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Tax Analysts: Joint Strategies for Meeting Community Health Needs Possible Under Proposed Regs.

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Under REG-106499-12 , which provides proposed guidance under section 501(r) on rules requiring nonprofit hospitals to conduct community health needs assessments (CHNAs) at least once every three years and develop strategies to meet identified needs, a hospital facility may work with other facilities and organizations to develop its implementation strategy but must document its strategy in a separate written plan. The facility could adopt a joint implementation strategy if it also adopts a joint report of its CHNA and the strategy is clearly identified as applying to the facility, identifies the facility's role in developing the strategy, and includes a summary or other tool to help people find the portions of the strategy that involve the facility.

Douglas M. Mancino of Hunton & Williams LLP told Tax Analysts the provision recognizes that "there is a lot of joint planning that gets done even among unrelated hospitals in a particular region." T.J. Sullivan of Drinker Biddle & Reath LLP said the provision reflects an IRS effort to provide added flexibility to hospitals while ensuring that the intent underlying the statute is carried out. Although only a few systems are likely to choose the approach, it may save them a lot of time without undercutting the contributions of the CHNAs, Sullivan said.

Also under the proposed regs, only significant health needs identified through a CHNA would have to be addressed in an implementation strategy, which would have to describe how the hospital facility would address the health needs and what the expected result would be. If a hospital facility does not plan to address a particular need, it would need to explain why not. Some of the reasons could be resource constraints, lack of expertise, or that the need is being addressed by other facilities or organizations.

The proposed regs also would require a hospital facility to adopt an implementation strategy by the end of the tax year in which the CHNA is conducted. Commentators responding to Notice 2011-52, 2011-30 IRB 60 , which spelled out the expected provisions in the proposed regs, asked for more time. The proposed regs deny that request, although they offer transition relief for hospitals that may not have had three full years during which to conduct their first CHNA.

Sullivan said that while he did not like that approach, "the definition of when a CHNA is 'conducted' that is keyed to when it is posted on the Web makes it much easier to control the timing than it may have initially appeared."

Reporting Requirements

A hospital organization also would have to attach to its Form 990, "Return of Organization Exempt From Income Tax," the most recent implementation strategies for each of its hospital facilities. Alternatively, it could report on the return the URLs of the Web pages on which the implementation strategies have been posted.

"Widely Available" Requirement

The proposed regs would require CHNA reports to be posted conspicuously online and remain there until two subsequent CHNA reports have been added. Also, a hospital facility could not require an individual to create an account or otherwise provide identifiable information to access an online report, which also would have to be available in paper format.

Mancino said he doubted making multiple reports available online would be burdensome and that he did not think there would be many requests for paper copies because the documents are available electronically. It's also unlikely many people will ask to see the reports, he said.

"There will be some public health advocates and people who are advocates for different disadvantaged classes of individuals that will be interested in this," Mancino said. "But by and large I think the general public probably will have little or no interest in the community health needs assessment documentation."

Sullivan also said he did not think the requirements will be too burdensome, adding that the IRS is becoming increasingly deft at balancing the interests of the hospital community and those of patient advocates.

Self-Correction

The proposed regs say Treasury and the IRS will publish guidance to help hospital facilities correct failures to fulfill CHNA requirements and other rules under section 501(r) and disclose how the errors were corrected.

Mancino commended the government for offering clear guidance on self-correction and self-disclosure.

"That aspect of the proposed regulations is probably the most welcome, in my mind," Mancino said, adding that in his experience, it is rare for a nonprofit hospital to intentionally break laws.

Public Health Departments

In conducting a CHNA, a hospital facility would be required to seek input from state or local public health departments. Sullivan was pleased that the proposed regs eliminated a provision in Notice 2011-52 that would have required consultation with a public health expert, explaining that having to identify particular individuals consulted by hospitals probably would not have been well received.

Revocations, Excise Taxes

The proposed regs also say that although section 501(r) empowers the IRS to revoke the exempt status of noncompliant hospitals, the agency should consider all facts and circumstances when considering revocation, including the scope of and reasons for the noncompliance and whether the same sorts of violations have occurred before. Willful or egregious violations ordinarily will lead to revocation, according to the proposed regs.

Hospital organizations that do not meet the CHNA requirements face a $50,000 excise tax. The tax is applied on a facility-by-facility basis, meaning a hospital organization with multiple facilities could be taxed $50,000 on each facility.

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