



# Public Health Law Program

OFFICE FOR STATE, TRIBAL, LOCAL AND TERRITORIAL SUPPORT

## Summary of the Internal Revenue Service's April 5, 2013, Notice of Proposed Rulemaking on Community Health Needs Assessments for Charitable Hospitals

The Patient Protection and Affordable Care Act (ACA) added section 501(r) to the Internal Revenue Code.<sup>1</sup> Section 501(r) imposes new requirements on 501(c)(3) organizations that operate one or more hospital facilities.<sup>2</sup> Under section 501(r), each hospital facility operated by a 501(c)(3) organization must meet the following four general requirements on a facility-by-facility basis in order for the organization to maintain its 501(c)(3) tax exempt status:

- establish written financial assistance and emergency medical care policies;
- limit amounts charged for emergency or other medically necessary care to individuals eligible for assistance under the hospital's financial assistance policy;
- make reasonable efforts to determine whether an individual is eligible for financial assistance before engaging in extraordinary collection actions; and
- conduct a community health needs assessment (CHNA) and adopt an implementation strategy at least once every three years.<sup>3</sup>

Section 501(r) became effective for tax years beginning after March 23, 2010, with the exception of the CHNA requirement, which became effective for tax years beginning after March 23, 2012. The ACA also added section 4959,<sup>4</sup> which imposes an excise tax for failure to meet the CHNA requirements and adds reporting requirements under section 6033(b)<sup>5</sup> related to sections 501(r) and 4959.

On April 5, 2013, the IRS released proposed regulations that provided guidance to charitable hospital organizations on the CHNA requirements and related excise tax and reporting requirements.<sup>6</sup> The IRS intends to finalize the proposed regulations on CHNAs in conjunction with the finalization of the proposed regulations regarding the other 501(r) requirements.

### Community Health Needs Assessments Requirements

The proposed regulations provide that a hospital facility must define the community it serves and assess the health needs of that community.

<sup>1</sup> See 26 U.S.C. § 501(r) (2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 4959 (2010).

<sup>5</sup> *Id.* § 6033 (2010).

<sup>6</sup> See Community Health Needs Assessments for Charitable Hospitals, 78 Fed. Reg. 66,20523–44 (proposed Apr. 5, 2013) (to be codified at 26 C.F.R. pts. 1, 53), available at [www.gpo.gov/fdsys/pkg/FR-2013-04-05/pdf/2013-07959.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-04-05/pdf/2013-07959.pdf).



### **i. Community served**

The proposed regulations clarify that, for the purposes of a CHNA, a hospital facility may define the community it serves geographically or take into account target populations or specialized functions. However, a community cannot be defined in a manner that excludes medically underserved,<sup>7</sup> low-income, or minority populations.

### **ii. Assessing community health needs**

A hospital facility conducting a CHNA must identify and prioritize the significant health needs of the community served. The proposed regulations give charitable hospitals flexibility in determining whether a health need is significant and do not require any particular method or criteria in prioritizing significant health needs (only examples of criteria are provided).

### **iii. Community input**

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

- at least one state, local, or regional governmental public health department;<sup>8</sup>
- members of medically underserved, low-income, and minority populations in the community, or individuals or organizations serving or representing their interests;<sup>9</sup> and
- written comments received on the hospital's most recently conducted CHNA and most recently adopted implementation strategy.

In addition, the proposed regulations require that input includes, but is not limited to, information about any financial and other barriers to access to care in the community.

### **iv. Documentation**

A hospital facility must document the following in its CHNA report:

- a definition of the community served and how the community was defined;
- process and methods used to conduct the CHNA;<sup>10</sup>
- community input received;
- a prioritized description of the significant health needs of the community and the process and criteria used in identifying certain health needs as significant and prioritizing such significant health needs; and
- the potential measures and resources to address the needs identified.<sup>11</sup>

A general summary of community input is required (including how and over what time period input was provided), but the report does not need to specifically name individuals who provided input. Every hospital

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<sup>7</sup> Medically underserved populations include populations experiencing health disparities or populations at risk of not receiving adequate medical care as a result of being uninsured or underinsured or due to geographic, language, financial, or other barriers.

<sup>8</sup> The proposed regulations require input from a public health department (rather than any governmental departments with current data or other information relevant to the health needs of the community) at a state or local, not a federal, level.

<sup>9</sup> 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.

<sup>10</sup> The proposed regulations provide that a CHNA report will be considered to describe the process and methods used if the report: describes the data and other information; and identifies any parties with whom the hospital collaborated, or with whom it contracted for assistance, in conducting the CHNA.

<sup>11</sup> Limited to resources known or identified in the course of conducting the CHNA.



facility must document its CHNA in a separate report. However, the proposed regulations recognize collaboration, and joint CHNA reports may be accepted under appropriate circumstances.

**v. Making the CHNA report widely available to the public**

The CHNA report must be made widely available to the public via a hospital facility’s website.

**Implementation Strategy**

For each significant health need identified through the CHNA, a hospital facility must develop an implementation strategy that either describes how a hospital facility plans to address the health need, or identifies the health need as one that the hospital facility does not intend to address and explains why. In describing how a hospital facility plans to address a significant health need, the proposed regulations require that the implementation strategy describe the actions the hospital facility intends to take, the anticipated impacts of the actions, and a plan to evaluate the impacts. The proposed regulations also require that the implementation strategy identify the programs and resources the hospital facility plans to commit to address the health need.

Hospital facilities may develop joint implementation strategies in collaboration with other facilities and organizations if certain conditions are met, but each facility must separately document its implementation strategy, and the strategy must document any planned collaboration.

**Compliance Requirements**

A hospital facility must adopt the implementation strategy by the end of the same taxable year in which the hospital finishes conducting the CHNA.<sup>12</sup> Failure to meet the CHNA requirements can result in a \$50,000 excise tax for each non-compliant facility that an organization operates during any taxable year in which its section 501(c)(3) status is revoked.<sup>13</sup>

**Resources Available**

The Centers for Disease Control and Prevention’s “Resources for Implementing the Community Health Needs Assessment Process” website<sup>14</sup> provides planning and data resources from a variety of organizations that can be used for CHNAs and community health improvement plans.

For additional information on this issue, please email [phlawprogram@cdc.gov](mailto:phlawprogram@cdc.gov).

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<sup>12</sup> The proposed regulations provide transition relief for a hospital’s first CHNA implementation strategy. The proposed regulations also provide some transition relief for new hospital facilities.

<sup>13</sup> 26 U.S.C. § 4959 (2010).

<sup>14</sup> See [www.cdc.gov/policy/chna](http://www.cdc.gov/policy/chna).

