

PUBLICATION

IRS Releases Two Notices for Tax-Exempt Hospitals

January 08, 2014

On December 30, 2013, the Internal Revenue Service issued two notices related to Section 501(r) of the Internal Revenue Code, which provides guidelines for hospital organizations wishing to retain tax-exempt status. Notice 2014-2 confirms that tax-exempt hospital organizations may rely on proposed regulations under Section 501(r) before final regulations are published. Notice 2014-3 provides correction and disclosure procedures for certain failures to meet the requirements under Section 501(r).

Background - Section 501(r)

Section 9007 of the Patient Protection and Affordable Care Act enacted Section 501(r) which provides that a hospital organization will not be afforded tax-exempt treatment under Section 501(c)(3) unless the hospital meets the requirements of Section 501(r)(3) through (r)(6).

- Section 501(r)(3) requires a hospital organization to conduct a community health needs assessment (CHNA) every three years and implement a strategy to meet those needs.
- Section 501(r)(4) requires a hospital organization to establish a financial assistance policy (FAP) and a policy related to emergency medical care.
- Section 501(r)(5) limits amounts charged for emergency or other medically necessary care that is provided to individuals under the hospital's FAP to not more than the amounts generally billed to insured individuals.
- Section 501(r)(6) requires reasonable efforts to be made to determine whether an individual is FAP-eligible before engaging in extraordinary collection actions.

For a more detailed discussion on Section 501(r), please see our [July 19, 2012](#) and [April 16, 2013](#) Health Stat Alerts.

Notice 2014-2

Notice 2014-2 confirms that tax-exempt hospital organizations may rely on the proposed regulations under Section 501(r) dated June 26, 2012 and April 5, 2013, pending the publication of final regulations or other applicable guidance.

The preamble to the 2013 proposed regulations did not specifically address whether taxpayers could rely on sections other than Prop. Reg. Section 1.501(r)-3 pending the publication of final or temporary regulations. Notice 2014-2 was written to confirm that tax-exempt organizations may rely on both the 2012 and 2013 proposed regulations until final or temporary regulations or other applicable guidance is published.

Notice 2014-3

Notice 2014-3 includes a proposed revenue procedure that provides correction and disclosure procedures, under which certain failures to meet the requirements of Section 501(r) will be excused for purposes of Sections 501(r)(1) and 501(r)(2)(B).

Correction Principles: The proposed revenue procedure contains four correction principles:

- **Restoration of Affected Persons:** To the extent possible, correction should be made with respect to each affected person, if any, and should restore the affected person(s) to the position they would have been in had the failure not occurred.
- **Reasonable and Appropriate Correction:** Correction should be reasonable and appropriate to address the failure.
- **Timing:** The correction should be made as promptly after discovery as is reasonable given the nature of the failure.
- **Implementation/Modification of Safeguards:** If the hospital organization has not established practices and procedures for its hospital facility that are reasonably designed to achieve each facility's compliance with the requirements of Section 501(r), the hospital organization should establish such practices and procedures as part of its correction.

To the extent that a hospital organization's established practices and procedures comply with Section 501(r), but those practices or procedures failed, the hospital organization should determine if changes are needed to reduce the likelihood of that type of failure recurring and to assure prompt identification and correction of any such failures.

Disclosure: A failure is disclosed if the hospital organization reports the following information on Schedule H of its Form 990 in the year the failure is discovered:

- A description of the failure;
- A description of the discovery, including how the discovery was made and the timing of the discovery;
- A description of the corrections made; and
- A description of the revised or newly-implemented practices and procedures.

The proposed revenue procedure provides that minor and inadvertent omissions and errors due to reasonable cause that are corrected in accordance with the requirements of Prop. Reg. Section 1.501(r)-2(b) of the 2013 proposed regulations are not considered failures to meet a requirement of Section 501(r) and do not need to be disclosed.

Comments related to this proposed regulation must be submitted by March 14, 2014. If you have any questions about these notices, please contact the Baker Donelson attorney with whom you regularly work, or any of the attorneys in the Firm's Health Law group.