ISSUANCE OF SECTION 501(r) FINAL REGULATIONS

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SCOPE AND DEPTH OF THE NEW TAX-EXEMPTION REQUIREMENTS FOR CHARITABLE HOSPITALS CLARIFIED

A few days before the New Year, the IRS and the Treasury Department released final regulations under Section 501(r) with respect to the new tax exemption requirements promulgated under the Affordable Care Act for hospital facilities. In particular, the final regulations set forth a number of significant changes and clarifications with respect to the requirements for hospital facilities to undertake a Community Health Needs Assessment (“CHNA”), approve and widely publicize a financial assistance policy, limit the charges to financial assistance eligible patients, and adopt certain billing and collection practices. With the release of the final regulations, hospitals now have greater clarity regarding key issues raised by the new tax exemption requirements, which should help provide the means and the charge to implement changes in order to come into compliance. Below is a summary of some of the key issues raised by the final regulations.

APPLICABILITY TO PHYSICIAN PRACTICES AND OTHER HOSPITAL-OWNED ENTITIES

• In a significant change from past guidance, the final regulations unequivocally pronounce that Section 501(r) applies not just to the hospital facility itself, but to certain hospital owned physician practices and medical joint ventures providing services in the hospital facility. The determination of whether the Section 501(r) rules apply to care provided in the hospital facility by a hospital owned entity depends upon the entity’s classification for federal income tax purposes. Hospital owned physician practices and medical joint ventures organized as disregarded entities or partnerships which are deemed related to the exempt purpose of the hospital (i.e. not subject to unrelated business income), are subject to the Section 501(r) requirements. On the other hand, hospital owned physician practices and medical joint ventures organized as taxable corporations and partnerships which are deemed not related to the exempt purpose of the hospital(i.e. subject to unrelated business income), are not subject to the Section 501(r) requirements.

DISCOUNTS, PRESUMPTIVE CHARITY CARE AND APPLICABILITY TO INSURED POPULATION

• The final regulations recognize that hospitals may offer discounts ((e.g., uninsured discount, prompt pay discount, in-state discount) to patients separately from, and outside of, the hospital’s financial assistance policy. So long as such discounts (e.g., uninsured discount, prompt pay discount, in-state discount) are not provided within the financial assistance policy document and are indicated as being available regardless of the patient’s eligibility for financial assistance, the amounts charged to non-financial assistance patients receiving the discounts will not be required to comply with the limitation on charges requirements set forth under Section 501(r).

• The final regulations provide flexibility for hospitals to provide presumptive charity care, outside of the financial assistance application process and remain in compliance with Section 501(r). When utilizing presumptive measures, the hospital must describe in its financial assistance policy what information obtained from sources (other than the individual) are used by the hospital to presumptively determine that an individual is eligible for financial assistance(ex, if hospital runs a credit check, they must disclose in FAP). In addition, if an individual is awarded a lesser discount than free care pursuant to the use of presumptive charity care, the hospital must notify the individual regarding the basis for that determination and how they can apply for more generous assistance.

• The final regulations reiterate the IRS’ overall intent that Section 501(r) generally applies to both uninsured and insured populations.

• The final regulations continue to allow great flexibility to hospital facilities to craft their own financial assistance policies, without setting any specific minimum criteria or thresholds for the provision of financial assistance.
FINANCIAL ASSISTANCE POLICY TECHNICAL REQUIREMENTS

• The final regulations assert that a hospital facility will not have sufficiently publicized its financial assistance policy (FAP) by merely making it available on its website or at the hospital facility itself. Instead, the final regulations require hospital facilities to affirmatively reach out to members of the communities they serve to notify and inform them about the financial assistance they offer. The IRS provides several examples of such affirmative outreach, including distributing copies of the FAP to the local health department, as well as to public agencies and nonprofit organizations in its community that address the health issues and other needs of low income populations.

• The final regulations have significantly lowered the threshold required to provide translated copies of the FAP to the public. The proposed regulations provided that hospital facilities must translate FAP documents into the primary language of any non-English speaking population that constitutes more than 10% of the members of the community served by the hospital facility. The final regulations change the threshold to the lower of 5% of the hospital facility’s community or 1,000 persons. This may have a significant impact on hospitals in major urban metropolitan areas.

TIMING OF APPLICABILITY

• The final 501(r) regulations apply to 501(c)(3) hospital facilities with respect to the first taxable year beginning after December 29, 2015. For example, a hospital with a June year end would be subject to the requirements beginning with tax year 6/30/17 (beginning on 7/1/16). Calendar year hospitals would be the first in line with a 1/1/16 applicable date.

Because of the details and requirements contained within the final regulations, it is critical that 501(c)(3) hospital facilities begin the process of determining 501(r) readiness now to allow the necessary time to implement any necessary changes.

DHG Healthcare will have more information and planning tools related to these regulations. Please contact a DHG Healthcare Tax Professional below for additional information.