

Final Rule on the Affordable Care Act's Requirements for Tax-Exempt Hospitals

INTRODUCTION

On December 29th, the Department of the Treasury issued a final rule on the Affordable Care Act's regulations for tax-exempt hospitals. The ACA requires that, as a condition of their tax-exempt status, charitable hospitals identify and address the health needs of the communities they serve, establish billing and collections protections for patients eligible for financial assistance, and provide patients with the information needed to apply for such assistance. The final rule takes effect taxable years beginning after December 29, 2015 and is available [here](#).

In practice, many of these requirements took effect in 2010. Charitable hospitals have been required to make a good-faith effort to comply with the statutory requirements since the ACA was passed, and have relied on Treasury's proposed regulations to do so. These final rules adopt the same framework of proposed regulations but make some changes.

The following are notable provisions in the final rule; these provisions are adopted directly from the proposed rule unless otherwise noted.

LIMITING CHARGES

For emergency or other medically necessary care, charitable hospitals may not charge individuals eligible for financial assistance more than "amounts generally billed." There are two methods that a hospital may use to determine these amounts:

1. The "look-back" method, which is based on actual past claims by either Medicare fee-for-service alone or Medicare fee-for service and all private health insurers paying claims to the hospital facility; or
2. The "prospective" method, which requires the facility to estimate the amount it would be paid by Medicare and a Medicare beneficiary for the emergency or other medically necessary care at issue if the individual were a Medicare fee-for-service beneficiary.

FINANCIAL ASSISTANCE POLICIES

Charitable hospitals must establish and publicize a financial assistance policy that clearly describes to patients the eligibility criteria for obtaining financial assistance and the method for applying for financial assistance. General notifications regarding a hospital's financial assistance policy must appear on bills and in the hospital.

The final rule also increases hospitals' obligations to provide translation of these policies beyond the proposed rule. Hospitals must now translate financial assistance policies into the primary language of

any populations with limited English proficiency that constitute more than 5 percent of the community or 1,000 people, whichever is less. *The threshold in the proposed rule was 10 percent.*

BILLING AND COLLECTION REQUIREMENTS

Charitable hospitals are prohibited from engaging in certain collection methods, such as reporting debt to a credit agency or garnishing wages, until they make reasonable efforts to determine whether an individual is eligible for assistance under the hospital's financial assistance policy. When a hospital plans to use extraordinary collections actions, such as reporting a debt to a credit bureau, selling the debt to a third party or garnishing wages, individual written and oral notifications of the hospital's financial assistance policy are required. *This is less stringent than the proposed rule, which required individual written notifications in all cases.*

COMMUNITY HEALTH NEEDS ASSESSMENT

Each charitable hospital must conduct and publish a community health needs assessment at least once every three years. On annual tax filings, the hospital must disclose the steps it is taking to address the health needs identified in the assessment.

REVOCAION OF TAX-EXEMPT STATUS

If a charitable hospital fails to meet the consumer protection provisions required by the law, the hospital could have its tax-exempt status revoked. If a hospital fails to properly conduct a community health needs assessment or adopt an implementation strategy, a \$50,000 excise tax will apply. However, if a hospital fails to meet a requirement, but the failure is neither willful nor egregious, the hospital can correct and publicly disclose the error to have it excused, avoiding revocation of tax-exempt status but not the application of the excise tax.