

Recent Health Care Legislation Impacts Tax-Exempt Hospitals

If you have any questions, please contact the following, or your Vorys relationship attorney:

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The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (together, the “Act”), amends the Internal Revenue Code (the “Code”) to impose four new requirements on tax-exempt hospitals. The requirements focus on the community benefit standard and are designed to address the concerns of members of Congress, particularly Sen. Charles Grassley (R-Iowa), that tax-exempt hospitals must provide sufficient charitable benefit to the community to warrant the benefits of tax-exempt status.

The new rules apply to any organization that is exempt under Section 501(c)(3) of the Code and operates at least one facility required by a state to be licensed or registered as a hospital. In addition, the IRS can apply the rules to any organization that it determines has the provision of hospital care as the principal purpose for which it is tax-exempt. For any tax-exempt organization operating more than one hospital, each facility must meet the new requirements.

The Act amends the Code so that a hospital will not be tax-exempt unless it does the following:

- Conducts a mandatory community health needs assessment at least every three years, involving input from members of the community served, and adopts an implementation strategy to meet the needs identified in the assessment;

- Adopts, implements and publicizes written financial assistance and emergency care policies;
- Limits amounts charged to individuals eligible under the financial assistance policy to the amounts generally billed to those who have insurance covering such care and prohibits the use of gross charges (generally, the amount a hospital charges without taking into account any discounts negotiated with insurance providers) for individuals eligible under the financial assistance policy; and
- Complies with requirements regarding billing and collection practices and refrains from using extraordinary collection actions before making reasonable efforts to determine whether a patient is eligible for the hospital’s financial assistance program.

Except for the community health needs assessment, the new requirements are effective for tax years beginning after the date of enactment, March 23, 2010. The community health needs assessment requirement is effective for tax years beginning after March 23, 2012. A \$50,000 excise tax will be imposed in any year in which a hospital fails to meet the community health needs assessment requirement.

In addition, hospitals also have new reporting and disclosure requirements on the Form 990. Hospitals must

include a description of how the organization is addressing the needs identified in each community health needs assessment and an explanation for any needs that are not being addressed. Further, the hospital's audited separate or consolidated financial statements also must be included with the Form 990, making such documents subject to the existing public disclosure requirements applicable to the Form 990.

Many hospitals are already performing some of the actions required under the Act; however, all hospitals should review the new rules and evaluate their existing policies and procedures to ensure that the hospital is in compliance with the new requirements for federal tax exemption.

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