Welcome and Thank You for Joining

The webinar has not yet started. You should begin hearing audio when the slide advances.

If you do not have the ability to stream audio through your computer, please use the dial-in number included on your registration confirmation to hear the audio.

Questions submitted during the webinar will be answered at the end if time permits.

501(r) Developments and Compliance

Paige Gerich, CPA
pgerich@bkd.com
Overview

- Overview of Section 501(r)
- Proposed Regulations 501(r)(4) – (6)
- Notice 2011-52 requirements
- Key Elements of a CHNA
- 2011 Revised Schedule H

Background

- 501(r) enacted March 23, 2010
- Notice 2010-39 – IRS requested comments regarding new 501(r) requirements (May 27, 2010)
- Notice 2011-52 – IRS addressed CHNA requirement (July 8, 2011)
- Proposed Regulations on requirements described in 501(r)(4) – (r)(6) (June 22, 2012)
- Comment period for Proposed Regulations ended September 24, 2012
Why is 501(r) important?

If compliance with 501(r) is required to maintain tax exemption, then we must ask the question...

What is the value of tax exemption for our exempt hospitals clients?

Impacts include (but are not limited to):
- Federal Income Tax
- State Income Tax
- Preferred Interest Rates on Exempt Bond Financing
- Sales Tax Exemption for Some Purchases
- Property Tax Exemptions for property used in furtherance of the hospital’s mission

Why is 501(r) important?

Case Study

Exempt Hospital
$44 M Revenue
$550 K Increase in Net Assets (Revenue less Expense)
$20 M Exempt Bond Debt
$8 M of Exempt Purchases
$60 M Hospital Facility Exempt from Property Tax
Why is 501(r) important?

- Case Study

- Federal Income Tax (34%) $187,000
- State Income Tax (6%) $33,000
- Interest Expense (add’tl 2%) $400,000
- Additional Sales tax (7%) $560,000
- Property Tax ($1.5/$100) $900,000

Sections 501(r)(4) – (6) Policies
IRC Section 501(r)(4)

- Financial Assistance Policy (FAP)
  - Eligibility criteria
  - Basis for calculating amounts charged
  - Method for applying
  - If no separate billing & collection policy exists, actions organization may take in event of nonpayment
  - Measures to widely publicize policy
  - Policy relating to emergency medical care

Schedule H
Part V-Financial Assistance Policy

<table>
<thead>
<tr>
<th>Financial Assistance Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did the hospital facility have in place during the tax year a written financial assistance policy that:</td>
</tr>
<tr>
<td>1. Established eligibility criteria for financial assistance, and whether such assistance includes free or discounted care?</td>
</tr>
<tr>
<td>2. Used Federal poverty guidelines (FPG) to determine eligibility for providing free care?</td>
</tr>
<tr>
<td>3. If “Yes,” indicate the FPG family income level for eligibility for free care:</td>
</tr>
<tr>
<td>4. If “No,” explain in Part V of the criteria the hospital facility used.</td>
</tr>
<tr>
<td>5. Explained the basis for calculating amounts charged to patients?</td>
</tr>
<tr>
<td>6. If “Yes,” indicate the factors used to determine such amounts (check all that apply):</td>
</tr>
<tr>
<td>a. Income level</td>
</tr>
<tr>
<td>b. Asset level</td>
</tr>
<tr>
<td>c. Medical indigency</td>
</tr>
<tr>
<td>d. Insurance status</td>
</tr>
<tr>
<td>e. Uninsured discount</td>
</tr>
<tr>
<td>f. Medicare/Medicaid</td>
</tr>
<tr>
<td>g. Other (describe in Part VI)</td>
</tr>
<tr>
<td>7. Explained the method for applying for financial assistance?</td>
</tr>
<tr>
<td>8. If “Yes,” indicate how the hospital facility publicized the policy (check all that apply):</td>
</tr>
<tr>
<td>a. The policy was posted on the hospital facility’s website</td>
</tr>
<tr>
<td>b. The policy was published in the hospital facility’s patient handbook</td>
</tr>
<tr>
<td>c. The policy was posted in the hospital facility’s emergency rooms or waiting rooms</td>
</tr>
<tr>
<td>d. The policy was posted in the hospital facility’s admissions office</td>
</tr>
<tr>
<td>e. The policy was provided, in writing, to patients or admissions to the hospital facility</td>
</tr>
<tr>
<td>f. The policy was available on request</td>
</tr>
<tr>
<td>g. Other (describe in Part VI)</td>
</tr>
</tbody>
</table>
Schedule H
Part V-Emergency Medical Care

IRC Section 501(r)(5)

- 501(r)(5) – Limitation on Charges
  - Limits amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under FAP to not more than amounts generally billed to individuals having insurance covering such care
  - Prohibits use of gross charges
### Schedule H
Part-Limitations on Charges

<table>
<thead>
<tr>
<th>Individuals Eligible for Financial Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 Indicates how the hospital facility determined, during the tax year, the maximum amounts that can be charged to FAP-eligible individuals for emergency or other medically necessary care.</td>
</tr>
<tr>
<td>a □ The hospital facility used its lowest negotiated commercial insurance rate when calculating the maximum amounts that can be charged.</td>
</tr>
<tr>
<td>b □ The hospital facility used the average of its three lowest negotiated commercial insurance rates when calculating the maximum amounts that can be charged.</td>
</tr>
<tr>
<td>c □ The hospital facility used the Medicare rates when calculating the maximum amounts that can be charged.</td>
</tr>
<tr>
<td>d □ Other (describe in Part VI)</td>
</tr>
</tbody>
</table>

20 Did the hospital facility charge any of its patients who were eligible for assistance under the hospital facility’s financial assistance policy, and to whom the hospital facility provided emergency or other medically necessary services, more than the amounts generally billed to individuals who had insurance covering such care?  |

21 Did the hospital facility charge any of its FAP-eligible patients an amount equal to the gross charge for any service provided to that patient?  |

**IRC Section 501(r)(6)**

- **501(r)(6) – Billing & Collection Requirement**
  - May not engage in extraordinary collection actions before organization has made reasonable efforts to determine whether individual is eligible for assistance.
Issues

- Guidance before release of Proposed Regulations was vague
- Requirements have been in place since March 23, 2010
- May rely on, but not required to comply with, Proposed Regulations
Proposed Regulations
IRC Sections 501(r)(4) – (6)

Hospital Facilities

- Licensed, registered or similarly recognized by state as hospital
- May treat multiple buildings operated under single state license as single hospital facility
- Facilities outside U.S. are not required to comply
- Disregarded entities operating hospitals must comply
- Governmental hospitals with 501(c)(3) status must comply
Financial Assistance Policy

- Previous requirements still apply
- May publicize summary of FAP as certain information may change regularly (such as federal poverty references)
- No mandate for particular eligibility criteria
- Must state amounts, such as gross charges, to which any discount percentages will be applied

Eligibility Criteria & Basis Calculating Amounts Charged

- Must state that FAP eligible patient will not be charged more than amounts generally billed (AGB) for emergency or other medically necessary care
- Must state which of IRS permitted methods used to determine AGB will be used
- Must either state % of gross charges hospital facility applies to determine AGB & how these AGB percentages were calculated or how members of public may readily obtain this information in writing free of charge
### Method for Applying & Actions Taken for Nonpayment

- Financial assistance may not be denied based on omission of information not specifically required by FAP or FAP application form
- Must describe actions that may be taken in event of nonpayment if no separate billing & collections policy exists
- Must describe process & time frames hospital will use in taking these actions, including reasonable efforts to determine if individual is FAP eligible
- Must describe who has final authority for determining hospital has made reasonable efforts

### Widely Publicizing

- **Four types of measures required**
  - Measures taken to make paper copies of FAP, FAP application & plain language summary available (in English & language of minority populations comprising > 10% of hospital’s community)
  - Public display measures
  - Measures to inform & notify members of hospital’s community
  - Measures to make FAP, application form & plain language summary available on website
Establishing FAP

- Authorized body must adopt policy & hospital must implement in policy
- Authorized body includes
  - Governing body
  - Committee of governing body permitted under state law to act on behalf of governing body
  - Other parties authorized by governing body of hospital to act on its behalf

Limitations on Charges

- Must limit charges to FAP-eligible patients to not more than AGB to individuals with insurance covering that care & charges must be less than gross charges
- Two methods for computing AGB
  - Look-back method
  - Prospective method
- Two methods are mutually exclusive
- Claims paid under Medicare Advantage are treated as claims paid by private insurance
Look-Back Method

- Based on actual claims paid to hospital by either Medicare fee-for-service only or Medicare fee-for-service together with all private health insurers paying claims
- Calculated by multiplying gross charges by one or more AGB percentages
- Must calculate AGB percentages no less than annually by dividing sum of certain claims paid by sum of associated gross charges

Look-Back Method

- Must begin applying AGB percentages by 45th day after end of 12-month period used in calculation
- May calculate one average AGB percentage for all emergency and medically necessary care or multiple AGB percentages for separate categories of care as long as the hospital facility calculates an AGB percentages for all emergency and other medically necessary care
Prospective Method

- Determine AGB by using same billing & coding process hospital would use if individual were Medicare fee-for-service beneficiary

Limitation on Charges

- A hospital facility may use only one of the methods to determine AGB

- After choosing a particular method, a hospital facility must continue to use that method
Gross Charges

- May use gross charges as starting point to which discounts are applied
- Safe harbor provided for situations where individual does not complete FAP application before time of charges

Billing & Collection

- Must engage in reasonable efforts to determine FAP eligibility before engaging in extraordinary collections actions (ECA)
- ECAs include
  - Any action that requires legal or judicial process
  - Reporting to credit agencies
  - Sale of individual’s debt to another party
Reasonable Efforts

- Notify individual about FAP
- If individual provides incomplete application, provide them with information relevant to complete application
- Make & document determination as to whether individual is FAP-eligible

Notification Period

- Period in which hospital must notify individual about FAP
- Begins on date care is provided & ends on 120th day after hospital provides first billing statement
Application Period

• Must accept & process FAP applications during longer period that ends on 240th day after hospital provides individual with first billing statement

Notification About FAP

• Must distribute plain language summary of FAP & offer an application before discharge
• Must distribute plain language summary of FAP with all (& at least 3) billing statements during notification period
• Must inform individual of FAP in all oral communications during notification period
• Must provide at least one written notice about ECAs hospital may take if individual does not submit FAP application or pay amount due by last day of notification period
### Plain Language Summary

- Brief description of eligibility requirements & assistance offered
- Direct website address & physical location copies may be obtained
- Instructions on how to obtain free copy by mail
- Contact information
- Statement of availability of translations if applicable
- Statement that no FAP-eligible patient will be charged more than AGB

### Incomplete FAP Applications

- If received during application period, hospital must
  - Suspend ECAs when received
  - Provide written notice that describes additional information needed
  - Provide at least one written notice describing ECAs that may be initiated or resumed if individual does not complete by deadline that is no earlier than later of 30 days from written notice or last day of application period
Complete FAP Applications

- If received during application period, hospital must
  - Provide billing statement indicating amount owed
  - Refund any excess payments made by individual
  - Take all reasonably available measures to reverse any ECA

Section 501(r)(3) and IRS Notice 2011-52
Community Health Needs Assessments
ACS Requirements --> Community Health Needs Assessment --> Notice 2011-52

**Affordable Care Act**
- Creates Section 501(r)
- Creates Section 4959

**Section 501(r)**
- CHNA Required Once Every Three Years
- Community Input Required
- $50,000 Excise Tax for Non-Compliance

**IRS Notice 2011-52**
- Provides CHNA Requirements
- Who, When, What & How

IRS Notice 2011-52

Notice and Request for Comments Regarding the Community Health Needs Assessment Requirements for Tax Exempt Hospitals

- **Section 1 – Purpose**
- **Section 2 – Background**

**Section 3 – Anticipated Regulatory Provisions**
- **Section 4 – Reliance**
- **Section 5 – Request for Comments**
- **Section 6 – Drafting Information**
IRS Notice 2011-52

Key Guidance

- 12 Parts within section 3 of the Notice
- Provides Key Guidance on the following:
  - Which Hospitals are required to conduct CHNA
  - Required Documentation for CHNA
  - Level and Type of Input Required for CHNA
  - Implementation Strategy
  - Timing

IRS Notice 2011-52

Anticipated Regulatory Provisions

- Organization that operates a facility which is required by state to be licensed, registered or similarly recognized as a hospital
  - Includes disregarded entities, joint ventures, partnerships
  - Excludes hospital facilities located outside the United States
- Hospital must meet requirements for each facility it operates
IRS Notice 2011-52
Anticipated Regulatory Provisions

- Treasury and IRS intend to require a hospital organization to document a CHNA for a hospital facility in a written report that includes descriptions of the following information:
  - Community
  - Process and methods
  - Community input
  - Community needs
  - Existing health care facilities

- CHNA must involve Persons Representing the Broad Interests of the Community with special knowledge of or expertise in public health:
  - Health departments or other agencies, with current data or other information relevant to the health needs of the community served by the hospital.
  - Leaders, representatives or members of medically underserved, low-income and minority populations and populations with chronic disease needs.
IRA Notice 2011-52

Anticipated Regulatory Provisions

• When is a CHNA Considered Conducted?
  o Taxable year the written report is made widely available to the public

• CHNA Must be made widely available to the Public
  o Post CHNA and findings on hospital website
  o CHNA report must be made “widely available” to the public until the date it makes a subsequent CHNA report “widely available”

Implementation Strategy:

o Written Plan that is attached to Form 990
o A separate plan for each hospital facility
o Adopted the date it is approved by an authorized governing body of the hospital organization
o Must be adopted by the end of the SAME tax year in which it conducts that CHNA
IRS Notice 2011-52
Anticipated Regulatory Provisions

- CHNA must be conducted once every three years for community served by each hospital – first must be completed by end of tax year beginning after March 23, 2012

<table>
<thead>
<tr>
<th>Year End</th>
<th>Beginning of Fiscal Year</th>
<th>Due Date for Initial CHNA</th>
</tr>
</thead>
<tbody>
<tr>
<td>03/31/2012</td>
<td>04/01/2012</td>
<td>03/31/2013</td>
</tr>
<tr>
<td>06/30/2012</td>
<td>07/01/2012</td>
<td>06/30/2013</td>
</tr>
<tr>
<td>09/30/2012</td>
<td>10/01/2012</td>
<td>09/30/2013</td>
</tr>
<tr>
<td>12/31/2012</td>
<td>01/01/2013</td>
<td>12/31/2013</td>
</tr>
<tr>
<td>01/31/2013</td>
<td>02/01/2014</td>
<td>01/31/2014</td>
</tr>
</tbody>
</table>

To-Do Item

Assess if Your Hospital is Required to Conduct a CHNA and Determine the Due Date of Your Initial CHNA

Hospital needs to “Conduct” the CHNA and “Adopt” an Implementation Strategy by the Due Date!
Key Elements
Community Health Needs Assessments

Key Elements of a CHNA

• Strategy and Planning
• Research and Analysis of Community
• Community Input
• Prioritization of Identified Health Needs
• Development of Implementation Strategy
Strategy and Planning

- Single Organization Versus Multiple Organization Partnership Approach
- Inventory Existing Assessments and Other Info
- Define Community
- Define Process and Establish Project Time Line

Define Community

- Primary and/or Secondary Service Area (BKD)
  - A zip code area must represent two percent or more of the Hospital's total discharges and outpatient visits
  - The Hospital's market share in the zip code area must be greater than or equal to 20 percent
  - The area is contiguous to the geographical area encompassing the Hospital.

- Identify Geographic Area
  - Maps

- Specialty Hospitals may take into account target populations
Strategy & Planning

Sample Timeline

<table>
<thead>
<tr>
<th>2012 OCT</th>
<th>2013 JAN/FEB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategy &amp; Planning</td>
<td>Strategy &amp; Planning</td>
</tr>
<tr>
<td>Start Needs Survey</td>
<td>Start Needs Survey</td>
</tr>
<tr>
<td>Identification of Community Health Needs</td>
<td>Identification of Community Health Needs</td>
</tr>
<tr>
<td>Final CHNA Draft Approved and Made Widely Available</td>
<td>Final CHNA Draft Approved and Made Widely Available</td>
</tr>
<tr>
<td>Board Approves Implementation Strategy</td>
<td>Board Approves Implementation Strategy</td>
</tr>
<tr>
<td>Provider Service Definition</td>
<td>Provider Service Definition</td>
</tr>
<tr>
<td>Key Informant Interviews</td>
<td>Key Informant Interviews</td>
</tr>
<tr>
<td>End Needs Survey</td>
<td>End Needs Survey</td>
</tr>
<tr>
<td>Draft of CHNA Provided to Management</td>
<td>Draft of CHNA Provided to Management</td>
</tr>
<tr>
<td>Draft of CHNA Provided to Management</td>
<td>Draft of CHNA Provided to Management</td>
</tr>
</tbody>
</table>

Research and Analysis of Community

- Population Demographics
- Socioeconomic Characteristics
- Health Statistics/Health Outcomes and Factors
  - Use public health data
  - Healthy 2020
- Inventory Existing Health Care Facilities and Health Resources
- Match Internal Data to Demand Analysis
Research and Analysis of Community
Population Demographics & Socioeconomic Characteristics

- Population Demographics
  - Estimated and Projected
  - Age, Hispanic, and Race
  - Geographic Area (Zip codes)

- Socioeconomic Characteristics
  - Family Income and Wealth
  - Unemployment Rates
  - Employment by Major Industry & Top Employers
  - Poverty Estimate
  - Uninsured
  - Education

Research and Analysis of Community
Healthy People 2020

- National Support with Probable Longevity
  - Comprehensive Development & Selection Process
  - Federal Data that includes 600 objectives with 1,200 measures

- Uses National Data
  - National Health Interview Survey
  - Health Indicators Warehouse

- National Benchmarks
- Consortium Organizations
- Tied to HHS Prevention Strategies
Research and Analysis of Community
Healthy People 2020

Community Input

- Identification of Key Stakeholders
  - Persons with special knowledge of or expertise in public health
  - Leaders, representatives or members of medically underserved, low-income and minority populations and populations with chronic disease needs
- Key Informant Interviews
- Community Health Surveys
- Community Focus Groups or Forums
- Incorporate Social Media
Prioritization of Identified Health Needs

- Identify Health Problems/Needs
  - Use comparisons, trends, benchmarks
- Establish Criteria and Prioritize Health Needs
- Documentation & Reporting Requirements
  - Describe the process used to Prioritize Health Needs
  - Identify and Document Information Gaps
  - Address Health Issues of Uninsured Persons, Low-income Persons and Minority Groups

Prioritization of Identified Health Needs

- Magnitude: The Number of People Impacted by the Problem
- Severity: The severity of the problem includes the risk of morbidity and mortality
- Historical Trends
- Ability to impact the problem
- Impact on Vulnerable Populations
- Available resources for the problem
- Feasibility (Cost & Probability of Success)
Development of Implementation Strategy

- Develop Goals, Objectives and Indicators
- Consider Possible Approaches
- Integrate the Implementation Strategy with Community and Hospital Plans
- Develop Written Strategy and Adopt
- Plan to Update the Assessment and Implementation Strategy

Source: Implementation Approach adapted from CHA

Common Missing Elements

Observations from the Field

- Implementation Strategy
- Documentation of Processes
- Proper Identification of Hospital “Community”
  - County may not be the service area
- Community Input
  - Persons with specialized knowledge or public health expertise
  - Representatives or members of medically underserved populations/minority populations
- List and Description of Existing Health Resources
- Listing/Prioritization of Identified Health Needs
  - Document Process
To-Do Item

Evaluate whether your Hospital’s CHNA and Implementation Strategy will adhere to the guidance provided by Notice 2011-52

Most Hospitals have not contemplated their “Implementation Strategy” and associated timing constraints of the **Due Date**!

Schedule H
Part V, Section B
Schedule H, Part V – Section B-CHNA

- Compliance with new rules outlined in Part V, Section B, Facility Policies and Practices
  - For 2010, Section B is optional
  - For 2011, Section B is required
- Must be completed on a facility by facility basis
- Be prepared to respond to all questions

Schedule H, Part V – Section B

- Part V Facility Information
  - Section B Facility Policies and Practices

  | Name of Hospital Facility: __________________________________________ |
  | Lien Number of Hospital Facility (from Schedule H, Part V, Section A): |
  | Yes | No |

Schedule H Form 09/2010  Page 4
Schedule H, Part V – Section B

- Community Health Needs Assessment

Community Health Needs Assessment [Items 1 through 2 are optional for 2012]

1. During the tax year or any prior tax year, did the hospital facility conduct a community health needs assessment (Nursing Assessment? If "No," skip to line 9.
   a. [ ] Yes, indicate what the Needs Assessment describes (check all that apply): [ ] A definition of the community served by the hospital facility.
   b. [ ] Established community health needs assessment process. [ ] Other [describe in Part VI].
   c. [ ] Existing health care facilities and resources within the community that are accessible to the community.
   d. [ ] How data was obtained.
   e. [ ] Identified health needs of the community.
   f. [ ] Identified and prioritized community health needs and services to meet the community health needs.
   g. [ ] Process for communicating with persons representing the community’s interests.
   h. [ ] Process for identifying and prioritizing community health needs.
   i. [ ] Facility self assessment that assist in the hospital facility’s ability to assess all of the community’s health needs.
   j. [ ] Other [describe in Part VI].
2. [ ] Indicate the year the hospital facility last conducted a Needs Assessment.
3. During the most recent Needs Assessment, did the hospital facility take into account input from persons who represent the community served by the hospital facility? If "Yes," describe in Part VI how the hospital facility took into account input from persons who represent the community, and identify the persons to whom the hospital facility consulted.
4. [ ] Was the hospital facility’s Needs Assessment conducted in one or more other hospital facilities? If "Yes," list the other hospital facilities in Part VI.

Schedule H, Part V – Section B

- Community Health Needs Assessment

5. Did the hospital facility make its Needs Assessment widely available to the public? [ ] Indicate how the Needs Assessment was made widely available (check all that apply):
   a. [ ] Hospital facility’s website.
   b. [ ] Available upon request from the hospital facility.
   c. [ ] Other [describe in Part VI].
6. If the hospital facility addressed needs identified in its most recently conducted Needs Assessment, indicate how (check all that apply):
   a. [ ] Adoption of an implementation strategy to address the health needs of the hospital facility’s community.
   b. [ ] Execution of the implementation strategy.
   c. [ ] Participation in the development of a community-wide community benefit plan.
   d. [ ] Participation in the execution of a community-wide community benefit plan.
   e. [ ] Inclusion of a community benefit section in operational plans.
   f. [ ] Adoption of a budget for provision of services that address the needs identified in the Needs Assessment.
   g. [ ] Prioritization of health needs in its community.
   h. [ ] Prioritization of services that the hospital facility will undertake to meet health needs in its community.
   i. [ ] Other [describe in Part VI].
7. Did the hospital facility address all of the needs identified in its most recently conducted Needs Assessment? If "No," explain in Part VI which needs it has not addressed and the reasons why it has not addressed such needs.
To-Do Item

Make certain that your CHNA and Implementation Strategy will include the documentation required to complete Schedule H of the Hospital’s Form 990

Can you sit with your CHNA document and Implementation Strategy and check yes to the questions on Schedule H?

Additional To-do List

- Read “Assessing & Addressing Community Health Needs” from Catholic Health Association
- Obtain and read a copy of IRS Notice 2011-52
- Consider Related Compliance, Operational and Public Relations Issues
- Document, Document, Document
- Make Certain that your CHNA is compliant with 501(r)!
• Quote from Preston Quesenberry, senior technical reviewer, IRS Office of Associate Chief Counsel (Tax-Exempt and Government Entities)
  - “Treasury and the IRS were trying to say collaboration would be acceptable as long as each hospital facility had a report that clearly applied to that facility. For example, if a hospital patient wanted to see the hospital’s needs assessment, he should be able to visit the hospital’s website and find a report with the hospital’s name on it that clearly applied to the hospital.”