

Final 'Section 501 (r)' Rules for Tax-exempt Hospitals Compared with Proposed Rules Summary of Changes

On December 31, 2014 the Internal Revenue Service (IRS) and the Treasury Department published final rules implementing the Affordable Care Act's (ACA) requirements for tax-exempt hospitals (<https://www.federalregister.gov/articles/2014/12/31/2014-30525/additional-requirements-for-charitable-hospitals-community-health-needs-assessments-for-charitable>). The rules cover the ACA's 501 (r) requirements for hospital tax exemption including conducting community health needs assessments (CHNAs), developing implementation strategies to address identified community health needs and establishing hospital financial assistance and billing and collection policies.

The IRS released proposed rules on needs assessments and implementation strategies in 2013 and detailed proposed rules on implementing the ACA financial assistance, billing and collection requirements were published in 2012. The final rules will apply to a hospital's taxable years beginning after December 29, 2015. Until that time, hospitals can follow the proposed rules.

This document summarizes the changes between the final rules and the proposed rules.

Changes from proposed rules on CHNAs:

- Hospitals must *solicit* and take into account any input from persons knowledgeable about the community - the proposed rules required that input must be taken into account. This clarification gives hospitals flexibility if they are unable to obtain input.
- Input must be solicited and used in *setting priorities* as well as in the assessment process, not, as the proposed rules required, for the assessment only.
- CHNA documentation must include an evaluation of the impact of any actions that were taken to address significant health needs since the previous assessment. This replaces the proposed rule's requirement that implementation strategies must include an evaluation plan for actions addressing significant health needs.
- Requires that multiple buildings holding a single license be treated as a single facility for the CHNA and the community served by the facility is the aggregate of areas and populations – as opposed to the proposed rule's *option* of treating such organizations as single or multiple facilities. However, the preamble to the final rules say that “a hospital facility consisting of multiple buildings could, if desired, assess the health needs of different geographic areas or populations served by the different buildings separately and document the assessments in separate chapters or sections in the hospital's CHNA report and implementation strategy. “
- Expands examples of health needs that may be included in the CHNA to include prevention of illness, ensuring adequate nutrition and addressing social, behavioral and environmental factors. This clarifies that community health needs can include social and environmental determinants of health.

Changes from the proposed rules on implementation strategies:

- Deletes the requirement that implementation strategies include an evaluation plan for planned actions, but requires evaluation to be part of subsequent assessments.
- Provides hospitals more time to complete the implementation strategy. The proposed rule called for an implementation strategy to be adopted within the same tax year as the CHNA, the final rule says the strategy must be adopted on or before the 15th of the fifth month after the end of the tax year in which the hospital facility completes the final step in its CHNA.

Changes from the proposed rule on financial assistance (FAP), billing and collections

- Clarification that information for FAP applications can be collected orally, as well as in writing, and that a hospital can determine what and how much documentation is needed.
- Clarification that if a hospital has separate financial assistance and billing and collection policies, they both must meet the requirements of being approved by an authorized body and be translated into foreign languages.
- Require that translations of the FAP and its plain language summary must be available in languages spoken by limited English proficient groups that constitute the lesser of 1000 persons or 5 percent of the community served by the hospital. The proposed rule had set the threshold at 10 percent.
- Hospitals can inform visitors about their FAPs by posting information in the emergency and admissions areas, not necessarily in all public areas. They must offer a paper copy of FAP summary to patients at intake or discharge and include a conspicuously written notice on billing statements of assistance, give website for copies of forms and phone number for assistance.
- Patients need to be notified about FAPs before discharge and with billing statements only when the hospital intends to engage in extraordinary collection actions.
- In response to public comments and questions concerning whether a hospital's FAP would apply to emergency department physicians and others who bill separately, the final rules require hospitals to describe which providers are covered by their policies and which are not. However, the IRS says a hospital cannot exclude an outsourced emergency department from its FAP and retain tax-exemption.
- Changes in calculating amounts generally billed (AGB), including adding that Medicaid rates can be used to calculate AGB. The final rules also permit hospitals to change the method used to determine AGB at any time.
- With regard to the requirement that tax-exempt hospitals may not engage in "extraordinary collection actions" (ECA) against an individual before making "reasonable efforts" to determine whether the individual is eligible for financial assistance, the final rules add a new action to the definition of an ECA: deferring or denying, or requiring prepayment before providing, medically necessary care because of an individual's nonpayment of one or more previous bills.
- There are changes in the detailed rules for making reasonable efforts to determine eligibility. Be sure to read these and all new requirements of the final rule.