

IRS RELEASES GUIDANCE ON THE COMMUNITY HEALTH NEEDS ASSESSMENT REQUIREMENTS FOR TAX-EXEMPT HOSPITALS

On July 7, 2011, the Treasury Department and the Internal Revenue Service ("IRS") released Notice 2011-52 ("Notice") to address the community health needs assessment ("CHNA") requirements described in section 501(r)(3) of the Internal Revenue Code (the "Code"). These CHNA requirements apply to hospital organizations that are, or seek to be, recognized as tax-exempt under Code Section 501(c)(3) ("hospital organizations"). They represent a relatively new and uncharted area of compliance for hospital organizations, which makes it imperative for such organizations to understand Code Section 501(r)(3) and the Notice.

BACKGROUND

Code Section 501(r) was added to the Code by section 9007(a) of the Patient Protection and Affordable Care Act ("ACA"). Under Code Section 501(r)(3), each hospital organization must conduct a CHNA within three (3) taxable years following ACA's date of enactment and not less than every three (3) years thereafter. This assessment must take into account input from persons with a broad range of interests in the communities they serve and include individuals with expertise in public health. The assessment must be made widely available to the public, and a hospital organization must adopt an implementation strategy to address the community health needs identified in the assessment. A hospital organization also must file in each taxable year a description of how it is addressing the community health needs identified in the CHNA and must describe any identified needs not being addressed and the reasons why they are not being addressed. This description is to be reported as part of the organization's Form 990.

TOPICS ADDRESSED IN THE NOTICE

The new CHNA requirements had already triggered many compliance questions. The Notice specifically addresses twelve (12) areas of concern:

1. What "hospital organizations" are required to meet the CHNA requirements?
2. How will hospital organizations with multiple hospital facilities comply?
3. What will be considered sufficient documentation of a CHNA?
4. How and when should a CHNA be conducted?
5. How should the community served by a hospital facility be defined?
6. For purposes of obtaining input on a CHNA, how should a hospital organization identify persons representing the broad interests of the community?
7. What will constitute making a CHNA widely available to the public?
8. What should an "implementation strategy" include?
9. How and when must an implementation strategy be adopted?
10. How will excise taxes on failures to meet the CHNA requirements be calculated and applied?
11. How will CHNAs be reported?

12. What are the effective dates?

ITEMS OF INTEREST IN THE NOTICE

The Notice provides detailed information and guidance for complying with the CHNA requirements. Therefore, management of organizations subject to the Notice should carefully review all aspects of the Notice and continue to develop plans to comply with the CHNA requirements. Items that likely will be of interest include, but certainly are not limited to, the following:

- **Definition of Hospital Organization.** The Notice explains that, at this time, only tax-exempt organizations that operate one or more State-licensed hospital facilities will be considered to be a "hospital organization" and subject to the CHNA requirements. This can include an organization that operates a State-licensed hospital facility through a disregarded entity or a joint venture, limited liability company, or other entity treated as a partnership for federal income tax purposes. The IRS also reserves its statutory authority to expand the definition of a "hospital organization" at a later date.
- **Multiple Facilities.** While the IRS has indicated that hospital organizations may collaborate with other organizations when conducting CHNAs and developing implementation strategies, the IRS intends to require a hospital organization operating multiple hospital facilities to separately document a CHNA and an implementation strategy for each of its hospital facilities.
- **Documentation.** The CHNA must be documented in a written report that includes a description of the following information:
 - The community served by the hospital facility and how it was determined.
 - The process and methods used to conduct the assessment, including a description of the sources and dates of the data and other information used in the assessment and the analytical methods to identify community needs. A hospital organization should also indicate gaps that impact its ability to assess the health needs of the community it serves and must provide additional information if it collaborated with other organizations in conducting a CHNA or contracted with a third party(ies) to assist with the CHNA.
 - How the hospital organization took into account input from persons who represent the broad interests of the community served, including when and how the organization consulted with these groups. A hospital organization should identify in the report the organizations from which it sought input and the name and/or title of (i) at least one individual in such organization with whom the hospital organization consulted; (ii) the individual(s) who has special knowledge and expertise in public health (as well as an indication of the individual(s)' affiliation with the hospital organization and a brief description of the individual(s)' special knowledge and expertise); and (iii) the individual(s) providing input as a "leader" or "representative" of the populations served by the hospital organization (as well as a description of the individual(s)' leadership or representative role).
 - All of the community health needs identified (in prioritized order) and a description of the process and criteria used in prioritizing such health needs.
 - The existing health care facilities and other resources within the community available to meet the community health needs identified.

As stated in Code Section 501(r)(3), a hospital organization must conduct a CHNA every three (3) years. A CHNA will be considered "conducted" in the taxable year that the written report of its findings is made widely available to the public. The Notice lists a number of ways in which a CHNA may be made widely available to the public, including by posting the written report of the CHNA findings on a hospital facility's website.

- **Implementation Strategy.** In addition to conducting a CHNA and developing a written report of its findings, a hospital organization must adopt an implementation strategy, which must be a written plan that addresses each of the community health needs identified through a CHNA for each facility. To fulfill this requirement, the written plan must (a) describe how a hospital facility plans to meet a health need; and (b) identify those health needs a hospital facility does not intend to meet and explain why the hospital facility does not intend to

meet such needs. An implementation strategy will be considered "adopted" when it is approved by the authorized governing body of the hospital organization. As explained above, the Notice indicates that the IRS intends to require each hospital organization to attach to its annual Form 990 the most recently adopted implementation strategy for each of its hospital facilities.

- **Effective Date.** The IRS intends to require a hospital organization to conduct a CHNA and adopt an implementation strategy for each of its hospital facilities by the last day of its first taxable year beginning after March 23, 2012. However, the CHNA requirements can be satisfied earlier if the CHNA is conducted and the implementation strategy is adopted in either of the two (2) preceding taxable years. With respect to reporting, the IRS does not intend to require hospital organizations to report the applicable information on Forms 990 until the first taxable year beginning after March 23, 2012.
- **Calculation of Excise Taxes.** Once the CHNA requirements become effective, a \$50,000 excise tax ("Penalty") applies to a hospital organization that fails to meet the CHNA requirements with respect to any taxable year. According to the Notice, this penalty will apply each year that the CHNA requirements are not met. In addition, if a hospital organization has more than one facility, then the Penalty will apply separately with respect to each hospital facility's failure to meet the CHNA requirements.
- **Application to County Hospitals.** Practitioners and others previously have asked whether the CHNA requirements will apply to certain government hospitals, such as county hospitals that are exempt from tax under Code Section 115 and that have also obtained recognition of exempt status for being described in Code Section 501(c)(3). Typically, such dual status was obtained because of retirement benefit plan purposes.




The Notice explains that, because Code Section 501(r) applies to all hospital organizations that are (or seek to be) recognized as described in Code Section 501(c)(3), the CHNA requirements apply to every hospital organization that has been recognized (or seeks recognition) under Code Section 501(c)(3). However, the IRS did leave some possibility that relief could be granted to government hospitals. Specifically, comments are requested regarding alternative methods a government hospital may use to satisfy the requirements of Code Section 501(r)(3).

In addition, the IRS indicated that government hospitals that have sought and received relief from filing a Form 990 can continue to abstain from filing a Form 990 and related schedules. Thus, such entities will be relieved from the new Form 990 reporting requirements relating to Code Section 501(r)(3). It is important to note, though, that these government hospitals are otherwise subject to the Code Section 501(r) requirements while they continue to be described in Code Section 501(c)(3).

CLOSING THOUGHTS

The Notice is the first piece of formal guidance from the IRS concerning the application of the various provisions of the new Code Section 501(r). According to the Notice, the IRS anticipates that it will issue additional guidance on Code Section 501(r) in the form of proposed regulations. Presumably, future guidance will include refinements to the CHNA requirements, as well as information regarding other requirements in Code Section 501(r), such as requirements for financial assistance policies, limitations on hospital charges and billings and collections policies. According to the Notice, hospital organizations can rely on the information provided in the Notice until six (6) months after such time as regulations are issued. In addition, the IRS is accepting comments pertaining to the Notice until September 23, 2011. Thus, management of hospital organizations should closely review this Notice, consider whether the organization should offer comments to the IRS and continue to develop processes and plans to comply with Code Section 501(r). The full text of the Notice may be viewed here: <http://www.irs.gov/pub/irs-drop/n-11-52.pdf>.

Should you desire to submit comments to the IRS as solicited in the Notice or need assistance with your organization's evaluation and implementation of compliance and reporting initiatives involving the CHNA requirements, please contact:

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