

26 CFR 601.201: Rulings and determination letters
(Also Part I, §§ 501(c)(3), 501(r), 1.501(r)-2)

Rev. Proc. 2015-21

SECTION 1. PURPOSE

This revenue procedure provides guidance regarding correction and disclosure procedures for hospital organizations to follow so that certain failures to meet the requirements of § 501(r) of the Internal Revenue Code will be excused for purposes of § 501(r)(1) and 501(r)(2)(B).

SECTION 2. BACKGROUND

Section 9007 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), enacted § 501(r), which imposes additional requirements on charitable hospital organizations. Section 501(r)(1) provides that a hospital organization described in § 501(r)(2) will not be treated as described in § 501(c)(3) unless the organization meets the requirements of § 501(r)(3) through (r)(6).

Section 501(r)(2)(A) defines a hospital organization as including any organization that operates a facility required by a state to be licensed, registered, or similarly recognized as a hospital.

Section 501(r)(2)(B) requires a hospital organization that operates more than one hospital facility to meet the requirements of § 501(r) separately with respect to each hospital facility and provides that such a hospital organization will not be treated as described in § 501(c)(3) with respect to any hospital facility for which the requirements of § 501(r) are not separately met.

Section 501(r)(3) requires a hospital organization to conduct a community health needs assessment (CHNA) every three years and to adopt an implementation strategy to meet the community health needs identified through such assessment. Section 4959 imposes a \$50,000 excise tax on a hospital organization that fails to meet the requirements of § 501(r)(3).

Section 501(r)(4) requires a hospital organization to establish a financial assistance policy (FAP) and a policy relating to emergency medical care.

Section 501(r)(5) requires a hospital organization to limit amounts charged for emergency or other medically necessary care that is provided to individuals eligible for assistance under the organization's FAP (FAP-eligible) to not more than the amounts generally billed to individuals who have insurance covering such care. Section 501(r)(5) also prohibits the use of gross charges.

Section 501(r)(6) requires a hospital organization to make reasonable efforts to determine whether an individual is FAP-eligible before engaging in extraordinary collection actions (ECAs) against the individual.

The statutory requirements of § 501(r) (except for § 501(r)(3)) apply to taxable years beginning after March 23, 2010. Section 501(r)(3) applies to taxable years beginning after March 23, 2012.

On December 29, 2014, the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) released final regulations (TD 9708) that contain guidance on the requirements of § 501(r)(3) through (r)(6) and the consequences for failing to meet any of these requirements.

Under § 1.501(r)-2(b) of the Treasury Regulations, a hospital facility's omission of required information from a report or policy described in § 1.501(r)-3 or § 1.501(r)-4, or error with respect to the implementation or operational requirements described in § 1.501(r)-3 through § 1.501(r)-6, will not be considered a failure to meet a requirement of § 501(r) if: (1) such omission or error was minor and either inadvertent or due to reasonable cause; and (2) the hospital facility corrects such omission or error as promptly after discovery as is reasonable given the nature of the omission or error. For purposes of this provision, correction must include the establishment (or review and, if necessary, revision) of practices or procedures (formal or informal) that are reasonably designed to promote and facilitate overall compliance with the requirements of § 501(r).

Under § 1.501(r)-2(c), a hospital facility's failure to meet the requirements of § 1.501(r)-3 through § 1.501(r)-6 that is neither willful nor egregious shall be excused for purposes of § 501(r)(1) and 501(r)(2)(B) if the hospital facility corrects and makes disclosure in accordance with rules set forth by revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin.

SECTION 3. PRINCIPAL CHANGES FROM DRAFT REVENUE PROCEDURE

.01 In Notice 2014-3, 2014-3 I.R.B. 408 (Dec. 31, 2013), the Treasury Department and the IRS invited comments regarding the procedures set forth in a proposed revenue procedure regarding correction and disclosure of failures to meet the requirements of

§ 501(r), including what additional examples, if any, would be helpful to include and whether hospital organizations should be required to make disclosure in ways other than reporting on their Forms 990, *Return of Organization Exempt From Income Tax*, such as on their Web sites. The Treasury Department and the IRS received six comments in response to Notice 2014-3.

.02 In response to the comments regarding Notice 2014-3 and to conform this revenue procedure with the final regulations under § 501(r) (TD 9708), this revenue procedure includes the following changes to the revenue procedure proposed in Notice 2014-3:

(1) Section 3.02 of Notice 2014-3 (section 4.02 of this revenue procedure) has been modified to conform with § 53.4959-1(b)(1), which makes clear that a hospital organization failing to meet the requirements of § 501(r)(3) will be subject to the excise tax under § 4959.

(2) Section 5.03 of this revenue procedure has been added in response to a comment requesting clarification that certain minor omissions and errors that are described in and corrected in accordance with § 1.501(r)-2(b) are not considered failures to meet a requirement of § 501(r) and are therefore outside the scope of this revenue procedure. Section 5.03 also includes two examples of minor errors suggested by a commenter that the Treasury Department and the IRS agree are the type of minor errors that are described in and may be corrected in accordance with § 1.501(r)-2(b). These are not the only kinds of omissions or errors that may be described in § 1.501(r)-2(b).

(3) Section 4.02 of Notice 2014-3 (section 5.04 of this revenue procedure) has been modified to conform with § 1.501(r)-2(c), which states that an egregious failure includes only a very serious failure, taking into account the severity of the impact and the number of affected persons, and that a hospital facility's correction and disclosure of a failure is a factor tending to show that the failure was not willful.

(4) Section 5.01(1) of Notice 2014-3 (section 6.01(1) of this revenue procedure) has been modified to provide that the correction principle requiring restoration of affected individuals applies only to failures to meet the requirements of § 501(r)(4)(A), (r)(5), or (r)(6). This section also has been modified to conform with §§ 1.501(r)-5(d)(3) and 1.501(r)-6(c)(6)(i)(C)(2) by specifying that restoration of FAP-eligible individuals does not require a refund of excess payments if the excess payment was less than \$5.

(5) Section 5.01(4) of Notice 2014-3 (section 6.01(4) of this revenue procedure) has been modified to conform with the language in § 1.501(r)-2(a)(5), (b)(1)(ii), and (b)(4), which refer to the establishment of practices or procedures (formal or informal) reasonably designed to promote and facilitate overall compliance with the § 501(r) requirements.

(6) Section 5.02(4) of Notice 2014-3 (section 6.02(3) of this revenue procedure) has been modified to conform with § 1.501(r)-4(b)(1)(ii), which requires a hospital facility to widely publicize its FAP.

(7) Section 6(1) of Notice 2014-3 (section 7.01(1) of this revenue procedure) has been revised to require an "estimate of" the number of persons affected and the dollar amounts involved and to eliminate the requirement to describe the practices and procedures (if any) that were in place prior to the occurrence of the failure to detect or

prevent the type of failure that occurred. Section 7.01(1) and (2) of this revenue procedure also clarify that information about multiple errors of the same type and corrections of those errors should be aggregated in a summary.

(8) Section 6(2) of Notice 2014-3, which required a description of the discovery of the failure, was deleted.

(9) Section 7.02 of this revenue procedure has been added to provide that hospital organizations that do not have a Form 990 filing requirement may disclose their failures and corrections on a Web site.

.03 In addition to the aforementioned changes, this revenue procedure makes other minor revisions to the revenue procedure proposed in Notice 2014-3 that are not intended to have substantive effect, such as updating section numbers and making corresponding changes to cross-references.

SECTION 4. EFFECT

.01 In general. The IRS will not treat a hospital organization's failure to meet a requirement of § 501(r) as a failure for purposes of § 501(r)(1) and 501(r)(2)(B) if the failure falls within the scope of section 5 of this revenue procedure and if the hospital organization corrects and discloses the failure in accordance with sections 6 and 7 of this revenue procedure.

.02 Excise tax under § 4959. Unless a hospital organization's failure to meet the requirements of § 501(r)(3) involves an omission or error that is described in and corrected in accordance with § 1.501(r)-2(b) (and is thus not considered a failure), a failure to meet the requirements of § 501(r)(3) will result in a tax being imposed on the

organization under § 4959, notwithstanding the organization's correction and disclosure of the failure in accordance with sections 6 and 7 of this revenue procedure.

SECTION 5. SCOPE

.01 In general. A hospital organization may use the provisions of this revenue procedure to correct and disclose any failure to meet a requirement of § 501(r) that is not willful or egregious, subject to the conditions of section 5.02 of this revenue procedure.

.02 Effect of exam. In the case of a hospital organization that is contacted by the IRS concerning an examination of the organization, the hospital organization may use the provisions of this revenue procedure to correct and disclose a § 501(r) failure only if, at the time the organization is first contacted by the IRS, the following conditions are satisfied:

(1) The hospital organization has corrected or is in the process of correcting the failure in accordance with section 6 of this revenue procedure; and

(2) If the due date (allowing for extensions) for the annual return for the tax year in which the failure was discovered has passed (or would have passed, in the case of a hospital organization that is not required to file an annual return), the hospital organization has already disclosed the failure in accordance with section 7 of this revenue procedure.

.03 Minor and Inadvertent Omissions and Errors. Under § 1.501(r)-2(b), a hospital facility's omission or error with respect to the requirements of § 1.501(r)-3 through § 1.501(r)-6 will not be considered a failure to meet a requirement of § 501(r) if such omission or error was minor and either inadvertent or due to reasonable cause and the

hospital facility corrects such omission or error in accordance with § 1.501(r)-2(b). Because minor omissions and errors that are either inadvertent or due to reasonable cause and are corrected in accordance with § 1.501(r)-2(b) are not considered failures to meet a requirement of § 501(r), hospital organizations do not need to use the correction and disclosure procedures described in this revenue procedure for such omissions and errors. However, an organization that wants to correct such a minor omission or error may rely on the principles regarding correction described in section 6 of this revenue procedure in meeting the correction requirements of § 1.501(r)-2(b)(1)(ii).¹ This section 5.03 may be illustrated by the following examples:

(1) A hospital facility's CHNA report or FAP is unavailable on a Web site for a short period of time due to an inadvertent technological malfunction. Promptly upon discovery of the technological malfunction, the hospital facility corrects the error by ensuring that the CHNA report or FAP is available on its Web site and reviews its relevant practices and procedures and determines that no revisions are necessary to prevent this type of error from recurring. Because the error was minor and inadvertent and the hospital facility corrects the error promptly upon discovery in accordance with § 1.501(r)-2(b)(1)(ii), the error would not be considered a failure to meet the requirements of § 501(r) and, thus, would be outside the scope of this revenue procedure.

¹ In addition, § 1.501(r)-2(a)(8) provides that, for purposes of determining whether to continue to recognize the § 501(c)(3) status of a hospital organization, the IRS will consider whether a hospital organization corrected a failure as promptly after discovery as was reasonable given the nature of the failure. A hospital organization that cannot or does not have an error or omission excused by following the correction and disclosure procedures outlined in this revenue procedure may nevertheless use the principles regarding correction described in section 6 of this revenue procedure in demonstrating that they satisfy the factor described in § 1.501(r)-2(a)(8).

(2) A hospital facility's usual signage about its FAP is not conspicuously displayed in its emergency room for a short period of time because an inadvertent disruption results in the signs falling down or being obstructed. The hospital facility corrects the error promptly upon discovery by replacing the signs or removing the obstruction and reviews its relevant practices and procedures and determines that no revisions are necessary to prevent this type of error from recurring. Because the error was minor and inadvertent and the hospital facility corrects the error promptly upon discovery in accordance with § 1.501(r)-2(b)(1)(ii), the error would not be considered a failure to meet the requirements of § 501(r) and, thus, would be outside the scope of this revenue procedure.

.04 Willful or egregious. A failure that is willful includes a failure due to gross negligence, reckless disregard, or willful neglect. An egregious failure includes only a very serious failure, taking into account the severity of the impact and the number of affected persons. Whether a failure is willful or egregious will be determined based on all of the facts and circumstances. A hospital organization's correction and disclosure of a failure in accordance with sections 6 and 7 of this revenue procedure is a factor tending to show that the failure was not willful.

SECTION 6. CORRECTION

.01 Correction principles. Correction must be made in accordance with the following principles:

(1) Restoration of affected individuals. With respect to failures to meet the requirements of § 501(r)(4)(A), (r)(5), or (r)(6) and to the extent reasonably feasible, the hospital organization should make the correction with respect to all affected individuals

and should restore any affected individual to the position in which he or she would have been had the failure not occurred, regardless of whether the harm suffered by the individual occurred in a prior year and regardless of whether such prior year is a closed taxable year. Restoration of a FAP-eligible individual who has paid more than he or she owes as a FAP-eligible individual does not require a refund if such excess payment was less than \$5.

(2) Reasonable and appropriate correction. The correction should be reasonable and appropriate for the failure. Depending on the nature of the failure, there may be more than one reasonable and appropriate correction.

(3) Timing. The correction should occur as promptly after discovery as is reasonable given the nature of the failure.

(4) Implementation/modification of safeguards. If the hospital organization has not established practices or procedures (formal or informal) for its hospital facility or facilities that are reasonably designed to promote and facilitate each facility's overall compliance with the requirements of § 501(r), the hospital organization should establish such practices or procedures as part of its correction. If the hospital organization has established such practices or procedures, the hospital organization should determine if changes to its practices or procedures are needed to reduce the likelihood of that type of failure recurring and to assure prompt identification and correction of any such failures that do occur. If it identifies any such changes to its practices or procedures, it should implement those changes.

.02 Examples. The provisions of section 6.01 may be illustrated by the following examples. For purposes of these examples, assume that the hospital facility corrected

the failure as promptly after discovery as is reasonable given the nature of the failure and put into place revised or newly established practices or procedures to minimize the likelihood of the failure recurring.

(1) A hospital facility has failed to adopt a CHNA report that contains all of the elements required by § 1.501(r)-3. It may correct the failure by preparing and adopting a CHNA report containing all of the required elements and making the corrected CHNA report widely available to the public within the meaning of § 1.501(r)-3(b)(7).

(2) A hospital facility has failed to adopt a FAP that contains all of the elements required by § 1.501(r)-4. It may correct the failure by establishing a FAP containing all of the required elements and widely publicizing that corrected FAP within the meaning of § 1.501(r)-4(b)(5).

(3) A hospital facility has failed to widely publicize its FAP in the manner described in § 1.501(r)-4(b)(5) because the FAP is not available on the hospital facility's (or any other) Web site for several months. The hospital facility may correct the failure by beginning to make the FAP widely available on a Web site as described in § 1.501(r)-1(b)(29) and doing additional public outreach to let affected individuals know the FAP is now available on the hospital facility's Web site (for example, through an "email blast" to patients whose email addresses the hospital facility has on record).

(4) A hospital facility has failed to meet the requirements of § 1.501(r)-5 because, due to processing errors, it charged FAP-eligible individuals more than an amount permitted under that section and discovers the errors during the month-end accounting period closing. The hospital facility may correct the failure by providing all of the affected FAP-eligible individuals with an explanation of the error, a corrected billing

statement, and a refund of any payments the individuals made in excess of the amounts owed after FAP discounts are applied (in cases in which the excess is \$5 or more).

SECTION 7. DISCLOSURE

.01 In general. Except as provided in section 7.02 of this revenue procedure, a failure is disclosed for purposes of this revenue procedure only if the hospital organization reports the following information on its Form 990, pursuant to the instructions for that Form, for the tax year in which the failure is discovered:

(1) A description of the failure, including the type of failure, the cause of the failure, the hospital facility or facilities where the failure occurred, the date(s) of the failure and its discovery, and the number of occurrences. Information about multiple errors of the same type should be reported in the aggregate in a summary that includes the time period over which the errors occurred and, in the case of errors involving the operational requirements described in § 1.501(r)-5 or § 1.501(r)-6, an estimate of the number of individuals affected and the dollar amounts involved.

(2) A description of the correction of the failure, including the method of correction, the date of correction, and, in the case of a failure to meet the requirements of § 501(r)(4)(A), (r)(5), or (r)(6), a description of how affected individuals were restored to the position they would have been in had the failure not occurred. Information about corrections of multiple errors of the same type should be reported in the aggregate in a summary that includes the time period over which the corrections occurred. If restoration of one or more individuals affected by a failure to meet the requirements of § 501(r)(4)(A), (r)(5), or (r)(6) was not reasonably feasible, the hospital organization should state this and explain why.

(3) A description of the practices or procedures, if any, that the hospital organization revised or newly established for its hospital facility or facilities to minimize the likelihood of the type of failure recurring and to facilitate the prompt identification and correction of any such future failures that do occur, or, if the hospital organization did not revise previously existing practices or procedures to minimize such likelihood, an explanation of why no changes in practices or procedures were necessary.

.02 Organizations not required to file Form 990. A hospital organization that is not required to file Form 990 will have disclosed a failure discovered in a tax year for purposes of this revenue procedure if the organization reports all of the information described in section 7.01 on a Form 990 for the tax year as described in that section or if it makes such information widely available on a Web site within the meaning of § 1.501(r)-1(b)(29) by the date its Form 990 for the tax year would have been due if the hospital organization were required to file a Form 990.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective on and after March 10, 2015. In addition, a hospital organization will be considered to have corrected and made disclosure in accordance with § 1.501(r)-2(c) if it corrected and disclosed a failure falling within the scope of this revenue procedure or Notice 2014-3 in a manner consistent with this revenue procedure or in accordance with Notice 2014-3 prior to March 10, 2015.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control number 1545-0047.

The collections of information in this revenue procedure are in sections 7.01 and 7.02, which describe the information regarding a hospital organization's failure to meet one or more of the requirements of § 1.501(r)-3 through § 1.501(r)-6 that the organization must disclose for the failure to be excused under § 1.501(r)-2(c). Section 7.01 describes the information that must be disclosed and requires disclosure to be made on the Form 990. The Treasury Department and the IRS have reached the following reporting burden estimates for those organizations disclosing information on a Form 990 pursuant to section 7.01:

Estimated total annual reporting burden: 4,914

Estimated average annual burden hours per recordkeeper: 2

Estimated number of recordkeepers: 2,457

Estimated frequency of collections of such information: Annual

Section 7.02 applies only to hospital organizations that are not required to file Form 990 and permits such organizations to disclose the information described in section 7.01 on a Web site rather than on a Form 990. The Treasury Department and the IRS have reached the following reporting burden estimates for those organizations that may disclose information on a Web site pursuant to section 7.02:

Estimated total annual reporting burden: 702

Estimated average annual burden hours per recordkeeper: 2

Estimated number of recordkeepers: 351

Estimated frequency of collections of such information: Annual

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Stephanie N. Robbins of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Stephanie N. Robbins at 202-317-5800 (not a toll-free call).