

EOTS NewsFlash

Exempt Organizations Tax Services

June 22, 2012

IRS and Treasury issue proposed regulations for charitable hospitals under section 501(r)

The Internal Revenue Service and the Treasury Department have issued a notice of proposed rulemaking (REG-130266-11) that would add new regulations under Internal Revenue Code section 501(r) to provide guidance regarding additional requirements imposed on charitable hospital organizations by the Patient Protection and Affordable Care Act of 2010.

Specifically, the proposed regulations provide guidance on the requirements described in section 501(r)(4) through 501(r)(6), which relate to financial assistance and emergency medical care policies, charges for certain care provided to individuals eligible for financial assistance, and billing and collection policies. The proposed regulations do not provide any further guidance with respect to the community health needs assessment ("CHNA") requirements described in section 501(r)(3), which were addressed by Notice 2011-52.

The proposed regulations provide detailed guidance in a number of key areas of concern to tax-exempt hospitals, including the content and making available of financial assistance policies ("FAPs"), the meaning of extraordinary collection actions ("ECAs"), and the meaning of amounts generally billed ("AGB") for purposes of the limitation on amounts charged for emergency or other medically necessary care to FAP-eligible individuals. However, the IRS and Treasury have reserved for further comment and future guidance the determination of some issues that remain high priorities for the healthcare sector. Further, although much of the detail included in the proposed regulations appears to address previous comments received by the IRS and Treasury, the proposed guidance will undoubtedly generate additional comments to be considered before final regulations are adopted.

Definition of hospital facility. Section 501(r) requires a hospital organization to satisfy the requirements separately with respect to each hospital facility. The proposed regulations define a hospital facility as a facility that is required by a state to be licensed, registered, or similarly recognized as a hospital. Except as otherwise provided in future published guidance, a hospital organization may treat multiple buildings operated under a single state license as a single hospital facility. Future



published guidance also will address whether a hospital organization's operations in a single building under more than one state license are treated as one or multiple hospital facilities for section 501(r) purposes.

Definition of hospital organization. The proposed regulations define the term "hospital organization" to include any organization recognized or seeking to be recognized as described within section 501(c)(3) that operates one or more hospital facilities, including any organization that operates a hospital facility through a disregarded entity. Noting that they are still considering comments received in response to Notice 2011-52, however, the IRS and Treasury explained that the operation of hospital facilities through joint venture arrangements will be addressed in separate guidance. Further, the proposed guidance does not expand the definition of hospital organization to include any other categories of organizations or facilities that provide hospital care but that do not operate one or more hospital facilities. The proposed regulations state that any future regulations regarding such categories of organizations will apply prospectively and only after notice and comment.

Consequences of a failure to satisfy the section 501(r) requirements. The proposed regulations reserve for future guidance the consequences of failing to meet one or more of the requirements of section 501(r). The IRS and Treasury are continuing to consider comments regarding this issue.

PwC is reviewing the substantive issues that were addressed by the proposed regulations, and we expect to provide further analysis shortly.

The proposed regulations are expected to be published in the Federal Register on June 26, 2012, which will begin the 90-day comment period. The pre-publication PDF may be accessed from the Federal Register, which is linked below.

Click [here](#) to access the notice of proposed rulemaking.

Click [here](#) to access PwC's NewsFlash discussing Notice 2011-52.

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For additional information, please contact a National Tax Services Exempt Organizations Tax Services Practice representative:

<i>Marci Krause</i>	<i>202-414-1012</i>	<i>marci.k.krause@us.pwc.com</i>
<i>Rob Friz</i>	<i>267-330-6248</i>	<i>robert.w.friz@us.pwc.com</i>
<i>Travis Patton</i>	<i>202-414-1042</i>	<i>travis.patton@us.pwc.com</i>
<i>Gwen Spencer</i>	<i>617-530-4120</i>	<i>gwen.spencer@us.pwc.com</i>
<i>Kaye Ferriter</i>	<i>617-530-4063</i>	<i>kaye.b.ferriter@us.pwc.com</i>
<i>Laura Parello</i>	<i>646-471-2472</i>	<i>laura.j.parello@us.pwc.com</i>
<i>Howard Schoenfeld</i>	<i>202-414-1717</i>	<i>howard.schoenfeld@us.pwc.com</i>
<i>Ron Schultz</i>	<i>202-346-5096</i>	<i>ronald.j.schultz@us.pwc.com</i>
<i>Caroline Burnicki</i>	<i>617-530-5767</i>	<i>caroline.n.burnicki@us.pwc.com</i>
<i>Larry Desalvo</i>	<i>267-330-6322</i>	<i>larry.desalvo@us.pwc.com</i>
<i>Michelle Michalowski</i>	<i>202-414-1615</i>	<i>michelle.g.michalowski@us.pwc.com</i>
<i>Eric McNeil</i>	<i>267-330-6415</i>	<i>eric.m.mcneil@us.pwc.com</i>
<i>Erin Couture</i>	<i>617-530-6179</i>	<i>erin.couture@us.pwc.com</i>
<i>Antonio C. Russo</i>	<i>267-330-1356</i>	<i>antonio.c.russo@us.pwc.com</i>

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