



NONPROFIT HOSPITAL REQUIREMENTS UNDER THE AFFORDABLE CARE ACT

Summary

Nonprofit hospitals are required under federal law to assess community health needs, limit financial charges to uninsured indigent patients and make financial assistance policies widely available. In the past several years, concerns surrounding the indigent care policies of nonprofit hospitals relative to the hospitals' tax exemptions have grown due to reports showing a disparity between the value of the benefit to communities versus the tax breaks that hospitals receive. A 2006 congressional study found that nonprofit hospitals provided only marginally more uncompensated care than for-profit hospitals.

The Patient Protection and Affordable Care Act (PPACA) and the Internal Revenue Service (IRS) have increased the scrutiny of nonprofit hospitals' charitable care to ensure that greater community benefit is provided. This bulletin outlines the PPACA and IRS requirements and notes the efforts by New Mexico's nonprofit hospitals to comply with those requirements.

The Legislative Council Service is a
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In December 2014, the IRS, which is charged with enforcement of the PPACA community benefit provisions, issued its final regulations on requirements for nonprofit hospitals. Nonprofit hospitals are now required to:

- (1) establish written financial assistance policies (FAPs);
- (2) limit the amounts charged to patients who qualify under a hospital's FAP;
- (3) make reasonable efforts to determine if patients are eligible for FAPs before engaging extraordinary collection actions; and
- (4) conduct community health needs assessments (CHNAs) and adopt an implementation strategy once every three years.

Hospitals that fail to meet these requirements may be subject to two different penalties. For non-minor errors, a hospital will be subject to a \$50,000 excise tax. For noncompliance, where the IRS finds that a hospital acted in bad faith, the penalty could result in a hospital's loss of nonprofit status.

Requirements for Written FAPs

A hospital's FAP lays out eligibility requirements, application processes, charging procedures and information for patients who wish to apply for discounted or free care. While only indigent and low-income patients qualify for financial assistance, a hospital must make the policy available to all patients.

A policy must include:

- (1) the eligibility criteria for financial assistance and information on whether the assistance includes free or discounted care;
- (2) the basis for the amount charged to patients;
- (3) the method for applying for financial assistance;
- (4) what actions the hospital will take in the event of nonpayment; and
- (5) a list of providers delivering care in a hospital that are covered by the FAP.

Hospitals are required to widely publicize their FAPs. To comply with the requirements for wide publication, a nonprofit hospital must post the information on the hospital website, provide a copy and an easy-to-understand explanation when requested and make the policy available in languages spoken in the community.

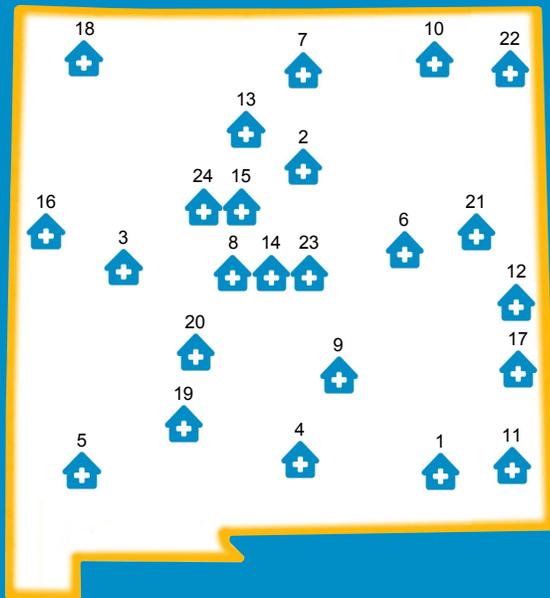
Health Needs Assessments

A nonprofit hospital is required to conduct a CHNA and create implementation strategies in order to address particular needs of the population it serves. Each hospital must:

- (1) define the community that it serves;¹
- (2) identify and assess the needs of that community;²

(Continued on next page)

NONPROFIT AND GOVERNMENTAL HOSPITALS IN NEW MEXICO



1. Artesia General Hospital – Artesia
2. CHRISTUS St. Vincent Regional Medical Center – Santa Fe
3. Cibola General Hospital – Grants
4. Gerald Champion Regional Medical Center – Alamogordo
5. Gila Regional Medical Center – Silver City
6. Guadalupe County Hospital – Santa Rosa
7. Holy Cross Hospital – Taos
8. Kaseman Presbyterian Hospital – Albuquerque
9. Lincoln County Medical Center – Ruidoso
10. Miners' Colfax Medical Center – Raton
11. Nor-Lea General Hospital – Lovington
12. Plains Regional Medical Center – Clovis
13. Presbyterian Española Hospital – Española
14. Presbyterian Hospital – Albuquerque
15. Presbyterian Rust Medical Center – Rio Rancho
16. Rehoboth McKinley Christian Health Care Services – Gallup
17. Roosevelt General Hospital – Portales
18. San Juan Regional Medical Center – Farmington
19. Sierra Vista Hospital – T or C
20. Socorro General Hospital – Socorro
21. Dr. Dan C. Trigg Memorial Hospital – Tucumcari
22. Union County General Hospital – Clayton
23. UNM Hospitals – Albuquerque
24. UNM Sandoval Regional Medical Center – Rio Rancho

- (3) solicit input from the community as to what is needed;³
- (4) adopt an implementation strategy to address those needs;⁴ and
- (5) make the CHNA report widely available to the public.⁵

Failure to Comply

During a review of an error or omission, the IRS considers all relevant facts and circumstances surrounding the error or omission to determine the intent of the hospital. This is measured by the size of the error or omission, how many errors were present and if the hospital acted with intent.⁶ The IRS describes and has defined three levels of noncompliance:

- (1) a minor or inadvertent error or omission;
- (2) aggregated minor or inadvertent errors or omissions; and
- (3) willful omissions or errors.

For the first category of noncompliance, the IRS will not impose the excise tax or revocation of the hospital's nonprofit status.⁷ The IRS looks at the actions taken by a hospital to remedy the error or omission as evidence that the error or omission was inadvertent or unintended.⁸ If an error is remedied in a reasonable amount of time after its discovery, it will not be considered a failure to comply.⁹ The IRS will determine what a "reasonable amount of time" is by the error or omission itself.¹⁰ Further, if a hospital corrects

an error and discloses the error to the IRS, the IRS will deem that hospital not to have acted willfully or in bad faith.¹¹

Under the second category of noncompliance, if there are multiple errors, the IRS will review all errors as one omission or error.¹² If the error is determined to be minor, the IRS will not impose the excise tax.¹³ However, if the error is deemed as being greater than minor, the hospital is subject to the \$50,000 excise tax.¹⁴

Under the third category, if a hospital acted willfully, the hospital is subject to the excise tax as a willful omission or intentional error and will be subject to loss of its nonprofit status.¹⁵

Hospitals in New Mexico

Although hospitals were not required to be in compliance with Section 501(r) of the Internal Revenue Code of 1986 until the end of 2015, hospitals were required to conduct CHNAs and participate in implementation strategies beginning in March 2012. In recent research of hospitals' websites, many hospitals made both CHNAs and FAPs available on their websites.

1. 79 Fed. Reg. 78954.
2. 79 Fed. Reg. 78962.
3. 79 Fed. Reg. 78962.
4. IRC §501(r)(3)(A)(ii).
5. IRC §501(r)(3)(B)(ii).
6. 26 C.F.R. 1.501(r)-2.
7. 26 C.F.R. 1.501(r)-2(b)(1)(ii).
8. 26 C.F.R. 1.501(r)-2(b).
9. 26 C.F.R. 1.501(r)-2(b).
10. 26 C.F.R. 1.501(r)-2(b).
11. 26 C.F.R. 1.501(r)-2(b).
12. 79 Fed. Reg. 78960.
13. 79 Fed. Reg. 78960.
14. 79 Fed. Reg. 78961.
15. 26 C.F.R. 1.501(r)-2(b).