

July 7, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20225

Dear Secretary Mnuchin and Commissioner Rettig:

On behalf of America's tax-exempt hospitals and health systems, we are writing to request an immediate extension of the deadlines many face for preparing their community health needs assessments (CHNA) or else be subject to a \$50,000 penalty excise tax under section 4959 of the Code for which abatement is not available. Hospitals and health systems are deeply committed to improving the health and well-being of their community. However, during these extraordinary times, COVID-19 is limiting the ability of hospitals to seek input from their communities, requiring the full attention of public health authorities and personnel, and affecting the priorities and attention of hospital boards.

An organization that operates one or more hospitals must conduct a CHNA at least once every three years, in order to retain its tax-exempt status as a section 501(c)(3) organization. The required components for conducting a CHNA are established by regulation:

- Seek input from members of the community on the health needs of the community. Treas. Reg. § 1.501(r)-3(b)(1)(iii).
- Reach out to underserved or low-income individuals as well as get input from a public health department. Treas. Reg. § 1.501(r)-3(b)(5)(i).
- Prioritize the community's needs and present a written report to the board for review. The report must be adopted by the board and made widely available by the last day of the third consecutive taxable year. Treas. Reg. § 1.501(r)-3(b)(1)(iv); § 1.501(r)-3(b)(2).
- Adopt an implementation plan at the board level, which must occur by the 15th day of the fifth month after the close of the taxable year. Treas. Reg. § 1.501(r)-3(a)(2).

Completion of the CHNA and adoption of the implementation strategy are "Specified Time Sensitive Actions" identified in Revenue Procedure 2018-58 and, therefore, under Notice 2020-23, the deadline for performing such actions, if they were required to be performed between April 1, 2020 and July 15, 2020 has been extended to July 15, 2020. However, there is no extension past that date and no process available for individual hospitals to request an extension.

Given the current status of the COVID-19 pandemic, it will be impossible for many if not most tax-exempt hospitals to complete the required process steps and adopt a satisfactory CHNA by July 15, 2020 (for ones that were due for completion between April 1, 2020 and June 30, 2020) or any date during the ongoing public health emergency, or for a period of time after. The limitations of the pandemic (e.g., limited public gatherings, stay at home orders) and the

immense pressure on hospitals to focus intently on delivering COVID-19 testing and care to their communities prevent hospitals from soliciting the necessary input from the public, underserved communities (who are often experiencing the greatest burden from COVID-19), and public health authorities and from taking the time to compile the written report and present it to the board. Failure to complete the CHNA by the end of the taxable year as required under section 501(r)(3) and the accompanying regulations subjects the hospital organization to a \$50,000 penalty excise tax under section 4959. That penalty is not subject to abatement. While sections 4961 and 4962 allow for abatement of certain chapter 42 excise taxes, the section 4959 tax is not one of them.

Hospitals have been raising concern about this impending problem since May. The American Hospital Association, Association of American Medical Colleges, and Catholic Health Association of the United States ask that the Treasury Department and Internal Revenue Service immediately announce an extension for any CHNA required to be conducted after April 1, 2020 until April 1, 2021 or a date that is six months after the expiration of the public health emergency declared by the Secretary of Health and Human Services (HHS) pursuant to the authority vested in the Secretary under section 319 of the Public Health Service Act, whichever is longer. An HHS spokesperson June 29 said that department expects to extend the current public health emergency declaration for 90 days past its current July 25, 2020 expiration date. Under this proposal, if the public health emergency were to expire in October, hospitals that were required under 501(r) to conduct a CHNA any time between April 1 and Oct. 31, 2020 would be treated as meeting the requirements of section 501(r)(3) if they conducted a CHNA no later than April 30, 2021. If the public health emergency were extended past October, the deadline for conducting CHNAs would be extended so that hospitals would have six months after the end of the public health emergency to complete the necessary work, have the board adopt the CHNA and make the CHNA widely available. We believe Treasury and IRS have the authority to provide this relief under section 7508A of the Code.

Thank you for your ongoing leadership during this difficult time.

Sincerely,

/s/
Richard J. Pollack
President & CEO
AHA

/s/
David J. Skorton, M.D.
President & CEO
AAMC

/s/
Sr. Mary Haddad, RSM
President & CEO
CHA

Cc: Margaret Von Lienen, Director, Exempt Organizations and Governmental Entities
Janine Cook, Deputy Associate Chief Counsel for Employee Benefits, Exempt Organizations and Employment Tax