



## Four Steps Nonprofit Hospitals Should Take to Help Retain Their Tax-Exempt Status

Newly finalized IRS regulations further distinguish the practices of tax-exempt hospitals from those of for-profit hospitals. While these new provisions are not applicable until tax years beginning after Dec. 29, 2015, hospitals are encouraged to examine their own policies and pursue compliance this year: In considering whether to revoke tax-exempt status following a compliance breach, the IRS will consider all relevant efforts the hospital has made to identify and address failures before the IRS discovers them.

Noncompliance with these new provisions, outlined in section 501(r) of the Internal Revenue Code, can result in loss of tax-exempt status. These rules apply even if a hospital operates a facility through a partnership or limited liability company where it has an ownership stake.

Tax-exempt hospitals should take action to have the right procedures in place in several ways:

**Make the community health needs assessment available to the public:** Tax-exempt hospitals must conduct a community health needs assessment (CHNA) at least once every three years and adopt an implementation strategy to meet the needs identified. Both the assessment and the strategy must be made “widely available to the public,” a standard that can be satisfied if the provider posts the CHNA online.

**Revisit your written financial assistance policy (FAP) and make sure it is online:** The FAP must spell out eligibility criteria, process and how charges are calculated. It must also explain the actions that may be taken in the event of non-payment. Finally, it should list all providers besides those employed by the hospital who deliver emergency and medical care there, noting which are covered by the FAP and which are not.

The FAP, as well as the FAP application and a plain-language summary, must be translated into any primary languages spoken by the lesser of 1000 persons or 5 percent of the population served, and must be available both online and in paper form and displayed prominently in the hospital. Additional distribution requirements outlined in Section 501(r) may necessitate involvement from the hospital’s marketing and community relations departments. Make the FAP, the application and plain language summary available online to widely publicize them.

Of note, even though there may be other discounts, the IRS will only view the discounts specified in a hospital’s FAP—and, therefore, subject to the “amounts generally billed” limitation—as a community benefit.



**Ensure FAP patient charges can be billed according to the new provisions:** Hospitals must limit FAP-eligible patients' charges for emergency or medically necessary care to not more than the "amounts generally billed" (AGB) to individuals with insurance covering that care. The AGB rate must be based on one of the two specific methods dictated by the regulations. Only one method can be used at a time, but different hospitals operated by the same organization may choose to use different methods to get a better rate, and a hospital may change the method it uses to determine AGB at any time. Nonemergency elective services could be billed at gross charges or a rate higher than AGB.

**Evaluate debt collection efforts for future compliance:** Nonprofit hospitals cannot sell a patient's debt, defer or deny medically necessary care or report adverse information to a patient's credit agency until the patient has had eight months (from the first post-discharge bill) to apply for financial assistance and thus confirm his/her FAP eligibility.

#### **Head off Future Threats to Tax-Exempt Status Now**

The IRS can easily monitor hospitals' websites and check to see that the required information is available, so make sure that all information is present and easily accessible. A hospital that fails to meet the requirements of section 501(r) may have its section 501(c)(3) status revoked and its income subject to taxation. Keep in mind that many of the provisions enumerated will require time to implement, so administrators should look to immediately begin a proactive effort to prepare the various departments that touch their hospitals' website, community outreach, accounting and other related functions. The time to start is now.