DATE: April 14, 2010

TO: Chief Executive Officers
    Chief Financial Officers
    In-House Counsel

FROM: Fred Jacobs, Esq.
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RE: New Requirements for Hospitals to Maintain Tax-Exempt Status Included in National Health Reform Law

Introduction and Overview
Section 9007 of the Patient Protection and Affordable Care Act of 2010 (the “Act”), imposes four new requirements that a hospital must satisfy to maintain tax-exempt status under Internal Revenue Code section 501 (c) (3). The new requirements apply to organizations that operate a facility required by a state to be licensed, registered, or otherwise recognized as a hospital, and are determined to have hospital care as their primary function or purpose for exemption. If an organization operates more than one hospital, every hospital in the organization must adhere to the provisions of the Act separately to qualify for its tax-exempt status. The new requirements take effect in 2011. However, the community health needs assessment requirement is not effective until 2013.

The four new requirements that a hospital must satisfy to be tax exempt are: (1) periodic preparation of a community health needs assessment; (2) maintenance of a qualified financial assistance policy; (3) limitations on charges to individuals eligible for such assistance; and (4) avoidance of certain billing and collection activities.

The New Requirements

1. Requirement for a Community Health Needs Assessment
Under the Act, each hospital facility is required to conduct a community health needs assessment at least once every three years and must have an implementation strategy, which is available to the public, to meet the needs identified through the assessment. The needs assessment must take advice from individuals who represent the community interest, including those with special expertise in public health issues. Failure to undertake such an assessment in any applicable three-year period can result in a penalty of up to $50,000.

NJHA’s Health Research and Educational Trust currently performs a community needs assessment that covers the necessary information every 5 years. HRET will adjust the schedule to comply with the three year requirement.

2. Requirement of a Financial Assistance Policy
Each hospital facility is required to adopt, implement and widely publicize a written financial assistance policy. The policy must indicate the eligibility criteria for financial assistance and whether such assistance includes free or discounted care.
For those eligible for discounted care, the policy must indicate the basis for calculating the amounts that will be billed to such patients. The policy also must indicate how to apply for assistance and if the hospital does not have a separate billing and collections policy, must indicate what actions a hospital may take in the event of non-response or non-payment, including collections action and reporting to credit agencies. In 2004 the American Hospital Association, the NJHA Board of Trustees and many other states adopted compassionate billing and collection practices (http://www.njha.com/publications/lop/lopv13n2.pdf).

3. Requirement of a Limitation on Charges
The hospital may not, with respect to emergency or other medically necessary care provided to individuals who are eligible for assistance under the financial assistance policy, charge more than the amounts generally charged to individuals who have insurance covering such care. The Act prohibits the use of gross charges in this regard, and the legislative history further explains that the hospital facility may not use “charge master” rates when billing such individuals. According to the legislative history, the amounts billed to individuals who qualify for financial assistance may be based on either the best, or an average of the three best, negotiated commercial rates, or Medicare rates.

4. The Billing and Collection Requirement
The hospital facility, including affiliates of the hospital, may not engage in “extraordinary” collection actions before the hospital has made reasonable efforts to determine whether the individual is eligible for assistance under its financial assistance policy. Extraordinary collection actions include lawsuits, liens on residence, arrest, body attachments and other similar collection practices.. Hospitals will be required to provide notification of their financial assistance policies upon admission and in written and oral communications with the patient regarding the patient’s bills, including invoices and telephone calls, before collection action or reporting to credit agencies is initiated.

Treasury Report on Charity Care
Underscoring congressional concern regarding tax exemptions for hospitals, the Act requires the Secretary of the Treasury to report annually to Congress on the levels of charity care, bad debt expenses, unreimbursed costs of means-tested government programs and unreimbursed costs of non-means-tested government programs incurred by tax-exempt, taxable and governmental hospitals, as well as the costs incurred by private tax-exempt hospitals for community benefit activities; presumably, the source for much if not all of this information will be the Form 990 Schedule H. Further, the Secretary is required to conduct a study of any trends regarding those items and submit a report on such study no later than five years from the date of enactment.

NJHA will continue to monitor any guidance the Internal Revenue Service may issue with respect to the requirements set forth in the Act. Please contact me at 609.275.4089 or Sally Roslow at 609.275.4224 with any questions.

1 Note that in 2008, New Jersey enacted C.26:2H-12.52, which limits the amount a hospital may charge an uninsured resident whose family gross income is less than 500 percent of the federal poverty level to an amount no greater than 115 percent of the applicable payment rate under Medicare.