

A Decade of § 501(r) Compliance

*Lessons Learned, Enforcement
Trends, and What's Ahead*

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Scope

What the Law Requires

How the Law Has Been Applied and Enforced

What May Be Coming Next – and What to Do Now



Part I: What the Law Requires

Key Provisions of § 501(r)

- Section 9007 of the ACA added new § 501(r) to the Code
- Four key requirements:
 - Community Health Needs Assessment (CHNA) and Implementation Strategy (IS)
 - Financial Assistance Policy (FAP) and Emergency Care Policy (ECP)
 - Limitation on Charges to Amount Generally Billed (AGB)
 - Extraordinary Collection Actions (ECA)
- Limited detail about these requirements in Code



Other New Requirements

- \$50,000 penalty for failure to meet CHNA and IS requirements (§ 4959)
- Expanded annual reporting requirements for hospitals through Form 990 (§ 6033)
- New requirements for Treasury and IRS
 - Annual review of hospital community benefit activities
 - Periodic reports to Congress
- Explicitly authorized Treasury to issue regulations and guidance



Guidance

- Significant early guidance
 - Notice 2011-52 (CHNAs)
 - 2012 Proposed Regulations (FAPs, AGB, and ECAs)
 - 2013 Proposed Regulations (CHNAs and Failures)
 - 2013 Final and Temporary Regulations (reporting CHNA violations)
- Final Regulations issued December 29, 2014
 - Full compliance required by 2016 tax year
 - For prior years, reasonable good faith interpretation



Who is subject to law?

- “Hospital organization” is any § 501(c)(3) organization that operates a hospital facility
- “Hospital facility” is any facility “required by state law to be licensed, registered, or similarly recognized as a hospital”
- Requirements apply on a hospital facility basis
- Special situations, like dual status and JVs
- Timing: when does § 501(r) apply for a new hospital?



CHNA and IS – The Basics

- Each hospital facility must conduct a CHNA at least once every three years
- Each hospital facility also must adopt an IS for meeting the community health needs identified through the CHNA
- Little additional detail in Code:
 - Must take into account input from persons representing broad interests of community served, including public health experts
 - Must make widely available to public



The CHNA Process

- Regulations contemplate a five-step process
 - Define community served
 - Assess community's health needs
 - Solicit and take into account required input
 - Document CHNA in written report approved by authorized body
 - Make CHNA widely available (accomplished by posting conspicuously on website)



CHNA and IS Points for Attention

- Include all required elements from Regulations
- Ensure that appropriate input has been solicited and taken into account
- Timely approval
 - CHNA: End of tax year
 - IS: Fifteenth day of fifth month of year after CHNA is adopted
- Make widely available in timely manner



Ongoing Cycle of Compliance

- To follow spirit of § 501(r), hospitals should maintain cycle of developing CHNA and IS and acting on the IS



Financial Assistance Policy (FAP)

- Adopt a written FAP
- Adopt written policy for emergency medical care
- FAP must apply to all emergency and other medically necessary care (MNC) provided by hospital facility
 - Include care from substantially related entities
- FAP Contents
 - Eligibility criteria – identify free or discounted care
 - Basis for calculating amounts charged to patients
 - Application method
 - Description of collections actions (billing and collections policy)
 - Presumptive eligibility criteria
 - Emergency and MNC provider list for hospital facility
 - Notice 2015-46 (separate list is permissible; updates required)



FAP – Widely Publicize

- Post to website
- Make paper copies available upon request, without charge, by mail, and in public locations (ER and admissions areas)
- Notify and inform community about FAP
- Notify and inform patients about the FAP
- Plain Language Summary (PLS)
- Conspicuous written notice on billing statement
- Conspicuous public displays (ER and admissions areas)
- Translate for limited English proficiency (LEP) populations



Amounts Generally Billed (AGB)

- Emergency or MNC: amount charged is limited by AGB
 - Based on 12-month period
 - calculated no less than annually
 - Implemented within 120 days
- “Charged” is the amount personally responsible to pay
 - (after deductions, discounts, and insurance)
- Methods:

Look-Back	<u>Sum of Amounts Allowed</u> Sum of Associated Gross Charges
Prospective	Medicare fee-for-service; Medicaid beneficiary; both
- All other care covered by the FAP: less than gross charges



Billing, Collections, and Extraordinary Collections Actions (ECAs)

- Must refrain from any ECAs for 120 days from date of first post-discharge statement; plus, 30 days written notice required
- Reasonable efforts to determine FAP eligibility required:
 - Presumptive eligibility
 - Notification and processing of applications
 - Refunds
- ECAs = legal actions; credit bureau reporting; selling debt; deferring, denying, or requiring payment for MNC
- Referrals and/or sale of debt



Failures and Corrections

- Minor Omissions and Errors
 - Not a failure if (i) minor and either inadvertent or due to reasonable cause; and (ii) corrected promptly
- Correction and Disclosure of Non-Minor Omissions and Errors
 - Must not be willful or egregious
 - Willfulness – nature of the omission/error (negligence/recklessness)
 - Egregiousness – severity of the impact and the number of affected persons
 - Omission or error will be excused if (i) corrected; and (ii) disclosed
 - Pursuant to Rev. Proc. 2015-21, disclosure is generally completed via Form 990
- Potential Penalties
 - Tax on non-compliant facility's income in multi-facility hospital organization
 - Revocation of hospital organization's Code §501(c)(3) status
 - CHNA errors – excise tax





Part II: How the Law Has Been Applied and Enforced



Key Actors and Perspectives

- IRS
- Congress (and individual Senators and Representatives)
- Private Sector



IRS / Post-Regulatory Guidance

- IRS has issued limited formal guidance since the Regulations
 - Revenue Procedure 2015-21 (correction and disclosure procedures)
 - Notice 2015-46 (provider list)
- Informal guidance
 - IRS website
 - Comments from IRS leadership



Treasury Reports

- Reports required under ACA
 - Annual report on charity care and related matters for tax-exempt, taxable and government-owned hospitals
 - Report five years after ACA's adoption about community benefit trends
- Reports actually issued
 - Two annual reports in 2018 and 2020 – both of which were preceded by requests from Sen. Grassley
 - Both reports also contain information about trends, though no separate report was prepared

IRS / TEGE Compliance Program and Priorities

- In 2024, IRS added language about tax-exempt hospitals to its Tax Exempt & Government Entities Compliance Program and Priorities
- Specific reference to –
 - Community benefit standard
 - § 501(r) compliance
- Language retained in 2025
- Focus is examinations

Exempt Organizations: Tax-Exempt Hospitals

The focus of this strategy is on compliance with the Patient Protection and Affordable Care Act (PPACA). We will verify whether tax-exempt hospitals are complying with their statutory obligations under Internal Revenue Code Section 501(c)(3), including the community benefit standard, and Section 501(r). The treatment stream for this strategy is examinations.



IRS / Reviews and Audits

- ACA requires IRS to review activities of each tax-exempt hospital every three years
- From these reviews and other sources, IRS identifies hospitals for field examinations (*i.e.*, audits)
- IRS also recently announced a separate examination program that is currently underway



IRS / ACA Reviews

- According to ACA, focus of these reviews was to be community benefit activities
- These reviews have expanded to include § 501(r) compliance
- Reviews also may address other areas of interest to IRS, including –
 - Unrelated business income tax
 - Excess benefit transactions
 - Excessive compensation



IRS / ACA Reviews

- Reviews are conducted by ACA Review Group
- Reviews do not involve taxpayer conduct
- What does IRS review?
 - Primary source of information is Form 990, particularly Schedule H
 - Also public-facing information about hospital, including website
- At conclusion of review, agents make recommendation for no change, for a compliance check, or for an examination



IRS / Audits

- Audits are contemplated as single-issue or limited scope examinations but may be expanded
- ACA Review Group will complete a referral describing issues for examination
- IRS will seek needed detail through Information Document Requests
 - IRS has developed IDRs for the various areas of § 501(r)
 - IDRs present questions for the organization to answer and request the organization supply documents
 - Additionally, IDRs may require an interview of person with knowledge or a site visit



IRS / Audits

- Examples of subjects addressed by IDRs
 - CHNA and Implementation Strategy
 - Copies of documents
 - Date of approval, with copies of minutes or resolutions
 - Description of actions taken to make CHNA widely available
 - Detail about actions taken to solicit public input
 - Financial Assistance Policy
 - Copies of FAP and related documents, including application, instructions, and plain language summary
 - Description of actions taken to widely publicize FAP
 - Detail about methodology for deciding languages for translations
 - Detail about complaints in which patient alleged hospital failed to comply with FAP requirements



IRS / Audits

- Examples of subjects addressed by IDRs (cont.)
 - Emergency Care Policy
 - Date of approval, with copies of minutes or resolutions
 - Explanation of how hospital implemented ECP
 - Limitations on Charges
 - Copies of workpapers for calculating amount generally billed
 - Comparisons of amounts generally billed to insured patients versus amounts billed to patients eligible for financial assistance
 - Billing and Collection Policy
 - Detail about extraordinary collection actions taken
 - Discussion of efforts taken by hospital to notify patients about potential for financial assistance



IRS / Audits

- IRS also may ask questions about other matters and is not limited to the questions on the IDR
- Examination may be by correspondence or may involve on-site visits, including interviews and tours of hospital facility
- Once information is gathered and considered, IRS will consider whether penalties are appropriate



IRS / New Examination Initiative

- In 2024, Robert Malone, Director of IRS Exempt Organization and Government Entities Division, announced at a panel that the IRS intended to open 35 examinations that year
 - Widely viewed as response to Congressional and other pressure for IRS to be more proactive in reviewing hospitals
- Limited detail has been available concerning initiative
 - Manner of selection of hospitals
 - Scope of reviews
 - Relationship of these examinations to standard examination process



IRS / New Examination Initiative

- Focus of these audits will be community benefit and § 501(r) compliance – but may be expanded to address other areas
- Hospitals have been selected to reflect the diversity of tax-exempt healthcare (e.g., multi-entity hospital systems, community hospitals, academic medical centers, and children's hospitals)
- IRS envisions that these audits will last longer than typical examinations (perhaps longer than a year) and will involve multiple IDRs and teams of agents



IRS / New Examination Initiative

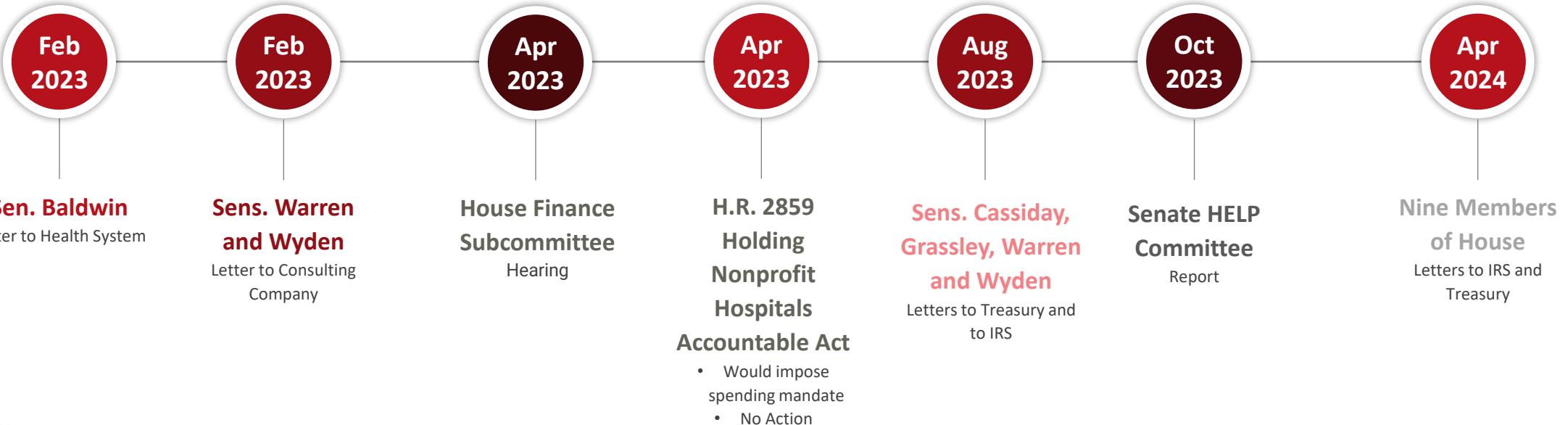
- IDRs generally are more extensive than typical IDRs and include such information as –
 - General ledgers
 - Copies of policies and manuals
 - Copies of internal processes
 - Board and committee minutes
 - Workpapers
 - Facility tours



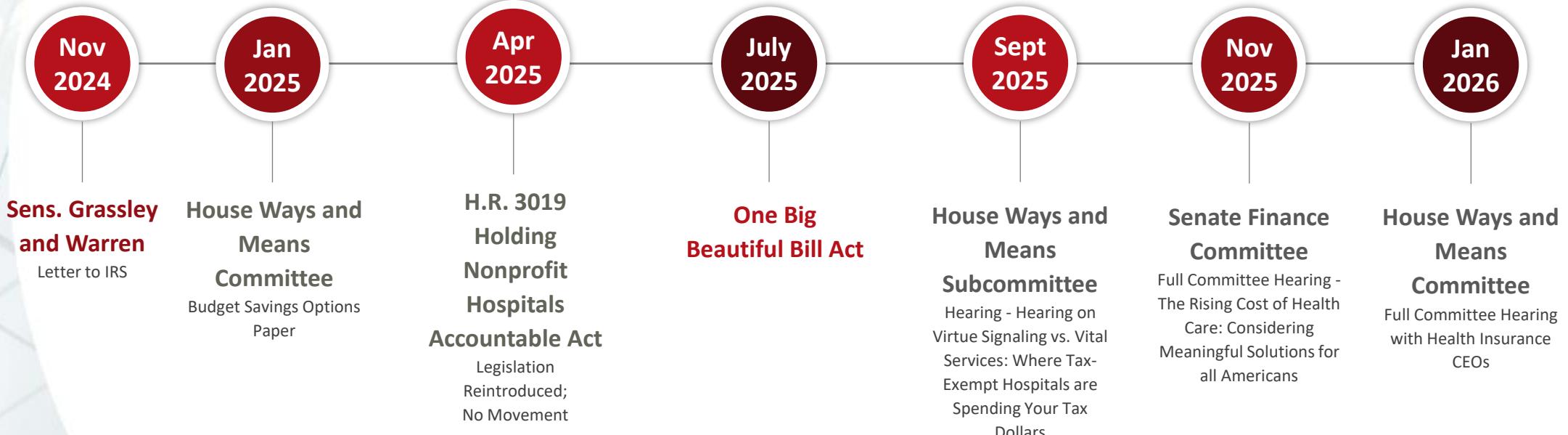
Penalties

- Explicit penalties under ACA –
 - Revocation of hospital organization's § 501(c)(3) status
 - For multi-hospital organization, treatment of non-compliant hospital facility's income as taxable
 - For CHNA violations, \$50,000 penalty under 4959
- To date, the sector is aware of three revocations of § 501(c)(3) status – each for a dual status hospital
 - 201731014
 - 201829017
 - 202521025
- IRS likely could also enter closing agreement

Congressional Scrutiny (2023-2024)



Congressional Scrutiny (2024-2026)



The change in administration has not diminished the federal attention to tax-exempt hospitals and health care organizations



Congressional Scrutiny

- Community Benefit Standard – Rev. Rul. 69-545
 - Emergency room open to all (regardless of ability to pay)
 - Provide care for all persons in community who are able to pay cost either directly or through third-party reimbursement (Medicare, Medicaid, private insurance)
 - Community board of directors
 - Open medical staff (privileges available to all qualified physicians)
 - Excess funds used to improve patient care, expand facilities, and advance medical training, education, and research programs
- Facts and circumstances inquiry – no single factor controls



Congressional Scrutiny

- House Oversight Subcommittee (Ways and Means)
 - Hearing on Tax-Exempt Hospitals and the Community Benefit Standard – April 26, 2023
 - Headlines
 - Reporting discrepancies in the Community Benefit Standard
 - Comparison of the value of hospital tax exemption to value of community benefits
 - Highlights
 - Are there aspects of the Community Benefit Standard that should be required for federally tax-exempt hospitals?
 - Regulating tax-exempt status (i.e., streamlining IRS reporting forms or standardizing reporting of community benefits)
 - Frustration with compensation to CEOs of tax-exempt hospitals



Congressional Scrutiny

- House Oversight Subcommittee (Ways and Means)
 - Hearing on Virtue Signaling vs. Vital Services: Where Tax-Exempt Hospitals are Spending Your Tax Dollars – September 16, 2025
 - Headlines
 - Continuation of themes from 2023 hearing (but more political)
 - Concern about Community Benefit Standard
 - Balancing Transparency with Burdensome Regulations
 - Highlights
 - Geographic disparities and challenges in health care – rural hospitals
 - Form 990, Schedule H reporting
 - Repeated rhetorical questions about logic of expenses for items such as advertising, billboards, and stadium-naming



Congressional Scrutiny

- House Oversight Subcommittee (Ways and Means)
 - Hearing on Virtue Signaling vs. Vital Services: Where Tax-Exempt Hospitals are Spending Your Tax Dollars—September 16, 2025
 - Comments from Oversight Subcommittee Chairman D. Schweikert
 - Medicare solvency is a concern – evaluating health care as a finance issue or a cost issue
 - Indicates that a Form 990 redesign is a possibility
 - Wants to provide better guidelines/standards to identify community benefit, which could improve reporting and help stakeholders with audits and data analysis
 - Solicited help from tax-exempt hospitals to develop ideas for improvement
 - Wants the next Oversight Subcommittee hearing to focus on solutions



Private Sector Scrutiny

- Private individuals
 - patients, philanthropists, “disruptors”
- Educational institutions, academics, and researchers
- Industry groups; Think tanks
- Media



Private Sector Scrutiny

- JAMA Network Report – National Compliance With Community Input on Nonprofit Hospital Community Benefit Activities (January 7, 2026)
 - Headline:
 - Only 10.5% (57 out of 543) of tax exempt hospitals sampled complied with CHNA requirement to solicit and account for written comments from the community
 - Background:
 - Academic team took a 20% stratified random sample of 3,087 U.S. nonprofit hospitals and reviewed their CHNA materials completed between 2018 and 2021.
 - Hospitals were counted as “compliant” if they described the following in their CHNA and/or IS: (1) how written comments on the most recent CHNA and/or IS were solicited, (2) at least 1 written comment received, and (3) how this information was taken into account in the current CHNA and/or IS.



Private Sector Scrutiny

- JAMA Network Report – National Compliance With Community Input on Nonprofit Hospital Community Benefit Activities (January 7, 2026)
 - What do CHNA rules actually require?

“[A] hospital facility must solicit and take into account input received from all of the following sources in identifying and prioritizing significant health needs and in identifying resources potentially available to address those health needs: . . . (C) Written comments received on the hospital facility's most recently conducted CHNA and most recently adopted implementation strategy.”

“A hospital facility's CHNA report will be considered to describe how the hospital facility took into account input received from persons who represent the broad interests of the community it serves for purposes of paragraph (b)(6)(i)(C) of this section if the CHNA report summarizes, in general terms, any input provided by such persons and how and over what time period such input was provided (for example, whether through meetings, focus groups, interviews, surveys, or written comments and between what approximate dates).”
 - Take Aways:
 - § 501(r) regulations are highly subjective and varying interpretations can simultaneously exist
 - This subjectivity allows for unfortunate headlines
 - Hospitals should strive to prepare thorough and detailed reports for § 501(r) compliance



Part III: What May Be Coming Next

Medicaid Implications

- Medicaid – OBBBA Changes
 - Funding cuts over 10 years projected between \$900B to \$1T
 - Restricts ability of States to utilize provider taxes
 - Imposes new residency and work requirements for Medicaid eligibility
 - Imposes more frequent eligibility redeterminations
 - Imposes cost-sharing requirements for some
- States will need to implement policy changes to address OBBBA's Medicaid provisions



ACA Implications

- ACA Premium Tax Credits (PTC)
 - In 2021, eligibility for the PTC was expanded
 - Income eligibility cap (400% of FPL) was eliminated/suspended
 - Percentages used to determine the credit amount were adjusted, resulting in larger subsidies/credits
 - Expired December 31, 2025
 - Extension of PTC was central issue in 2025 government shutdown

Implications For Financial Assistance

- Medicaid Funding:
 - CBO estimates 11.8M individuals may lose coverage
- If Enhanced PTC Is Not Extended:
 - Premiums through the Exchange/Marketplace will increase
 - For those no longer eligible for a PTC, the increase will be potentially significant
 - CBO estimates fewer insured individuals (2.2M to 3.8M per year)
- Increased utilization and pressure on financial assistance programs
- Increased emergency room visits



Potential IRS Action

- Legally required Annual ACA reviews are all but certain to continue, as are referrals for audits when deemed appropriate
- Likely that IRS also will complete the 35-audit project announced in 2024
- Uncertain that IRS will have bandwidth for a significant expansion of audit program
 - Budget cuts
 - Reductions in workforce
 - Challenges replacing experienced agents as they retire



Potential IRS Action

- Possibility for formal IRS guidance on § 501(r)
 - IRS annually issues a Priority Guidance Plan that identifies guidance projects “that are priorities for allocating Treasury Department and [IRS] resources”
 - 2024-25 Plan included 10 Exempt Organizations priorities, including “Guidance illustrating the application of the regulations under § 501(r)
 - This item is absent from 2025-26 Plan
- 2025-26 Plan states some projects on earlier plan are not included in new plan because they are not in priority category but may be considered in future



Potential IRS Action

- Removal from the Plan does not guarantee we will not see § 501(r) guidance this year
- Even if such guidance is not an independent priority for the IRS, that could change if IRS receives significant pressure from Senate or House
- Congressional stalemates may make administrative action through IRS more attractive than the legislative process



Potential IRS Action

- Areas of stated Congressional interest in § 501(r)
 - Active efforts to address identified community needs
 - Failure to make information about financial assistance available
 - Prohibition of billing “gross charges” to any patients
 - Aggressive billing practices
 - Provision of charity care, perhaps requiring spending a stated percentage of total revenues on such care
- § 501(r) adjacent areas of interest
 - Medical debt
 - Calculation and reporting of community benefit



Potential IRS Action

- IRS also could influence § 501(r) compliance through changes to Form 990, expanding reporting requirements relating to –
 - Financial assistance applications approved and denied
 - Attachment of AGB calculations
 - Number of extraordinary collection actions taken
- Calculation of community benefit also could be modified through this Form



Potential Congressional Action

- Short Term
 - Potential Partial government shutdown, including IRS, if funding bill is not passed by Friday (or over the weekend)
- Longer Term
 - Funding Challenges for the IRS
 - OBBBA rescinded some strategic funding; current appropriations bill includes additional cuts
 - Budget cuts: currently proposed annual funding bill is 9% lower than 2025
 - Legislative Action?
 - Seems unlikely at this stage
 - Expect Continued Congressional Scrutiny, Pressure for Agency Action



Recommendations

- “Top Down” Approach
- Ongoing Education
- Internal Review
- Community Engagement
- Mission Mindset



“Top Down” Approach

- Board and C-Suite
 - Active engagement with § 501(r) matters
 - Periodic discussion of § 501(r) issues at Board meetings
- Specific identification of person or people with authority for overall § 501(r) compliance
- Construct team with expertise in various facets of § 501(r) compliance to work with § 501(r) leadership



Ongoing Education

- High-level education for Board members to convey significance of § 501(r) compliance
- Training module for all new employees who will bear responsibility for matters relating to § 501(r)
- Ongoing, periodic education to ensure individuals remain aware of (and compliant with) § 501(r) requirements



Internal Review

- Self-checks to ensure documents and processes remain § 501(r) compliant
- Review of agreements with third-parties engaged in collection
- Periodic reviews of websites to ensure all required content is present (and that links are operational)
- No more “unforced errors”



Community Engagement

- Ongoing relationships with third parties linked to hospital's § 501(r) compliance efforts
 - Government agencies and nonprofits hospital solicits to gather information for CHNA
 - Off-site locations where hospital is making financial assistance information widely available
 - Current and potential mission partners that also promote community health and/or serve those with financial need
- Engagement with media to provide success stories of identifying and meeting community health needs and ensuring care for those in financial need



Mission Mindset

- § 501(r) offers tax-exempt hospitals an important opportunity to consider ways to advance their mission and serve their communities
- Identifying and addressing health needs of its community represents core hospital function
- Implementation strategy should be developed and utilized as a touchstone for the hospital's community benefit activities
- Serving needs of financially vulnerable is community and national priority



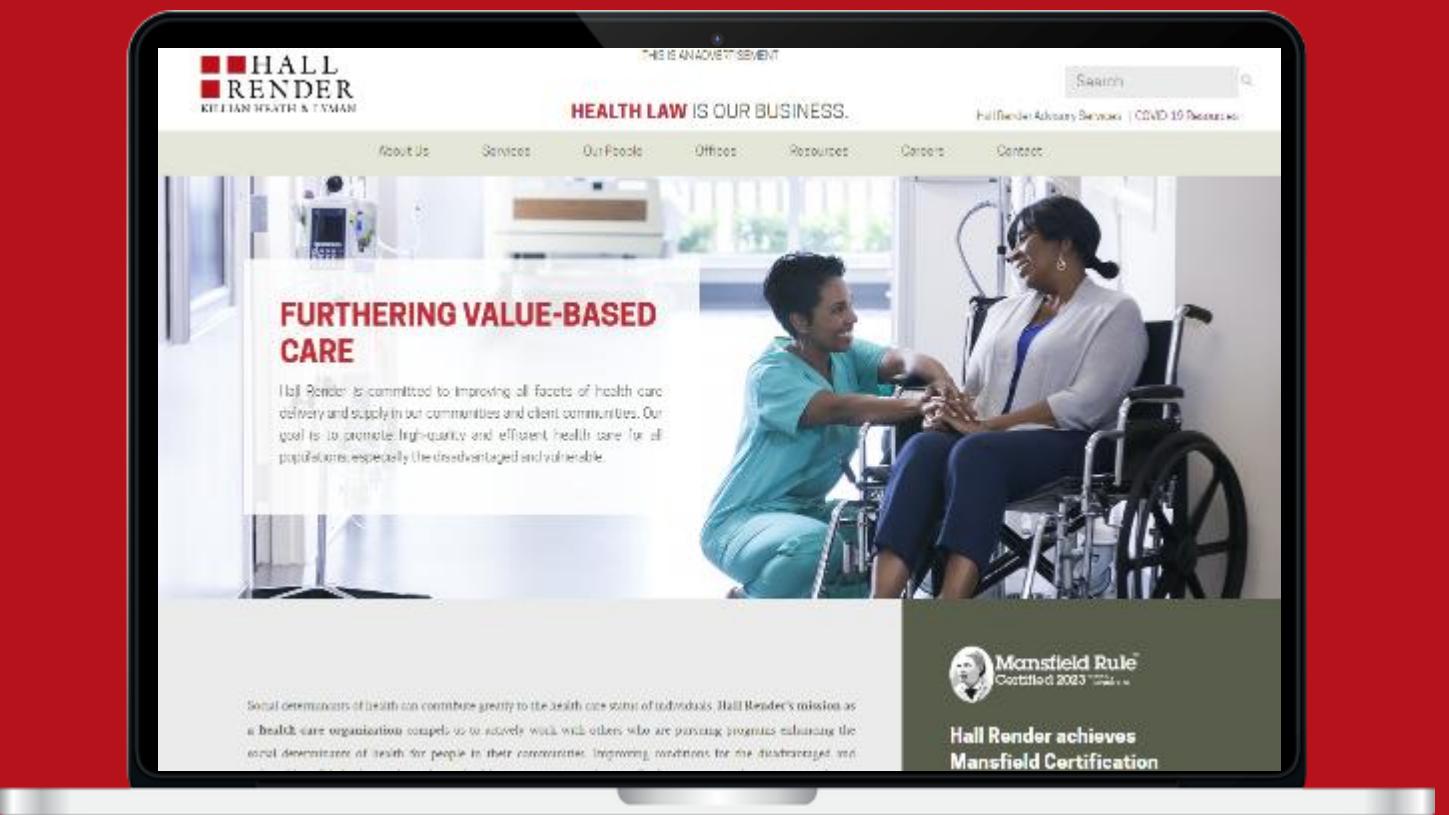
Questions or Comments?

For more information on these topics visit hallrender.com.

Thank you!

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