

Treasury Releases Proposed Guidance for Charitable Hospitals Performing Community Health Needs Assessments

The U.S. Department of the Treasury today took the next step in implementing a provision of the Affordable Care Act that helps ensure access to financial assistance for patients of charitable hospitals, protects patients from abusive collections practices, and requires hospitals to assess and address the health needs of the communities they serve. In order to receive or retain a tax-exemption, charitable hospitals must meet the new standards.

Today's proposed regulations provide guidance for hospitals on the community health needs assessment (CHNA) and subsequent implementation strategy to address the findings of the CHNA. Last June, the Treasury Department issued proposed regulations under this provision relating to charitable hospitals' responsibilities to publicize information needed to apply for financial assistance and establish billing and collections protections for patients. Together, these proposed regulations promote transparency and patient protections, while providing flexible rules that can be applied to a wide range of charitable hospitals.

Key Elements of Today's Proposed Rules

Community Health Needs Assessment Report. For tax years beginning after March 23, 2012, each charitable hospital must conduct a CHNA at least once every three years and make widely available to the public a written report summarizing its findings. The CHNA report must include a prioritized description of the significant health needs of the community. The proposed regulations allow a hospital to define its "community" to take into account not only its geographic location, but also the target populations served by the hospital (e.g., children) or the hospital's special medical focus (e.g., cancer treatment). In its CHNA, a hospital must take into account input from public health departments; medically underserved, low-income, and minority populations; and written comments received on its last CHNA report and implementation strategy.

Implementation Strategy. A hospital 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. In addition, a hospital must annually attach its most recent implementation strategy to its Form 990 and describe in the Form 990 the steps it took during the year to address the identified health needs.

Consequences of Noncompliance. Today's proposed rules also address the excise tax on failures to conduct a CHNA, as well as the consequences for hospitals that fail to satisfy any of the new requirements imposed on charitable hospitals by the statute. The IRS may revoke a hospital's tax-exempt status in appropriate cases of noncompliance after taking into consideration all facts and circumstances, including whether the organization has had previous failures; the size, scope, and significance of the failure; and the reasons for the failure. The

proposed regulations also provide opportunities for errors or omissions that are due to reasonable cause to be waived if they are corrected. If a single facility within a multi-facility organization fails to comply with the statutory requirements (and the failure would have resulted in revocation in the case of a single-facility hospital organization), the proposed regulations impose a tax on the income of the noncompliant facility.

Correction and excuse of failures. Under the proposed regulations, minor and inadvertent errors or omissions due to reasonable cause are not considered failures if they are promptly corrected. In addition, under the proposed regulations, a failure to meet the new requirements (other than one that is willful or egregious) may be excused if the hospital corrects the failure and makes disclosure in accordance with future guidance the IRS will publish.

Excise tax on CHNA failures. The proposed regulations confirm that an excise tax will apply to a failure to conduct a CHNA. This excise tax may apply even if the failure is excused for other purposes. Under the proposed rules, the excise tax applies on a facility-by-facility basis if a hospital operates more than one facility that fails to complete a CHNA.

Key Elements of the June 2012 Proposed Regulations:

Financial Assistance and Emergency Medical Care Policies. Tax-exempt hospitals must establish financial assistance policies that clearly describe the available financial assistance and how to apply for it. The 2012 proposed regulations describe how a hospital must publicize its financial assistance policy so that community members are aware that aid is available. In addition, a hospital must have a written emergency medical care policy that does not discriminate against patients who may need financial assistance and that prohibits debt collection activities in the emergency department or other hospital venues where the activities could interfere with treatment.

Limitation on Collection Actions. The 2012 proposed rules provide that a charitable hospital may not engage in certain collection methods (for example, reporting a debt to a credit agency or garnishing wages) until it makes reasonable efforts to determine whether an individual is eligible for financial assistance. For example, the 2012 proposed rules require charitable hospitals to:

- Provide patients with a plain language summary of the financial assistance policy before discharge and with the first three bills; and
- Give patients at least 120 days following the first bill to submit a financial aid application before commencing certain collection actions, and an additional 120 days (for 240 days total) to submit a complete application.

Limitation on Charges. A hospital may not charge individuals eligible for financial assistance more for medically necessary care than the amounts the hospital generally bills to insured individuals. If a person has not applied for financial assistance, the hospital may bill the person at its usual charges, provided the hospital is reaching out to determine whether the person is eligible for financial assistance. If the person is eligible for aid, the hospital must refund any excess payments already made.

Effective Dates: The statutory requirements related to establishment of a financial assistance policy, limitations on collection actions, and limitations on charges are already in effect today

and have been since tax years beginning after the enactment of the Affordable Care Act. Requirements related to CHNAs are effective for tax years beginning after March 23, 2012. Until final regulations are published, hospitals can rely on these proposed regulations and the 2012 proposed regulations as they comply with these new requirements. Hospitals that have already started their CHNAs can continue to rely on the interim rules provided in Notice 2011-52, which the Treasury Department issued in March, 2011, for six more months.

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