

NAVIGATING THE MAZE

Cheri Benander, MSN, RN, CHC, NHCE-C
Health Services Consultant, HealthTechS3

ARE YOU READY FOR A 501(R) COMPLIANCE AUDIT?



The Affordable Care Act (ACA) added additional requirements to the Internal Revenue Code section 501(r) for hospital organizations that want to be described as a Charitable 501(c)(3) hospital.¹ While most of the provisions were effective with the enactment of the ACA on March 23, 2010, others became effective with tax years beginning after March 23, 2012.² The changes added four general requirements for 501(c)(3) organizations that operate one or more hospital facilities, an excise tax for non-compliance, and reporting requirements. Recent IRS audits have many facilities re-evaluating their compliance with the rules. Let's take a closer look at the requirements.

501(r)(3)

Section 501(r)(3) requires that organizations complete a Community Health Needs Assessment (CHNA). The assessment must be conducted during the current tax year or in either of the two immediately preceding taxable years.³ Once completed, organizations are required to have a written report that includes an implementation strategy related to the needs identified in the CHNA (see 79 FR 78953 for detailed information related to the components of a CHNA). The CHNA and written strategies should be readily available on the organization's website.

501(r)(4)

Section 501(r)(4) states that a facility must have a Financial Assistance Policy (FAP) & Emergency Medical Care Policy. These policies may be combined or may be individual policies.

The FAP needs to include:

- ◆ eligibility criteria for financial assistance, and whether such assistance includes free or discounted care;
- ◆ the basis for calculating amounts charged to patients;
- ◆ the method for applying for financial assistance;
- ◆ in the case of an organization that does not have a separate billing and collections policy, the actions the hospital organization may take in the event of non-payment; and
- ◆ measures to widely publicize the FAP within the community to be served by the hospital organization.⁴

The Emergency Medical Care policy requires that you provide care for individuals with emergency medical conditions without discrimination and within the requirements of the Emergency Medical Treatment and Labor Act (EMTALA) regardless of their eligibility for financial assistance.⁵

501(r)(5)

Setting limits on amounts that can be charged for care provided to individuals who are eligible for assistance under the facilities FAP is the basis of the 501(r)(5) provision. In cases of an emergency or other medically necessary care, the facility may not charge those eligible under the FAP more than the amounts generally billed to individuals who have insurance. As it relates to all other medical care that is covered under the FAP, the facility is limited to less than gross charges for such care. "A billing statement issued by a hospital facility to a FAP-eligible individual for medical care covered under the FAP may state the gross charges for such care and apply contractual allowances, discounts, or deductions to the gross charges, provided that the actual amount the individual is personally responsible for paying is less than the gross charges for such care".⁶

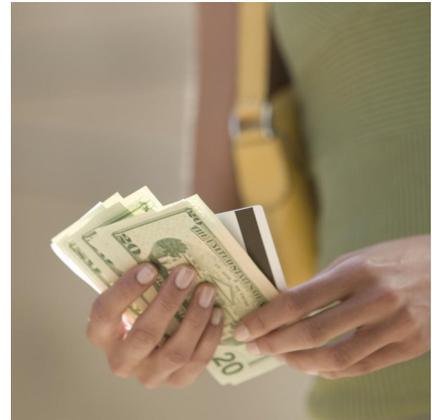


501(r)(6)

In provision 501(r)(6), there are restrictions related to how an organization can bill patients along with when and how accounts can be moved to bad debt. In general terms, the facility can not engage in extraordinary collection actions to receive payment for care

before reasonable efforts have been made to determine if the individual is eligible for financial assistance under the facilities FAP policy.⁷ While there are exceptions, the Federal Register describes extraordinary collection actions as;

- ◆ selling an individual's debt to another party;
- ◆ reporting adverse information about the individual to consumer reporting agencies or credit bureaus;
- ◆ deferring or denying, or requiring a payment before providing, medically necessary care because of an individual's nonpayment of one or more bills for previously provided care covered under the hospital facility's FAP;
- ◆ actions that require a legal or judicial process⁸



Excise Tax

Also added to the rules was Section 4959. This section imposes a \$50,000 excise tax for organizations that do not meet the CHNA requirements in a taxable year.⁹ An exemption was included as it relates to a minor admission or error that was either inadvertent or was due to a reasonable cause and is corrected.¹⁰

Reporting Requirements

Section 6033 was amended to include reporting requirements as it relates to Section 4959. The amendments indicate that "...a hospital organization must provide with its IRS Form 990 a description of how it is addressing the community health needs identified for each facility it operates, its audited financial statements, and the amount of the excise tax imposed on the organization under section 4959 during the taxable year".¹¹

Hospitals that are government organizations are exempt from filing Form 990 creating some questions as to how these organizations were going to satisfy the reporting requirements.



79 FR 78958 paragraph four provides clarification:

“The Affordable Care Act did not change the requirements regarding which organizations are required to file a Form 990. Rev. Proc. 95-48 provides that certain government entities are relieved from any requirement to file a Form 990 (and therefore are relieved from having to disclose information or documents on or with a Form 990). Accordingly, a government hospital organization (other than one that is described in section 509(a)(3)) described in Rev. Proc. 95-48 or a successor revenue procedure is not required to file a Form 990 or include any CHNA-related information with a Form 990. However, to be treated as described in section 501(c)(3), government hospital organizations still must meet all section 501(r) requirements that do not involve disclosure on or with the Form 990, including making their CHNA reports and FAPs widely available on a Website”

Conclusion

Some organizations are reporting recent audits aimed at ensuring compliance with the IRS Code Section 501(r). Be aware that the requirements apply to all hospital organizations including governmental organizations exempt from filing IRS Form 990. Prepare your organization by reviewing the requirements located in the Federal Register (79 FR 78953) and then performing your own internal audit.



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¹ Internal Revenue Service. (2017). New Requirements for 501(c)(3) Hospitals under the Affordable Care Act. Available from <https://www.irs.gov/charities-non-profits/charitable-organizations/new-requirements-for-501c3-hospitals-under-the-affordable-care-act>

² Indem

³ Catholic Health Association of the United States (Chausa). Summary of community health needs assessments and implementation strategy requirements (January 2015). Available from <https://www.chausa.org/docs/default-source/community-benefit/summary-of-chna-requirements.pdf?sfvrsn=2>

⁴ 77 FR 38147. Available from <https://www.federalregister.gov/documents/2012/06/26/2012-15537/additional-requirements-for-charitable-hospitals>

⁵ 77 FR 79008. Available from <https://www.federalregister.gov/documents/2012/06/26/2012-15537/additional-requirements-for-charitable-hospitals>

⁶ 79 FR 79009. Available from <https://www.federalregister.gov/d/2014-30525/page-79009>

⁷ 79 FR 79010. [https://www.federalregister.gov/documents/2014/12/31/2014-30525/additional-requirements-for-charitable-hospitals-community-health-needs-assessments-for-charitable#sectno-citation-%E2%80%891.501\(r\)-6](https://www.federalregister.gov/documents/2014/12/31/2014-30525/additional-requirements-for-charitable-hospitals-community-health-needs-assessments-for-charitable#sectno-citation-%E2%80%891.501(r)-6)

⁸ Indem

⁹ 79 FR 78995. Available at [https://www.federalregister.gov/documents/2014/12/31/2014-30525/additional-requirements-for-charitable-hospitals-community-health-needs-assessments-for-charitable#sectno-citation-%E2%80%891.501\(r\)-6](https://www.federalregister.gov/documents/2014/12/31/2014-30525/additional-requirements-for-charitable-hospitals-community-health-needs-assessments-for-charitable#sectno-citation-%E2%80%891.501(r)-6)

¹⁰ Indem

¹¹ 79 FR 78994. Para 7. Available at <https://www.federalregister.gov/documents/2014/12/31/2014->

For more information, please contact Cheri Benander:

Cell: 307-202-0315

Main: 615-309-6053

cheri.benander@healthtechs3.com

5110 Maryland Way, Suite 200 | Brentwood, TN 37027

www.healthtechs3.com

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