



VCU Medical Center

Office of Health Innovation

Proposed Rule: Community Health Needs Assessments for Charitable Hospitals

Description: This document contains proposed regulations that provide guidance to charitable hospital organizations on the community health needs assessment (CHNA) requirements, and related excise tax and reporting obligations, enacted as part of the Patient Protection and Affordable Care Act of 2010. These proposed regulations also clarify the consequences for failing to meet these and other requirements for charitable hospital organizations. These regulations will affect charitable hospital organizations.

Major Provisions

Section 501(r)(1) of the Internal Revenue Code states that a hospital organization described in section 501(r)(2) will not be treated as a tax-exempt organization described in section 501(c)(3) unless the organization meets the requirements of section 501(r)(3).

Section 501(r)(3) requires a hospital organization to conduct a CHNA at least once every three years and adopt an implementation strategy to meet the community health needs identified through the CHNA. The CHNA report must include a prioritized description of the significant health needs of the community. The CHNA must take into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health. The CHNA must also be made widely available to the public.

Hospital Facilities and Organizations

USC Section 4959 imposes a \$50,000 excise tax on “a hospital organization to which section 501(r) applies” that fails to meet the requirements of section 501(r)(3) for any taxable year. These proposed regulations clarify that the section 4959 excise tax will apply to a hospital organization that fails to meet the section 501(r)(3) requirements during a taxable year in which its section 501(c)(3) status is revoked.

The definition of “hospital facility” in the 2012 proposed regulations provides that multiple buildings operated by a hospital organization under a single state license may be considered a single hospital facility. To increase the certainty and consistency in the designation of hospital facilities, the proposed regulations amend the current proposed definition of “hospital facility” to provide that multiple buildings operated by a hospital organization under a single state license “are” (rather than “may be”) considered a single hospital facility.

On July 11, 2011, the IRS Released Notice 2011-52, which states that it is the intention of the Treasury Department and the IRS to include within the definition of “hospital organization” any organization described in section 501(c)(3) that operates a hospital facility through a joint venture, limited liability

company, or other entity treated as a partnership for federal tax purposes. These proposed regulations provide two exceptions to this general rule.

- First, an organization without the control over the operation of a hospital facility sufficient to ensure that the hospital facility furthers an exempt purpose is unlikely to have the control sufficient to ensure compliance with section 501(r). As a general rule, if a tax-exempt partner does not have control sufficient to ensure that a trade or business activity regularly carried on by the partnership furthers (or is substantially related to) its exempt purposes, that activity will be considered an unrelated trade or business with respect to the tax-exempt partner.
- Second, some tax-exempt organizations may have entered into partnership arrangements prior to the enactment of section 501(r) that gave them control over a partnership sufficient to ensure that the partnership furthers charitable purposes other than the provision of community health care, but not sufficient to ensure compliance with section 501(r). These proposed regulations provide a grandfather rule under which a hospital organization will not be considered to “operate” a hospital facility for purposes of section 501(r) if certain conditions are met.
 1. At all times since March 23, 2010, the hospital organization must have been organized and operated primarily for educational or scientific purposes and must not have engaged primarily in the operation of one or more hospital facilities.
 2. Pursuant to a partnership arrangement (including any side agreements) entered into before March 23, 2010, the hospital organization must not own more than 35 percent of the capital or profits interest in the partnership, not own a general partner or similar interest, and not have sufficient control over the operation of the hospital facility to ensure that the hospital facility complies with the requirements of section 501(r).

Failures to Satisfy the Requirements of Section 501(r)

The proposed regulations provide that a hospital facility's omission of required information from a policy or report, or error with respect to the implementation or operational requirements, will not be considered a failure to meet a requirement of section 501(r) if the omission or error was minor, inadvertent, and due to reasonable cause, and the hospital facility corrects such omission or error as promptly after discovery as is reasonable given the nature of the omission or error.

To provide an incentive for hospital facilities to take steps not only to avoid errors but to correct and provide disclosure when they occur, the Treasury Department and the IRS will issue a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin which will provide that a hospital facility's failure to meet one or more of the requirements that is neither willful nor egregious will be excused if the hospital facility corrects and provides disclosure in accordance with the rules set forth in the guidance.

The proposed regulations provide that the IRS will consider all facts and circumstances in determining whether to continue to recognize the section 501(c)(3) status of a hospital organization that fails to

meet one or more requirements of section 501(r). In general, the Treasury Department and the IRS expect that application of these facts and circumstances will ordinarily result in revocation of the section 501(c)(3) status of a hospital organization if the organization's failures to meet the requirements of section 501(r) are willful or egregious.

Taxing Noncompliant Hospital Facilities

The proposed regulations provide that if a hospital organization operating more than one hospital facility fails to meet one or more of the requirements of section 501(r) separately with respect to a hospital facility during a taxable year but continues to be recognized as described in section 501(c)(3), the income derived from the noncompliant hospital facility during that taxable year will be subject to tax computed as provided in section 11 (or as provided in section 1(e) if the hospital organization is a trust described in section 511(b)(2)).

- In applying the tax, the income derived from a noncompliant hospital facility during a taxable year will be the gross income derived from that hospital facility during the taxable year, less the deductions allowed by chapter 1 of the Code that are directly connected to the operation of that hospital facility during the taxable year.
- To be directly connected with the operation of a noncompliant hospital facility, these proposed regulations provide that an item of deduction must have proximate and primary relationship to the operation of the hospital facility. Expenses, depreciation, and similar items attributable solely to the operation of a hospital facility are proximately and primarily related to such operation, and therefore qualify for deduction to the extent that they meet the requirements of section 162, section 167, or other relevant provisions of the Code.
- Where expenses, depreciation, and similar items are attributable to more than one hospital facility operated by the hospital organization (and/or to activities of the hospital organization unrelated to the operation of hospital facilities), such items shall be allocated between the hospital facilities (and/or other activities) on a reasonable basis.
- The gross income and allowed deductions of a noncompliant hospital facility may not be aggregated with the gross income and allowed deductions of the hospital organization's other noncompliant hospital facilities or its unrelated trade or business activities described in section 513.
- If a hospital organization operating a noncompliant hospital facility continues to be recognized as described in section 501(c)(3) and otherwise exempt from tax under section 501(a), the fact that a facility-level tax is imposed as a result of the facility's failure to comply with section 501(r) will not itself cause the interest on qualified 501(c)(3) bonds to be taxable.
- The facility-level tax will be reported on the Form 990-T.

Community Health Needs Assessments

In conducting a CHNA, the hospital facility must document the CHNA in a written report ("CHNA report") that is adopted for the hospital facility by an authorized body of the hospital facility. Finally, consistent with section 501(r)(3)(B)(ii), the hospital facility must make the CHNA report widely available to the

public. These proposed regulations provide that a CHNA is considered “conducted” on the date the hospital facility has completed all of these steps.

The proposed regulations provide a hospital facility with the flexibility to take into account all of the relevant facts and circumstances in defining the community it serves, including the geographic area served by the hospital facility, target populations served (for example, children, women, or the aged), and principal functions (for example, focus on a particular specialty area or targeted disease). A hospital facility may define its community to include populations in addition to its patient populations and geographic areas outside of those in which its patient populations reside.

A hospital facility may not define its community in a way that excludes medically underserved, low-income, or minority populations who are part of its patient populations, live in geographic areas in which its patient populations reside (unless they are not part of the hospital facility's target populations or affected by its principal functions), or otherwise should be included based on the method used by the hospital facility to define its community.

If a hospital facility uses a method of defining its community that takes into account patient populations, these proposed regulations require the hospital facility to treat as patients all individuals who receive care from the hospital facility, without regard to whether (or how much) they or their insurers pay for the care received or whether they are eligible for financial assistance.

Assessing Community Health Needs

In order to “assess” the health needs of the community it serves, a hospital facility must identify significant health needs of the community, prioritize those health needs, and identify potential measures and resources (such as programs, organizations, and facilities in the community) available to address the health needs. For these purposes, health needs include requisites for the improvement or maintenance of health status in both the community at large and in particular parts of the community (such as particular neighborhoods or populations experiencing health disparities). A CHNA need only identify significant health needs and need only prioritize, and otherwise assess, those significant health needs identified. A hospital facility may determine whether a health need is significant based on all of the facts and circumstances present in the community it serves.

Persons Representing the Broad Interests of the Community

The proposed regulations require a hospital facility to take into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health. The proposed regulations require a hospital facility to take into account input from, at a minimum:

1. At least one state, local, tribal, or regional governmental public health department (or equivalent department or agency) with knowledge, information, or expertise relevant to the health needs of the community;

2. Members of medically underserved, low-income, and minority populations in the community, or individuals or organizations serving or representing the interests of such populations; and
3. Written comments received on the hospital facility's most recently conducted CHNA and most recently adopted implementation strategy.

Government Public Health Departments

The proposed regulations preserve the flexibility in Notice 2011-52 of allowing a hospital facility to choose the jurisdictional level of government (for example, state, local, tribal, or regional) that it feels is most appropriate for its CHNA. However, in recognition of the planning and subject-matter expertise that public health departments can offer to the CHNA process, a hospital facility is required to seek input from a public health department (or equivalent department or agency) in particular, rather than any governmental departments with current data or other information relevant to the health needs of the community.

Medically Underserved, Low-Income, and Minority Populations

The proposed regulations clarify that a hospital facility may seek input either directly from members of medically underserved, low-income, and minority populations in the community (for example, in the form of meetings, focus groups, surveys, or interviews) or from individuals or organizations serving or representing the interests of those populations. The proposed regulations do not refer to chronic disease needs in particular but rather define “medically underserved populations” in a manner that focuses on disparities in coverage, access, and other barriers to care for persons with health needs that may include, but are not limited to, chronic diseases.

Implementation Strategy

A hospital facility must adopt a written implementation strategy that describes how it plans to address the significant community health needs identified through the CHNA or explains why it does not plan to address the health need(s). The proposed regulations indicate that the implementation strategy also must specify the anticipated impact of actions the hospital facility plans to take, and how it intends to evaluate the impact. The proposed rules generally require a hospital to adopt an implementation strategy in the same tax year in which it conducts a CHNA, but provide additional time for the first implementation strategy.

Documentation of a CHNA

The proposed regulations provide that a hospital facility must document its CHNA in a CHNA report that is adopted by an authorized body of the hospital facility and includes:

1. A definition of the community served by the hospital facility and a description of how the community was determined;
2. A description of the process and methods used to conduct the CHNA;
3. A description of how the hospital facility took into account input from persons who represent the broad interests of the community it serves;

4. A prioritized description of the significant health needs of the community identified through the CHNA, along with a description of the process and criteria used in identifying certain health needs as significant and prioritizing such significant health needs; and
5. A description of potential measures and resources identified through the CHNA to address the significant health needs.

The proposed regulations provide more detail about two of these required elements of the CHNA report: the description of the process and methods used to conduct the CHNA and the description of how the hospital facility took into account input from persons who represent the broad interests of the community.

1. **Description of Process and Methods:** A hospital facility's CHNA report will be considered to describe the process and methods used to conduct the CHNA if the CHNA report:
 - a. Describes the data and other information used in the assessment, as well as the methods of collecting and analyzing this data and information, and
 - b. Identifies any parties with whom the hospital facility collaborated, or with whom it contracted for assistance, in conducting the CHNA.
2. **Description of Community Input:** These proposed regulations clarify that the CHNA report may summarize, in general terms, how and over what time period input was provided (for example, whether through meetings, focus groups, interviews, surveys, or written comments and between what dates) and need not provide a detailed description of each instance of feedback.
 - a. The CHNA report should identify the organizations that provided input into the CHNA and summarize the nature and extent of that input.

Collaboration on CHNA Reports

The proposed regulations provide, generally, that every hospital facility must document its CHNA in a separate CHNA report. However, these proposed regulations provide that if a hospital facility is collaborating with other facilities and organizations in conducting its CHNA or is basing its CHNA, in part, on a CHNA for all or part of its community conducted by another organization, portions of the hospital facility's CHNA report may be substantively identical to the CHNA report of a collaborating hospital facility or the other organization conducting a CHNA, if appropriate under the facts and circumstances.

If a hospital facility collaborates with other hospital facilities in conducting its CHNA, all of the collaborating hospital facilities may produce a joint CHNA report as long as all of the facilities define their community to be the same and conduct a joint CHNA process.

Making the CHNA Report Widely Available to the Public

In order to make its CHNA report widely available to the public, a hospital facility must post the CHNA report on the hospital facility's Web site or, if the hospital facility does not have its own Web site separate from the hospital organization that operates it, on the hospital organization's Web site.

Alternatively, the hospital facility may post the CHNA report on a Web site established and maintained by another entity as long as either the hospital facility or hospital organization's Web site (if the facility or organization has a Web site) provides a link to the Web page on which the CHNA report is posted, along with clear instructions for accessing the report on that Web site.

Reporting Requirements

The proposed regulations allow a hospital organization either to attach to its Form 990 a copy of the most recently adopted implementation strategy for each hospital facility it operates or to provide on the Form 990 the URL(s) of the Web page(s) on which it has made each implementation strategy widely available on a Web site. An implementation strategy must describe, with respect to each significant health need identified through the CHNA, how the hospital facility plans to address the health need or why the hospital facility does not intend to address the health need.

The proposed regulations also reiterate the requirement that a hospital organization attach to its Form 990 a copy of its audited financial statements for the taxable year—or in the case of an organization the financial statements of which are included in consolidated financial statements with other organizations, such consolidated financial statements.

The proposed regulations require a hospital organization to disclose the amount of the excise tax imposed on the organization under section 4959 during the taxable year for failures to meet the requirements of section 501(r)(3).

Excise Tax on Failure to Meet CHNA Requirements

Section 4959 imposes a \$50,000 excise tax on a hospital organization that fails to meet the CHNA requirements of section 501(r)(3) with respect to any taxable year. The proposed regulations confirm that the excise tax may be imposed for each taxable year that a hospital facility fails to meet the section 501(r)(3) requirements. The proposed regulations also make clear that the excise tax may be imposed in addition to any tax imposed on a noncompliant hospital facility or that results from revocation of a hospital organization's section 501(c)(3) status.