



Health Reform Adds New Requirements for Nonprofit Hospitals to Remain Tax-Exempt

CLIENT ADVISORY

While the full impact of the Patient Protection and Affordable Care Act (the "Act") is still being analyzed and debated throughout the country, the Act has included a new layer of requirements that tax-exempt hospitals must fulfill to maintain exempt status. Failure to comply with the additional measures may result in financial penalties and/or loss of exempt status. Many of these changes had been debated, proposed and defeated over the past several years in hearings and legislation, including proposed amendments to the American Recovery and Reinvestment Act of 2009. However, with the passage of the Act, tax-exempt hospitals must become familiar with the new restrictions.

These new requirements apply to each tax-exempt organization (i) that operates a facility required to be licensed, registered or recognized as a hospital under state law; or (ii) that the Treasury Department determines to have hospital care as its primary function (these facilities are collectively referred to as "charitable hospitals"). If an exempt organization operates more than one charitable hospital, the requirements will apply separately to each charitable hospital.

Section 9007 of the Act creates a new Section 501(r) in the Internal Revenue Code and imposes the following additional requirements on charitable hospitals:

- Community Health Needs Assessment. Once every three years, each charitable hospital will be required to undertake a community

health needs assessment that takes into account input from persons who represent the broad interests of the community served by the charitable hospital, including those with special knowledge of or expertise in public health. Each assessment must be made widely available to the public, and the organization must adopt an implementation strategy to meet the community health needs identified through each assessment. An excise tax of \$50,000 is imposed on an exempt organization for each year that it fails to meet these requirements. Although the assessment requirement does not take effect until March 23, 2012, charitable hospitals should plan to conduct at least one community health needs assessment by that date since the penalty provisions took effect upon passage of the Act.

- Financial Assistance Policy. Each charitable hospital must implement and maintain a written financial assistance policy that includes (i) eligibility criteria for financial assistance, and whether such assistance includes free or discounted care; (ii) the basis for calculating amounts charged to patients; (iii) the method for applying for financial assistance; (iv) the actions the organization may take in the event of non-payment, in the event the organization does not have a separate billing and collection policy; and (v) measures to widely publicize the policy within the community served by the organization.



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- Policy Relating to Emergency Medical Care. Each charitable hospital must implement and maintain a written policy requiring it to provide, without discrimination, care for emergency medical conditions to individuals regardless of their eligibility under the financial assistance policy.
- Limitation on Charges. Charitable hospitals must limit the amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy to not more than the amounts generally billed to individuals who have insurance covering such care.
- Billing and Collection. Charitable hospitals may not engage in extraordinary collection actions before they have made reasonable efforts to determine whether the individual is eligible for assistance under the financial assistance policy.

The Act requires the Treasury Department to implement regulations and guidance as necessary to implement these requirements. The Act also requires the Treasury Department to review, at least once every three years, the community benefit activities of each charitable hospital.

The Act also includes new Form 990 reporting requirements. In future Form 990 filings, exempt organizations subject to the above requirements will also be required to include (i) copies of their audited financial statements or consolidated financial statements, if applicable; and (ii) a description of how the organization is addressing the needs identified in each community health needs assessment, along with a description of any such needs that are being addressed together with the reasons why such needs are not being addressed.

Except for the community health needs assessment requirement, which takes effect on March 23, 2012, the above requirements generally apply to taxable years beginning after March 23, 2010.

The Act requires the Treasury Department to submit an annual report to Congress detailing trends and issues for all hospitals general regarding charity care, bad expenses and unreimbursed costs for government programs applicable to all hospitals.

Exempt organizations should begin reviewing their internal policies and procedures to determine the steps necessary to comply with the Act. HDJN can help with explaining these requirements in more detail, determining the impact of these requirements on your organization and developing a plan to implement any necessary changes. If you have any questions or if we can be of assistance, please contact Jim Daniel or Mike Newby at 804-967-9604. Additional information about the firm Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.



HDJN is one of the largest Virginia law firms primarily focusing its practice on the needs of the healthcare industry.

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Richmond 4701 Cox Road Suite 400 Glen Allen, VA 23060 PO Box 72050 Richmond, VA 23255-2050 ○ (804) 967-9604	Fairfax 3975 Fair Ridge Road Suite 475 South Fairfax, VA 22033 ○ (703) 591-3440
Harrisonburg 3210 Peoples Drive Harrisonburg, VA 22801 ○ (866) 967-9604	Virginia Beach One Columbus Center 283 Constitution Drive Suite 301 Virginia Beach, VA 23462 ○ (757) 321-6555
Lewisburg, WV 210 West Randolph Street Lewisburg, WV 24901 ○ (866) 967-9604	Franklin, TN 725 Cool Springs Blvd. Suite 600 Franklin, TN 37067 ○ (866) 967-9604

For more information about HDJN visit the firm website at:
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