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Guidance Planned for Intermediate Violations of Community Needs Assessment Rules.

The IRS is developing guidance on correction and disclosure of section 501(r) violations that are more than minor or inadvertent but less than egregious or willful, a Treasury Department official said May 15.

The guidance is likely to take the form of a revenue procedure and will provide hospitals with more details on remedying failures to comply with section 501(r) requirements, of which community health needs assessments (CHNAs) are one, and a way to keep those details fresh, Ruth Madrigal, attorney-adviser in the Treasury Office of Tax Legislative Counsel, said during a luncheon program sponsored by the District of Columbia Bar Taxation Section's Exempt Organizations Committee.

The intermediate violations comprise "a large range, but I think we gave the outlines of it in the proposed regs that there would be a mechanism for disclosure and correction," Madrigal said after the luncheon, referring to REG-106499-12. "And so I think we need to put some meat on those bones," she said, adding that officials hope to release the new guidance before the final regs.

The proposed regs say Treasury and the IRS plan to publish guidance to help hospital facilities correct failures to meet CHNA requirements and other rules under section 501(r) and to inform them how to disclose the corrections.

Revocation of a hospital's exemption is possible but won't be a knee-jerk response, Madrigal said. The proposed regs lay out several factors the IRS will consider when deciding whether to revoke exempt status, including the size and scope of the failures. Madrigal said she believes the factors would be applied when the failure was known, which would typically be during an audit. But she said hospitals she's spoken with and those who regularly counsel hospitals are working hard to avoid all failures, so a willful or egregious failure would be rare.

Minor and inadvertent failures won't be considered failures if corrected reasonably promptly after they're found, Madrigal said, giving the example of a hospital failing to widely publicize its policy for a few days because its posted financial assistance policy fell under a sofa and the website hosting the policy crashed due to malware.

"The things that are truly minor, foot faults, they don't need to be discussed," Madrigal said.

Schedule H

Alexander L. Reid of Morgan, Lewis & Bockius LLP said there are discrepancies between the instructions on Schedule H of the Form 990, "Return of Organization Exempt from Income Tax," and the proposed regs under section 501(r). For example, the definition of a hospital is broader in the instructions than in the proposed regs, raising the question of which should be relied on, Reid said. Typically after a statutory change makes an IRS form obsolete, the IRS has attached a cover sheet with instructions on how to proceed, but that hasn't happened yet, he said.

“It would be premature to change the form until we do have final regulations in place,” said Amy Giuliano, attorney-adviser in the IRS Office of Associate Chief Counsel (Tax-Exempt and Government Entities). “We’re planning to change [Schedule] H when the regulations are finalized.”

by David van den Berg

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