

# 2010 Health Care Reform Alert

HONIGMAN

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## Requirements for Tax-Exempt Hospitals

Under the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010 (collectively, 2010 Health Legislation) tax-exempt hospitals must meet new requirements to maintain their tax-exempt status under IRC Section 501(c)(3). For tax-exempt organizations operating more than one hospital, each hospital must satisfy these requirements separately. These new requirements are highlighted below.

### 1. Community Health Needs Assessment (Effective for Tax Years Beginning after March 23, 2012)

Tax-exempt hospitals must conduct a community health needs assessment once every three years, and adopt an implementation strategy to meet the community health needs identified in the assessment. The assessment must include input from persons who represent broad interests of the community served by the hospital facility, including those with special knowledge or expertise in public health. Additionally, the assessment must be made widely available to the public.

The 2010 Health Legislation also requires hospitals to provide certain related information on IRS Form 990, including (a) a report that describes how the hospital is addressing the needs identified in the assessment, along with a summary of needs that are not being addressed and an explanation of why; and (b) audited financial statements (however, it is unclear from the 2010 Health Legislation when such statements need to be included in the Form 990). The IRS will review the hospitals' community benefit activities once every three years. Failure to complete a community health needs assessment in any applicable three-year period may result in a \$50,000 excise tax.

### 2. Financial Assistance Policy (Effective for Tax Years Beginning after March 23, 2010)

Each tax-exempt hospital must adopt and make widely available a written financial assistance policy with two key components:

First, it must incorporate (a) eligibility criteria for financial assistance and whether such assistance includes free or discounted care; (b) the basis for calculating amounts charged to patients; (c) the method for applying for financial assistance; (d) for hospitals that do not have a separate billing and collections policy, a statement of the collection-related actions the hospital may take in connection with non-payment; and (e) how the hospital will widely publicize the policy within the community it serves.

Second, it must commit the hospital to provide non-discriminatory emergency medical care, regardless of whether an individual is eligible for financial assistance under the hospital's financial assistance policy. (It is not clear how this changes a hospital's EMTALA obligations or how this affects a tax-exempt hospital that does not operate an emergency room.)

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Detroit

Lansing

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Kalamazoo

**3. Limitations on Patient Charges (Effective for Tax Years Beginning after March 23, 2010)**

Tax-exempt hospitals must limit the charges for emergency or other medically necessary care provided to individuals eligible for assistance under the hospitals' financial assistance policy to not more than the amounts generally billed to individuals who have insurance covering such care. Additionally, hospitals must prohibit the use of "gross charges" when billing individuals who qualify for financial assistance. Although the 2010 Health Legislation does not define "gross charge", the term generally means the full cost that a hospital charges without applying the discount negotiated with insurance providers.

**4. Billing and Collection Requirements (Effective for Tax Years Beginning after March 23, 2010)**

The 2010 Health Legislation prohibits hospitals from taking extraordinary collection actions before making reasonable efforts to determine whether individuals are eligible for assistance under the hospitals' financial assistance policies. "Extraordinary collection actions" include lawsuits, liens on residences, arrests or other similar collection practices. The definition of "reasonable efforts" will be determined by subsequent regulation, although it presumably would include notification to patients of the written financial policy upon admission, in the bill and by follow-up telephone calls.

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**Action Steps**

We recommend immediate attention to the new requirements described in this alert to ensure compliance with the 2010 Health Legislation. Tax-exempt hospitals should evaluate their existing policies regarding financial assistance, patient charges and billing and collections to ensure compliance with the new standards. Hospitals should also consider their community's needs and plan for the preparation of a formal assessment.

For questions concerning the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010, please contact any member of the Honigman Health Care Department.