

Community Health Needs Assessments Provide Opportunity to Support CON Projects

As previously reported, the Affordable Care Act targeted tax-exempt hospitals in a number of ways including the adoption of a new Community Health Needs Assessment (“CHNA”) requirement. The CHNA requirement, contained in Section 501(r) of the Tax Code, requires that hospital organizations conduct, on a facility-by-facility basis, an assessment of community health needs and an Implementation Strategy for addressing these needs utilizing both hospital and community resources. The CHNA, in effect, acts as an additional level of governmental oversight to ensure tax-exempt hospitals are actively providing and planning for the rendering of community-focused health care services. Hospitals should take notice, however, that CHNAs may serve a secondary purpose: supporting (and defending) future hospital growth projects, including future certificate of need (“CON”) applications.

On July 7, 2011, the Treasury Department and the Internal Revenue Service (the “IRS”) issued Notice 2011-52 (the “Notice”) in which it promulgated interim, “anticipated” regulations for CHNAs. The Notice enumerates several requirements CHNAs must satisfy, including those related to scope of the community examined by the CHNA, standards for assessing community health needs, and the contents of the aforementioned Implementation Strategy. In detailing these requirements, the Notice provides some clarity as to ways hospitals may utilize the CHNA process to their advantage with respect to future CON applications.

First, hospitals may utilize the CHNA



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process as a means to document need for new health care facilities or services in future service areas, including those areas not historically served by the hospital. For example, in defining the “community served by the hospital” for the CHNA, the Notice directs that a hospital may take into account “all relevant facts and circumstances.” The Notice goes on to clarify that hospitals can define their community by geographic location or, in the case of specialty hospitals, by target populations served (e.g., women, children) and/or the facility’s principal functions (e.g., focus on a particular disease). Given the flexibility afforded in this regulation, hospitals may broadly define the community to be examined in the CHNA to encompass planned service areas or, alternatively, expanded target populations to accommodate future service lines. As such, the community served by the hospital as defined for the CHNA may provide a basis for defining future service areas for a hospital’s planning, including CON development.

Second, hospitals may utilize the CHNA process to build community support for future CON applications. Specifically, the Notice allows hospitals to partner with other organizations in preparing the CHNA and Implementation Strategy, including public health agencies, nonprofit organizations, and other providers. Moreover, the Notice requires hospitals to seek input from persons who represent the “broad interests of” the community served by the hospital facility in preparing the CHNA, including leaders of medically underserved populations and public health experts. Hospitals can and should take advantage of these requirements. By partnering with a local agency(ies) or nonprofit organization(s) to conduct the CHNA, hospitals may: (1) bolster the evidentiary value of the CHNA from a simple tax filing to an objective, community-based study on health needs that it can utilize to support long term planning, including future CON applications; (2) proactively build public/governmental support with its community partners for those projects identified in the CHNA; (3) share, and therefore lessen, the amount of human and financial resources the hospital would otherwise expend if it performed the CHNA without external organizations; and (4) share the burden of implementation of services with other agencies or providers, when appropriate. For example, smoking cessation courses may be offered in conjunction with public health agencies and/or at public health locations.

Third, hospitals may utilize the Implementation Strategy as a tool to docu-

ment specific health facilities that are needed in the community. The Notice specifically directs that the hospital’s Implementation Strategy contain: (1) a prioritized description of all of the community health needs identified in the CHNA; and (2) a description of the existing health care facilities and other resources within the community available to meet identified community needs. It is important to note that the Implementation Strategy must be filed with the hospital’s Form 990 and is otherwise subject to public scrutiny under the disclosure requirements found in Section 501(r). As such, hospital management should ensure that the priority projects and needs defined in the Implementation Strategy are considered in its long-term planning, including future CON applications.

Thus, hospitals can and should utilize the CHNA process as a mechanism to support long-term growth planning, including potential projects requiring a CON. Additionally, because CHNAs are public documents, hospital leadership must ensure the CHNA Implementation Strategy does not conflict with the hospital’s planned growth, including potential future CON applications. In this regard, hospital management should integrate its CHNA findings into its overall long-term planning process.

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