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Health Care Reform Increases Federal Tax Exemption Requirements for Hospitals

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Hinshaw Health Law Alert

This is the sixth in a series of health care alerts that Hinshaw & Culbertson LLP will publish on the topic of health care reform.

Section 9007 of the Patient Protection and Affordable Care Act (PPACA) places additional requirements on tax-exempt hospitals for them to receive and maintain their Section 501(c)(3) federal tax exemption status. Many of the additional requirements found in Section 9007 are effective the taxable year beginning after the March 23, 2010 enactment date of this law. Thus, for those hospitals that, for instance, have a May 1 to April 30 fiscal year, these provisions apply for fiscal year 2011 beginning May 1, 2010.

The new requirements have been codified in the Internal Revenue Code at Section 501(r). There are four general requirements. A 501(c)(3) hospital must:

- meet the community health needs assessments required in PPACA;
- meet the financial assistance policy requirements in PPACA;
- meet the requirements on charges in PPACA; and
- meet the billing and collection requirements in PPACA.

If a health system has more than one hospital that is tax-exempt, each such hospital must meet the requirements separately to be treated as exempt from federal tax pursuant to Section 501(c)(3).

The first significant new requirement is that tax-exempt hospitals must provide a community health needs assessment. This requirement is effective for taxable years beginning after the second anniversary date of PPACA's date of enactment.

The community health needs assessment must be performed every three years. It must take into account persons who represent the broad interests of the community served, including those with special knowledge of or expertise in public health. A comprehensive assessment will require community input, analysis of public health programs, and identification of disadvantaged populations and chronic diseases. The assessment should collect information from publicly available sources, such as the Department of Health, private foundations, and state and federal agencies. Hospitals are encouraged to form coalitions with community leaders, social workers, health educators and

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representatives of the medically underserved to develop a community health needs assessment, which includes strategies for meeting the health needs identified. Resources will need to be budgeted to implement the strategies. Finally, the assessment must be made widely available to the public.

Many hospitals may already meet the second requirement of having written financial assistance policies. These policies must determine:

- 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;
- for those hospitals that do not have separate billing and collection policies, a statement of the collection-related actions the hospital may take in connection with non-payment; and
- how the hospital will publicize the policy within the community served.

The third major element involves charges. A hospital must limit the amounts charged for emergency room or other medically necessary care provided to patients eligible for assistance under the hospital's financial assistance policy to no more than the lowest amounts charged to patients who have insurance covering such care. In other words, hospitals cannot charge persons eligible for financial assistance higher rates than the lowest amounts charged to patients who have insurance covering such care.

Finally, a hospital may not engage in extraordinary collection actions before it has made reasonable efforts to determine whether the subject individual is eligible for financial assistance. There is no description of what might constitute reasonable efforts to determine whether the individual is eligible, nor as to what may be considered extraordinary collection actions. Hopefully, subsequent regulations will provide some guidance as to these issues.

PPACA amends the Internal Revenue Code by adding Section 4959 to impose an excise tax penalty of $50,000 on any tax-exempt hospital that fails to satisfy the community health needs assessment requirement for any taxable year. Furthermore, the United States Secretary of the Treasury, or that individual's delegate, is to review the community benefit activities of each tax-exempt hospital at least every three years. This review will probably be based upon the Form 990 Schedule H material and used to assess the excise tax penalty. Section 6033(b) of the Internal Revenue Code is also amended to require tax-exempt hospitals to include in their Form 990 a report describing how they are addressing the needs identified in each community health needs assessment conducted and their audited financial statements (or the consolidated financial statements in which they are included).

Hospitals are encouraged to begin developing, if they have not already done so, community health needs assessments, and to review their policies and procedures with respect to financial assistance, how charges are billed, and billing procedures and collection requirements.

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