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CLIENT ALERT

IRS ISSUES FINAL REGULATIONS REGARDING “COMMUNITY HEALTH NEEDS ASSESSMENTS” FOR 501(C)(3) CHARITABLE HOSPITAL ORGANIZATIONS

The Patient Protection and Affordable Care Act of 2010 added Section 501(r) to the Internal Revenue Code (the “Code”) which imposed new requirements on hospital organizations that are tax exempt under Section 501(c)(3) of the Code. One of these requirements is the obligation of charitable hospital organizations to conduct a Community Health Needs Assessment (“CHNA”) and adopt a corresponding implementation strategy at least once every three years. As further discussed below, hospital organizations must meet CHNA and implementation strategy requirements for each hospital facility operated by them.

On December 31, 2014, the Internal Revenue Service (“IRS”) issued final regulations regarding CHNAs, implementation strategies, reporting obligations, and consequences for failure to comply with CHNA requirements. According to the IRS and the Treasury Department, these regulations are intended to foster transparency and community involvement in the development of CHNAs and their implementation strategies. Because the penalty for non-compliance can include an excise tax and even revocation of a hospital organization’s 501(c)(3) status, it is crucial that hospital administrators familiarize themselves with these CHNA requirements as soon as possible, as they become effective for hospital organizations’ taxable years beginning after December 29, 2015.

Basic Information on CHNA Requirements

Who is obligated to conduct a CHNA?: Under Section 501(r)(2) of the Code, the CHNA requirements apply to any organization that operates a hospital facility required by the state to be “licensed, registered or similarly recognized as a hospital” (a “Hospital Facility”), as well as to any other organization identified by the Treasury Department whose 501(c)(3) status is based on the provision of hospital care (in both cases, a “Hospital Organization”). This term includes government hospitals which are recognized as exempt under Section 501(c)(3) of the Code. Hospital Organizations that operate multiple Hospital Facilities under separate licenses will be required to meet the CHNA requirements (including documentation and reporting) separately with respect to each Hospital Facility. The regulations do not distinguish between acute and non-acute care hospitals.

For purposes of Section 501(r), the term Hospital Organization also includes any 501(c)(3) organization that “operates” a state-licensed Hospital Facility through a joint venture, limited liability company, or other entity treated as a partnership under federal tax law. Certain exceptions apply when the venture is treated as for-profit for federal tax purposes, and for certain grandfathered ventures which operate for educational or scientific purposes (as opposed to charitable purposes), if the 501(c)(3) organization does not control the venture. In addition, the CHNA requirements will not apply to any activities of a Hospital Organization that are unrelated to the operation of a Hospital Facility. For example, if a Hospital Organization operates a facility that is not required to be licensed, registered, or similarly recognized as a hospital by the state, the Hospital Organization will not be required to meet the CHNA requirements with respect to that facility.

What is a CHNA?: A CHNA is a written report that assesses the health needs of the community in which a particular Hospital Facility is located. CHNA reports must include: (1) a description of the community served by the Hospital Facility and how it was determined; (2) a description of the process and methods used to conduct the assessment, including the data used, methods of collection and analysis, any information gaps, and any contractors or collaborators; (3) a description of how the Hospital Organization took into account input from persons who represent the broad interests of the community; (4) a prioritized description of the significant community health needs identified through the CHNA, and a discussion of the process used to prioritize such health needs; (5) a description of the existing resources available within the community to meet the identified health needs; and (6) an evaluation of the impact of any actions that were taken since the Hospital Organization conducted its immediately preceding CHNA, to address the significant health needs described in the prior CHNA(s). The regulations specify the types of input which must be taken into account in developing the CHNA. CHNA reports must be adopted by the governing body of the Hospital Organization, or a committee of the governing body. Hospital Organizations will be required to make CHNA reports widely available to the public by posting copies on their websites and providing hard copies upon request.

What is an Implementation Strategy?: In order to comply with the CHNA requirements, a Hospital Organization must adopt a written plan (called an “implementation strategy”) that addresses each of the community health needs identified through the CHNA. An implementation strategy is deemed to address a health need if it either: (1) describes how the Hospital Facility plans to meet the health need and the resources it intends to commit to accomplish its goal; or (2) identifies the health need as one the Hospital Facility does not intend to meet, and explains why it does not intend to meet the need. Implementation strategies must be adopted by a governing body of the Hospital Organization or a committee of the governing body. The most recent implementation strategies for each Hospital Facility must be attached to the annual Form 990, either in physical form or by inclusion of the URL of the website on which it has been made widely available. In addition, the annual Form 990 must include either a description of the actions taken during the taxable year to address each significant health need identified in the

CHNA, or the reason why no actions were taken. Hospital Organizations must adopt an implementation strategy on or before the 15th day of the fifth month after the end of the taxable year in which it has finished conducting the CHNA for its Hospital Facilities.

Collaboration: Hospital Organizations will be permitted to base CHNAs on information from other health care organizations, including government agencies and non-profit organizations. Hospital Organizations may also collaborate with other entities, including other Hospital Organizations, for-profit and government hospitals, and state or local agencies, in conducting a CHNA and in developing implementation strategies. CHNAs resulting from such collaboration must satisfy each of the requirements of an individual CHNA, and the implementation strategies resulting from such collaboration must be tailored to each individual Hospital Facility operated by each Hospital Organization. Joint CHNAs are permitted when all of the collaborating Hospital Organizations define their communities in the same manner. Subject to certain requirements, joint implementation strategies are permitted when based on a joint CHNA.

Ramifications of Non-Compliance with CHNA Requirements: Hospital Organizations may be subject to serious penalties for failure to comply with the CHNA requirements. First, the IRS will impose an excise tax of \$50,000 on any Hospital Organization that fails to meet the requirements with respect to any taxable year of each of the Hospital Organization's noncompliant Hospital Facilities. Second, and more notably, the IRS will have the authority to revoke the Section 501(c)(3) status of noncompliant Hospital Organizations. In deciding whether revocation of 501(c)(3) status is appropriate, the IRS will consider such factors as the scope, nature, and significance of the CHNA non-compliance. Minor or inadvertent errors and omissions which are promptly corrected might not result in serious, if any, penalties, but willful or egregious errors will likely lead to assessment of an excise tax and revocation of 501(c)(3) status. A Hospital Organization which fails to meet the CHNA requirements with respect to some, but not all, of its Hospital Facilities, will not be subject to revocation of 501(c)(3) status for all of its Hospital Facilities. Instead, the income derived from each non-compliant Hospital Facility will be subject to taxation during the taxable year in which it fails to meet the CHNA requirements.

Effective Date: The final regulations are effective for Hospital Organizations' taxable years beginning after December 29, 2015. If a Hospital Organization's taxable year begins on or before December 29, 2015, or if a Hospital Organization conducts a CHNA or adopts an implementation strategy for the Hospital Facility before the first day of the Hospital Organization's first taxable year beginning after December 29, 2015, the Hospital Organization may comply with Section 501(r) using a reasonable interpretation of that Section for that first taxable year, which may include reliance upon either the proposed or final regulations.

More Information

If you would like more information on the new CHNA requirements or the final regulations, or have any other questions, please contact Attorney Elka Sachs (esachs@kb-law.com), Attorney Judith Kim (jkim@kb-law.com), or Attorney Robert J. Griffin (rgriffin@kb-law.com) at Krokidas & Bluestein LLP.

The final regulations, 26 CFR parts 1 and 53, may be accessed at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-31/pdf/2014-30525.pdf>.