

Advocacy Organizations' Complaint Puts a Spotlight on Potential Noncompliance by Nonprofit Hospitals

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Thursday, September 4, 2014

On August 25, two advocacy organizations filed a complaint with the Internal Revenue Service (IRS) alleging **noncompliance by a hospital system** with respect to certain community benefit requirements imposed by the Patient Protection and Affordable Care Act (ACA).^[1] The hospital system at issue, **Jackson Health System (JHS)**, is a public hospital system operating in Miami-Dade County, Florida. The complaint, filed jointly by Florida Legal Services and the National Health Law Project, alleges that JHS does not have a financial assistance policy meeting IRS requirements, violates billing and collection requirements, and fails to meet community health needs assessment obligations.^[2]

Basis for the Complaint

As part of the ACA, Section 501(r) was added to the Internal Revenue Code (the Code). Section 501(r) imposes additional requirements on hospitals recognized (or seeking recognition) as charitable organizations described in Section 501(c)(3) of the Code.

Specifically, Section 501(r) requires tax-exempt hospitals, including those operated through joint ventures and governmental hospitals that have been recognized as

Section 501(c)(3) organizations, to comply with requirements relating to (1) community health needs assessments (CHNAs), (2) financial assistance policies (FAPs), (3) limitations on charges, and (4) billing and collections procedures. The majority of the requirements became applicable for tax years beginning after March 23, 2010, while the CHNA requirements became applicable for tax years beginning after March 23, 2012.

The complaint was filed on an IRS Form 13909, *Tax-Exempt Organization Complaint (Referral) Form*, with an accompanying memorandum, a mechanism by which a member of the general public may allege that a tax-exempt organization is in potential noncompliance with tax law.

Allegations

The complaint and memorandum rely on requirements outlined in IRS proposed regulations to argue that the practices of JHS fall short of the Section 501(r) requirements.^[3] Specific allegations relating to the FAP requirement include that JHS does not widely publicize its FAP and does not provide written assurance to its FAP-eligible patients that they will not be charged more than insured patients are. With respect to the billing and collections requirements, the complaint alleges that JHS is not using reasonable efforts to inform or assist those eligible for the charity care program and that extraordinary collection actions are undertaken without notice to patients that they may be eligible for such program. Finally, the complaint alleges that JHS fails to comply with the CHNA requirement by not having its CHNA materials available on its website and not engaging with low-income community advocates in the assessment process.

Implications

As an initial matter, it is not clear whether Section 501(r) applies to JHS, which is a public hospital. Section 501(r) applies only to those public hospitals that are also recognized by the IRS as organizations described in Section 501(c)(3). Even if Section 501(r) does apply, any action by the IRS would be discretionary and kept strictly confidential, even from the complainants.

Where the complaint may be more successful, however, is in creating public awareness of and generating public pressure with respect to these issues. A nod to this complementary purpose can be found in a bolded passage in the complaint, noting that a significant percentage of Miami-Dade's low-income patients fall into the "coverage gap" caused by the Florida Legislature's refusal to expand Medicaid under the ACA.

It is not clear whether other advocacy organizations will utilize the IRS complaint procedures in a similar manner in the future, but we would advise all tax-exempt hospitals, including public hospitals, to be aware of this possibility as they consider Section 501(r) compliance. While the effect of such a complaint on public hospitals may be limited to bad press, Section 501(c)(3) hospitals also face the potential threat that the IRS will take action on the complaint.

[1] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 9007, 124 Stat. 119 (2010), *codified at Code § 501(r)*.

[2] The full memorandum in support of the IRS Form 13909 complaint can be found [here](#).

[3] For further discussion of the proposed regulations, see “IRS Issues Proposed Regulations on Community Health Needs Assessments,” (Apr. 8, 2013), and T. Forte and T.J. Sullivan, “Implementing Section 501(r)’s Financial Assistance, Limitation on Charges, and Billing and Collections Requirements,” BNA’s Health Law Reporter (Dec. 13, 2012).

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