




Proposed Regulations on Additional Requirements for
Charitable Hospitals:
Compliance and Public Comments
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General Background and Scope of the Proposed Regulations

- Provide guidance on certain additional requirements for charitable hospitals set forth in section 501(r) of the Internal Revenue Code
- Requirements addressed relate to financial assistance and emergency medical care policies, charges for certain care provided to individuals eligible for financial assistance, and billing and collections

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General Background and Scope of the Proposed Regulations (cont.)

- Do not provide guidance on requirements relating to Community Health Needs Assessments (which were addressed in part by IRS Notice 2011-52)
- Do not provide guidance on many important questions (for example, no guidance is provided on the effects of noncompliance)

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Description of the Status of the Proposed Regulations

- Not currently effective, but address rules in the Code that are currently effective
- Proposed tax regulations are frequently, but not always, significantly revised when published in final form
- The proposed regulations set forth very detailed and specific requirements

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Description of the Status of the Proposed Regulations (cont.)




- The rules in the proposed regulations generally are minimum requirements, not safe harbors
- As a practical if not technical matter, the rules in the proposed regulations could be viewed as establishing safe harbors under the requirements of the Code
- Whether to comply now with each specific rule in the proposed regulations will require judgment

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Organizations Subject to the Requirements



- The requirements apply separately to hospital facilities
- Hospital facilities are generally defined by reference to state law licensing requirements
- Hospital organizations generally include organizations operating hospital facilities through joint ventures and similar arrangements

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Organizations Subject to the Requirements (cont.)



- Governmental hospitals that have 501(c)(3) status are subject to the requirements, but IRS may be receptive to special treatment of governmental hospitals

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Content of Financial Assistance Policies



- The proposed regulations describe the required content of an FAP in great detail, including detailed descriptions of particular procedures and time periods
- Financial assistance may not be denied based on an omission of information and documentation not specifically required by the FAP

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Content of Emergency Medical Care Policies

- Expressly prohibit payment demands and debt collection activities from occurring in emergency department or other hospital venues that could interfere with treatment
- References compliance with regulations under EMTALA

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Requirement to Widely Publicize Policies

- Require detailed web, paper copy and facility posting availability
- Require plain language summaries
- Require materials in other languages based on a 10% standard for any language minority with limited proficiency in English

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Limitations on Charges

- Permit only two specified methods to determine "amounts generally billed"
- "Look-back Method" based on either Medicare fee-for-service only or Medicare fee-for-service together with all private health insurer paying claims
- "Prospective Medicare Method"
- One method must be chosen and consistently used
- Limitations on "gross charges"

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Limitations on Billing and Collections

- Generally defines "extraordinary collection actions" by reference to legal or judicial process, but also include selling debt and reporting to credit agencies
- Very detailed procedural requirements for "reasonable efforts" to determine eligibility
- "Notification period" beginning on first date care provided, ending 120 days after first billing statement provided

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Limitations on Billing and Collections (cont.)



- "Application period" beginning on first date care provided, ending 240 days after first billing statement
- Specified procedures for receipt of complete application, incomplete application and no application

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Relationship to Form 990 Schedule H



- Discussion of Schedule H

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Responding to the Proposed Regulations

- Possible source of best practices under existing Code requirements
- Possible that at least some specific requirements will be modified in final regulations
- Lack of guidance on the effects of noncompliance is a factor to consider