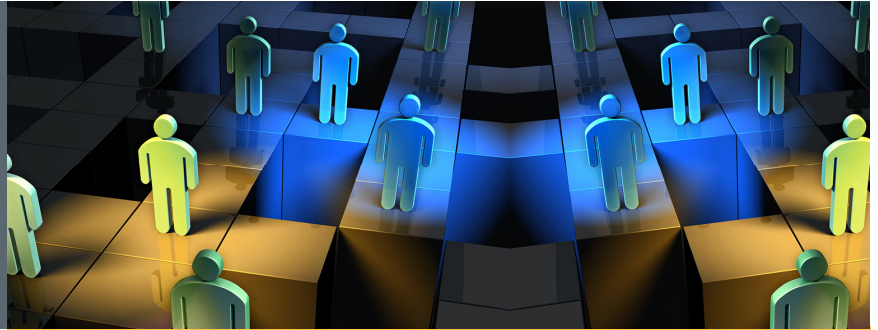


in the news

Nonprofit Organizations



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IRS Provides Updated Guidance and Transition Rules on Community Health Needs Assessments

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On April 5, the IRS published proposed regulations regarding Section 501(r)(3) and the related reporting requirements of Section 6033 (the Proposed Regulations). The Proposed Regulations provide updated guidance on the community health needs assessment (CHNA) requirements applicable to hospital organizations described in Section 501(c)(3). The Proposed Regulations also address the consequences of a hospital organization’s failure to comply with the requirements imposed by Section 501(r), which is the subject of a separate Polsinelli Update. [[click here](#)]

What You Need to Know

Background

Section 501(r)(3) requires Section 501(c)(3) organizations that operate hospital facilities to

conduct a separate CHNA for each facility at least once every three years. The deadline for a hospital facility to conduct its first CHNA is the end of its first taxable year beginning after March 23, 2012. Hospitals with a June 30th fiscal year end must conduct their first CHNA no later than June 30, 2013.

The IRS previously provided guidance in Notice 2011-52 (the Notice) issued in July 2011 that addressed various aspects of conducting and implementing a CHNA. In June 2012, the IRS issued proposed regulations relating to other new hospital requirements under Section 501(r), which include definitions of key terms and concepts that apply to Section 501(r) generally, including the CHNA requirements of Section 501(r)(3).



The Proposed Regulations generally are consistent with the guidance set forth in the Notice and the 2012 proposed regulations, but provide additional guidance, clarity and transition rules. A hospital organization may continue to rely on the Notice for any CHNA made widely available to the public and any implementation strategy adopted on or before October 5, 2013. A hospital facility may rely on the CHNA requirement portions of the Proposed Regulations for any CHNA conducted or implementation strategy adopted on or before the date that is six months after the Proposed Regulations are published in final form.

Key Provisions of the Proposed Regulations

Key modifications and clarifications included in the Proposed Regulations, described in more detail below, include:

- Multiple buildings operated under a single state license will be treated as a single hospital facility;
- A hospital facility needs to assess only “significant health needs,” and not all health needs;
- A hospital facility must seek input from a public health department or its equivalent in conducting its CHNA;
- Hospital facilities are permitted to conduct a joint CHNA and adopt a joint implementation strategy if certain conditions are met;
- The requirements for making the CHNA widely available have been modified, including extending the time a CHNA Report must be maintained on the hospital facility’s website. A CHNA Report must remain on the website until two subsequent CHNA Reports are posted;
- A hospital facility generally will have an additional 4½ months to adopt the implementation strategy for its first CHNA;
- A hospital facility’s implementation strategy must address the anticipated impact of their planned actions to address health needs, the plan to

evaluate that impact, and the programs and resources committed by the hospital facility to address the health needs; and

- A hospital organization is no longer required to attach a copy of the implementation strategy to its Form 990 if it provides the URL address of the web page on which it is available.

Identifying the Hospital Facility

Under the Proposed Regulations, a “hospital organization” is an entity that “operates” a “hospital facility.” A “hospital facility” is a facility that is required by a state to be licensed, registered, or similarly recognized as a hospital. The Proposed Regulations include clarifications relating to the definitions of “hospital organization” and “hospital facility.” These clarifications include:

- Multiple buildings operated under a single state license will be treated as a single hospital facility;
- A hospital organization “operates” a hospital facility if it is a participant in a joint venture entity that operates the hospital facility and that is treated as a partnership for federal income tax purposes, unless it treats the activities conducted by the joint venture as an unrelated trade or business or qualifies under a limited grandfather provision; and
- A hospital organization “operates” a hospital facility if it is the sole member or owner of a disregarded entity that operates the hospital facility.





The Proposed Regulations also confirm that Section 501(r) does not apply to activities conducted by a hospital organization that are unrelated to the operation of a hospital facility, such as a separate facility that is not licensed as a hospital.

Defining the Community Served

Consistent with the Notice, the Proposed Regulations permit a hospital facility to take into account all relevant facts and circumstances in defining the community.

- The Proposed Regulations clarify that a hospital facility may define the community to include populations in addition to its patient populations and geographic areas outside those in which its patient populations reside; and
- Similar to the Notice, the Proposed Regulations provide that 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.

Assessing Community Health Needs

While the Notice states that a hospital facility should prioritize all its community's health needs identified through the CHNA, the Proposed Regulations clarify that a CHNA needs to identify only significant health needs and may determine significance based on all the facts and circumstances. The Proposed Regulations do not require a hospital facility to use any particular methods or criteria in prioritizing health needs.

Persons Representing the Broad Interest of the Community

The Proposed Regulations provide additional guidance on the inclusion of persons representing the broad interest of the community:

- The Proposed Regulations require a hospital facility to seek input from a state or local public health or similar agency, but preserve the flexibility for the hospital facility to choose the jurisdictional level of government it feels is most appropriate; and

- Persons with chronic diseases are no longer identified as a separate category of persons who may not be excluded, but may be considered part of the medically underserved populations.

Documenting the CHNA

The Proposed Regulations provide greater flexibility for documentation of the CHNA, describing the required elements to be included in a CHNA report rather than prescribing a single method for compliance. Under the Proposed Regulations:

- The hospital facility may summarize, in general terms, how and over what time period input was provided and the substance of the input;
- The CHNA report must include the names of organizations providing input but it is not necessary to identify any individual at the organizations;
- The CHNA report need not identify individuals participating in community forums, focus groups or similar groups;
- The CHNA report must describe the medically underserved, low-income and minority populations being represented by organizations or individuals providing input;
- Any written comments received on the hospital facility's most recent CHNA and implementation plan must be taken into account;





- The CHNA report must include a prioritized description of the identified significant health needs of the community, as well as a description of the process and criteria used in the prioritization; and
- The CHNA report must also include a description of the potential measures and resources potentially available to address the significant health needs, which are now limited to those “known or identified” during the course of conducting the CHNA.

Making the CHNA Widely Available to the Public

The Proposed Regulations make four changes to the interim rule contained in the Notice regarding making the CHNA Report widely available. These changes include:

- The complete version of the CHNA Report must be conspicuously posted on the website;
- The time period during which a CHNA Report must remain on the website is extended until two subsequent CHNA Reports are posted;
- An individual must not be required to create an account or to provide personally identifiable information to access the website; and
- A paper copy must be available for public inspection without charge until two subsequent CHNA Reports are made available.
- The Proposed Regulations make it clear that a hospital facility may post a draft CHNA Report without starting a new three year cycle.

Collaboration: Separate or Joint Reports and Implementation Plans?

While the Proposed Regulations generally continue to require each hospital facility to produce its own report, the Proposed Regulations add the ability of collaborating hospitals to produce a joint CHNA Report and a joint

implementation strategy. Collaborating hospitals may produce a joint CHNA Report if:

- All of the hospital facilities define their community to be the same community;
- The facilities conduct a joint CHNA process; and
- The resulting joint CHNA Report clearly indicates that it applies to the hospital facility.

Similarly, the Proposed Regulations provide that a hospital facility participating in a joint CHNA also may adopt a joint implementation strategy if:

- The joint implementation strategy clearly indicates that it applies to the hospital facility;
- The hospital facility’s particular role and responsibilities are clearly identified; and
- The implementation strategy includes a summary or other tool to enable a reader to easily locate those portions of the strategy that apply to the hospital facility.

Implementation Strategy

The Notice stated that an implementation strategy addresses an identified health need if the written plan either (1) describes how the facility plans to meet that health need or (2) indicates that the hospital facility did not intend to meet that need and explains why. The Proposed Regulations clarify that a brief explanation of why the hospital facility does not intend to meet a need is sufficient. Examples of such reasons in the Proposed





Regulation include resource constraints or that other facilities or organizations are addressing that need.

The Proposed Regulations add that the implementation strategy must also describe the anticipated impact of the hospital facility's proposed actions, the plan for evaluating the impact, the programs and resources the hospital facility will commit to addressing the need, and any planned collaboration with other facilities or organizations in addressing the need.

Transition Rules for First CHNA and Implementation Strategy

The Proposed Regulations provide a transition rule for a hospital facility's first CHNA and implementation strategy that was not included in the Notice. Under the transition rule, if a hospital facility conducts a CHNA in its first taxable year beginning after March 23, 2012, the hospital facility will be deemed as having satisfied the requirement

to adopt an implementation strategy in the same taxable year the CHNA is conducted if an authorized body of the hospital facility adopts an implementation strategy to meet the community health needs that have been identified by the CHNA on or before the 15th day of the fifth calendar month following the close of its first taxable year beginning after March 23, 2012. June 30th fiscal year end hospital facilities conducting their first CHNA in FYE 2013 will have until November 15, 2013 to adopt their implementation strategies.

What You Need To Do Now

Hospital organizations should carefully review their CHNA and implementation processes in light of the Proposed Regulations. For CHNAs conducted and implementation strategies adopted before October 5, 2013, a hospital organization may rely on the Notice; otherwise, the organization should look to the guidance provided in the Proposed Regulations. ■

For More Information

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