

MEMORANDUM



KAUFMAN | GILPIN | MCKENZIE

KAUFMAN.GILPIN.MCKENZIE.THOMAS.WEISS, PC

To: Hospitals Exempt from Taxation Under Section 501(c)(3) of the Internal Revenue Code

From: John Ward Weiss, Esquire
D. Brent Wills, Esquire

Re: Community Health Needs Assessment

Date: October 25, 2011

The 2010 Patient Protection and Affordable Care Act (“PPACA”) added Section 501(r) to the Internal Revenue Code (the “Code”) to require that, for tax years beginning after March 23, 2012,¹ hospitals exempt from federal income tax (“Exempt Hospitals”) under Section 501(c)(3) of the Code must, among other things,² conduct a community health needs assessment (“CHNA”). Section 501(r) also requires that Exempt Hospitals adopt implementation strategies to meet community needs identified in the CHNA and that the CHNA be made widely available to the public.

In general, Section 501(r) requires that an Exempt Hospital conduct a CHNA at least once every three (3) years. However, an Exempt Hospital that has not conducted a CHNA (in compliance with requirements of the Notice) within the last three (3) years must complete a CHNA, including formal adoption of an implementation strategy, not later than the end of the first taxable year to which Section 501(r) applies.³ Moreover, organizations that include more than one Exempt Hospital must meet the requirements under Section 501(r), including performing CHNAs, for *each* such hospital. In addition, the IRS has revised Schedule H to its Form 990 Return of Organization Exempt from Income Tax (“Schedule H,” and “Form 990”) to incorporate certain provisions relating to compliance with Section 501(r), including with regard to CHNAs.⁴

¹ The requirements of Section 501(r) will be effective for tax years beginning after March 23, 2012.

² In addition to conducting a community needs assessment and adopting an implementation strategy, Section 501(r) also requires that Exempt Hospitals establish certain financial assistance policies and comply with certain restrictions on charges and billing and collections. Additional information regarding these requirements, and Section 501(r)’s requirements relating to community needs assessments, is available on the IRS website at <http://www.irs.gov/charities/charitable/article/0,,id=236275,00.html>.

³ For example, an Exempt Hospital with a calendar tax year must complete its initial CHNA and adopt an implementation strategy not later than December 31, 2013. An Exempt Hospital with a June 30, fiscal year end, however, must complete its initial CHNA not later than June 30, 2013.

⁴ The revised Schedule H may be accessed on the IRS website: <http://www.irs.gov/pub/irs-pdf/f990sh.pdf>.

Earlier this year, the Internal Revenue Service (the “IRS”) published Notice 2011-52⁵ (the “Notice”) to provide guidance to Exempt Hospitals attempting to comply with the CHNA requirements in Section 501(r). While the guidance provided in the Notice does not include proposed or final regulations, Exempt Hospitals may rely on the guidance in conducting CHNAs until the IRS adopts regulations,⁶ and for six (6) months thereafter.⁷

1. Determining the Community and Input from Persons Who Represent the Broad Interests of the Community

The Notice seems to indicate that, to determine the community it serves, an Exempt Hospital should consider its geographic location, but it may also consider the target populations it serves (e.g., women, children, elderly) and its principal functions (e.g., specialized services, targeted diseases). Exempt hospitals may not, however, circumvent the purposes of Section 501(r) by, for example, excluding medically underserved, low income or minority populations, or individuals with chronic disease needs.

In addition to defining the community it serves, Section 501(r) requires an Exempt Hospital, when conducting a CHNA, to take into account input from persons who represent the broad interests of the community. Section 501(r) stipulates that such persons should include those with special knowledge of or expertise in public health. In addition, the Notice requires that an Exempt Hospital take into account the input of government agencies that have current information relating to the health needs of the community and representatives or members of medically underserved, low income or minority populations, and of individuals with chronic disease needs, in the community. The Notice would also permit an Exempt Hospital to consider input received from health care consumer advocates, academic experts, private businesses, health insurance and managed care organizations, and other individuals and organizations located in or serving the community.

2. Documenting the CHNA

The Notice indicates that the IRS intends to require Exempt Hospitals to document CHNAs in a written report (the “CHNA Report”). The Notice sets forth particular information that must be included in the CHNA Report, including descriptions of the community served by the Exempt Hospital, the process the Exempt Hospital used to define the community, and the facilities and resources currently available within the community to meet the community’s health needs; a description of the process the Exempt Hospital used to take into account the input of persons representing the broad

⁵ IRS Notice 2011-52 is available on the IRS website: <http://www.irs.gov/pub/irs-drop/n-11-52.pdf>.

⁶ PPACA does not specify a timeline for adoption of proposed or final regulations with regard to the requirements of Section 501(r), and, as of the date of this Client Alert, it is not known when the IRS will publish regulations or additional guidance regarding CHNAs.

⁷ Thus, for example, an Exempt Hospital that is a calendar year taxpayer and completes a CHNA in compliance with the requirements of the Notice during its 2012 tax year (assuming the IRS does not publish regulations or further guidance that supersedes the Notice on or before June 30, 2012) would not be required to complete another CHNA to comply with Section 501(r) until December 31, 2015.

interests of the community (e.g., meetings, focus groups, interviews), including the identities and relevant credentials of such persons; and a prioritized description of the community health needs the Exempt Hospital identified in conducting the CHNA, together with a description of the process and criteria used to prioritize such needs.

3. Widely Available to the Public

The Notice indicates that the IRS intends to require Exempt Hospitals to make information relating to CHNAs widely available to the public. Apparently, the particular requirements for publication will be similar to the rules currently in place with respect to the IRS Form 990. Thus, Exempt Hospitals should anticipate posting their CHNA Reports online, either on their own websites or, where appropriate, on other organizations' websites, with instructions for accessing the CHNAs on their own websites. Again, this requirement must be met for each Exempt Hospital within a single organization.

In addition, Schedule H requires a number of disclosures relating to compliance with Section 501(r)'s CHNA requirements, including that Exempt Hospitals attach a copy of the most recently adopted implementation strategy (i.e., the implementation strategy adopted with respect to the CHNA conducted during the current tax year, or during the two preceding tax years) with the schedule.

4. Implementation Strategy

The Notice indicates that an Exempt Hospital must put the implementation strategy required by Section 501(r) in writing and that the written implementation strategy must address the health needs of the community identified in the CHNA. The Exempt Hospital must indicate whether and how it intends to meet each health need and, with respect to any need the hospital does not intend to meet, explain why the hospital does not intend to meet it. The Notice requires that the implementation strategy must be approved by the Exempt Hospital's governing board, or a legally authorized committee of such board, and that such approval must occur during the same tax year in which the Exempt Hospital makes the CHNA Report widely available to the public. Again, a written implementation strategy must be prepared for each Exempt Hospital within an organization.

5. Public Comments

Public comments recently received by the IRS regarding the Notice indicated that, while the Notice provides helpful guidance, there is still uncertainty among Exempt Hospitals regarding a number of key issues, including:

- Whether, and to what extent, Exempt Hospitals within a single organization, or within a single community, may collaborate in meeting the CHNA requirements.⁸

⁸ Notwithstanding that each Exempt Hospital must meet the CHNA requirements separately, an IRS official recently indicated that multiple hospitals within a single community may work together in

- What flexibility, if any, the IRS will allow Exempt Hospitals in satisfying the CHNA requirements, particularly in defining the applicable “community served.”
- The criteria for identifying individuals qualified to provide input on the public health needs of communities, within the meaning of Section 501(r).

6. *Conclusion*

In order to comply with Section 501(r) in its first taxable year (i.e., the first taxable year beginning after March 23, 2012), an Exempt Hospital that has not conducted a CHNA within the last three (3) years must conduct a CHNA, make it widely available to the public *and* formally adopt an implementation strategy not later than the end of such year (i.e., not later than December 31, 2013, for an Exempt Hospital that is a calendar year taxpayer). With this in mind, Exempt Hospitals that have not conducted a CHNA in compliance with the requirements of the Notice during its 2011 tax year would be well advised to begin preparing (if it has not already) to do so in order to comply with Section 501(r).

Also, given that the IRS anticipates that much of the information related to the CHNA will be made widely available to the public, Exempt Hospitals must be careful to avoid including confidential or proprietary information in CHNA Reports, written implementation strategies, or other documents that will be made public. On the other hand, Exempt Hospitals must keep in mind they may rely on the Notice only for the period until formal regulations are provided with respect to CHNAs, and for six (6) months thereafter. With this in mind, we will continue to update our clients regarding future developments relating to and the CHNA requirements and other requirements under PPACA, to ensure that you are able to comply timely with Section 501(r).

The above information is not intended to provide comprehensive analysis or legal advice with respect to Section 501(r), PPACA or any other legal issues. If you need specific guidance regarding any of these matters, please consult appropriate legal counsel.

completing a CHNA, so long as they independently complete their CHNA Reports and adopt implementation strategies. See BNA Health Law Reporter, *Different Reports in Community Health Needs Assessment Can Be Similar, IRS Official Says*, Vol. 20, No. 40, at 1538 (Oct. 6, 2011).