



Advocates' Guide to IRS Rulemaking: Questions about Charitable Hospitals and Community Benefit

In order to assist the IRS and Treasury with their rulemaking process and ensure that charitable hospitals are accountable for serving the communities they are supposed to serve, it is important to understand what questions they will be addressing so that our advocacy efforts are tailored to help them answer the questions in the most consumer-friendly way possible.

Here are the key questions to be addressed in rulemaking:

Community Health Needs Assessments¹

1. What does it mean to “take into account input from persons who represent the broad interests of the community”? (*This is our hook as advocates to talk about community engagement throughout the assessment and planning processes.*)
 - a. Who specifically should be consulted during the CHNA? Who should be required and who should be optional?
 - i. **Required** - Health departments with data or other information relevant to the health needs of the community? Leaders, representatives, members of medically underserved, low income, and minority populations, and populations with chronic disease needs?
 - ii. **Optional** - Consumer advocates, nonprofit organizations, academic experts, local government officials, community-based organizations, health care providers, private businesses, insurance or managed care organizations? Others?
 - b. Should the IRS allow a hospital to base its CHNA solely on information collected by other organizations, such as a public health agency or non-profit organization?
 - c. How should the “community served by the hospital” be defined, *e.g.*, by geography, a target population the hospital serves, or the hospital’s principal function (children’s hospital, specialty hospital)?
2. What does it mean to make community health needs assessments “widely available to the public”? (*How can transparency and accessibility make this requirement useful for communities?*)
 - a. Is it enough to publicize the community health needs assessment or should the implementation strategy also be made widely available to the public? (*The IRS’ current proposal requires hospitals to attach the implementation strategy to their Form 990, but that is not required by law. Strong regulations on the implementation strategy reporting and progress made on the implementation*

¹ This section includes core questions raised in [Notice 2011-52](#). Comments are due to the IRS by September 23, 2011.

could also be very useful for communities.)

Financial Assistance

3. What does it mean to “widely publicize” the financial assistance policy? *(Disclosure of the financial assistance policy is almost as important as the policy itself. We need meaningful dissemination. Healthcare.gov would be a great place to start.)*
4. What should hospitals be required to state with regard to the guidelines be for eligibility criteria, application procedures, the basis for calculating charges, and the content of financial assistance policies?

Billing & Charging

5. Section 9007 clearly prohibits the use of gross charges. What alternative standard should be used to bill patients?
6. The ACA also states that hospitals cannot charge patients who qualify for financial assistance more than the “amounts generally billed” to people with insurance for emergency and medically necessary care. How should “amounts generally billed” and “medically necessary care” be defined?
7. Section 2718 of the ACA requires HHS to publicly post hospital charges. Will the IRS and HHS collaborate on the collection of this data and share it with the public in a meaningful way?

Debt Collection

8. A hospital may not engage in “extraordinary collection actions” before it makes “reasonable efforts” to determine eligibility for financial assistance. What are “extraordinary collection actions”? What constitutes a “reasonable effort” to determine eligibility for financial assistance?

Reporting and Oversight

9. The IRS will be collecting a lot of information about community benefit. How should that data be used? Should it be shared with other policymakers, including state governments? How should it be communicated to the public?
10. What is the role of Schedule H in ensuring compliance and creating transparency around community benefit, and how can it be improved? *(The current Schedule H asks questions regarding Community Health Needs Assessments and Financial Assistance, but reporting on these two issues is optional for FY 2010. Assuming the IRS will rely on Schedule H as the primary vehicle for oversight, what do we want to advocate to keep in Schedule H, and where do we want to see more reporting?)*
11. Should the IRS require separate reporting for each hospital facility, or should it allow hospitals to report on a systems level?

12. Are the current enforcement mechanisms adequate? (*With the exception of the requirement to conduct community health needs assessments, which carries a \$50,000 per year civil fine, the impact of failure to comply is revocation of federal tax status. How could that be problematic for our communities? Is there a need for an intermediate sanction for the remaining provisions?*)