

501 (r)

What You Wish You Already Knew

Gwynne Mesimer

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Agenda

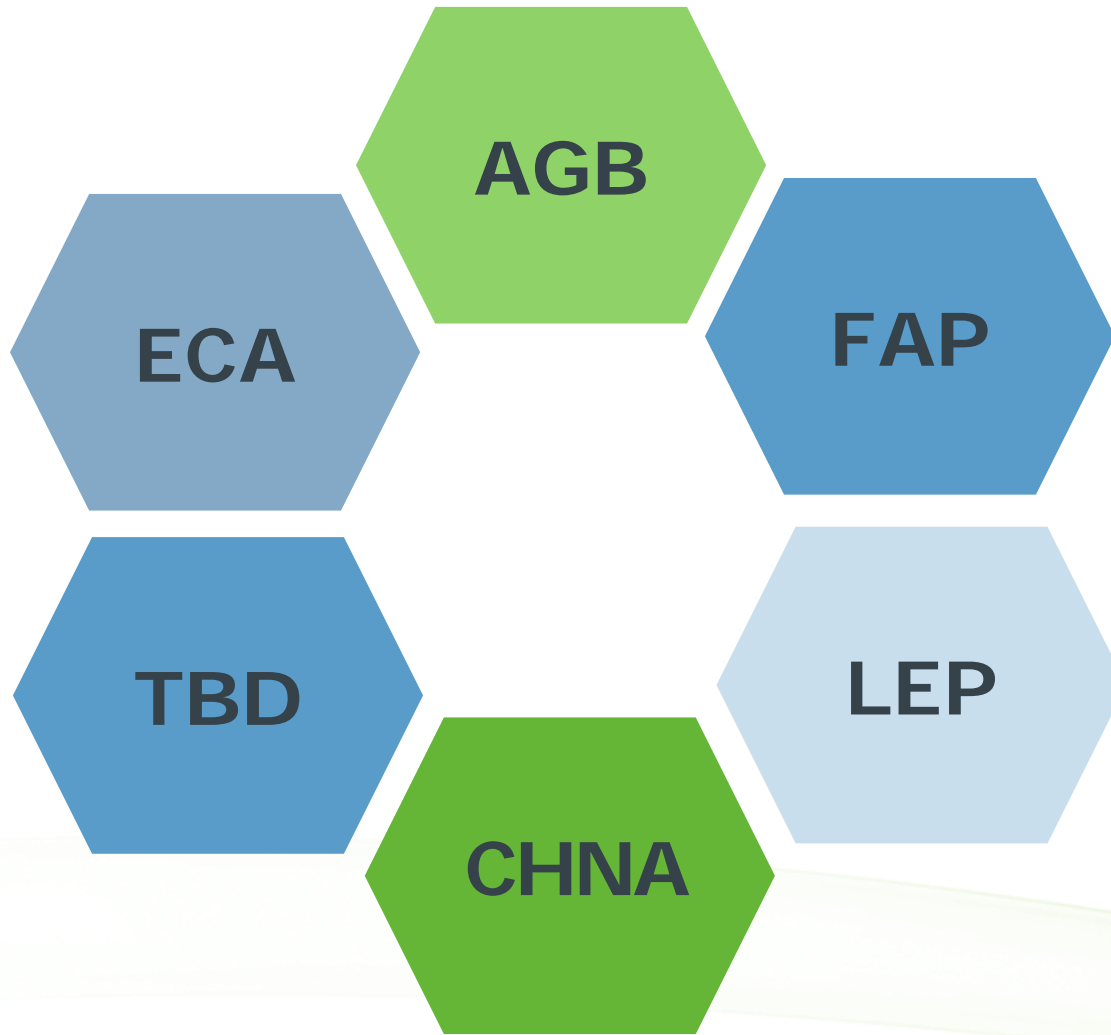
- 501(r) Overview
- Financial Assistance Policy
- Financial Assistance Policy/Process
- Community Health Needs Assessment

Presenter – Gwynne Mesimer



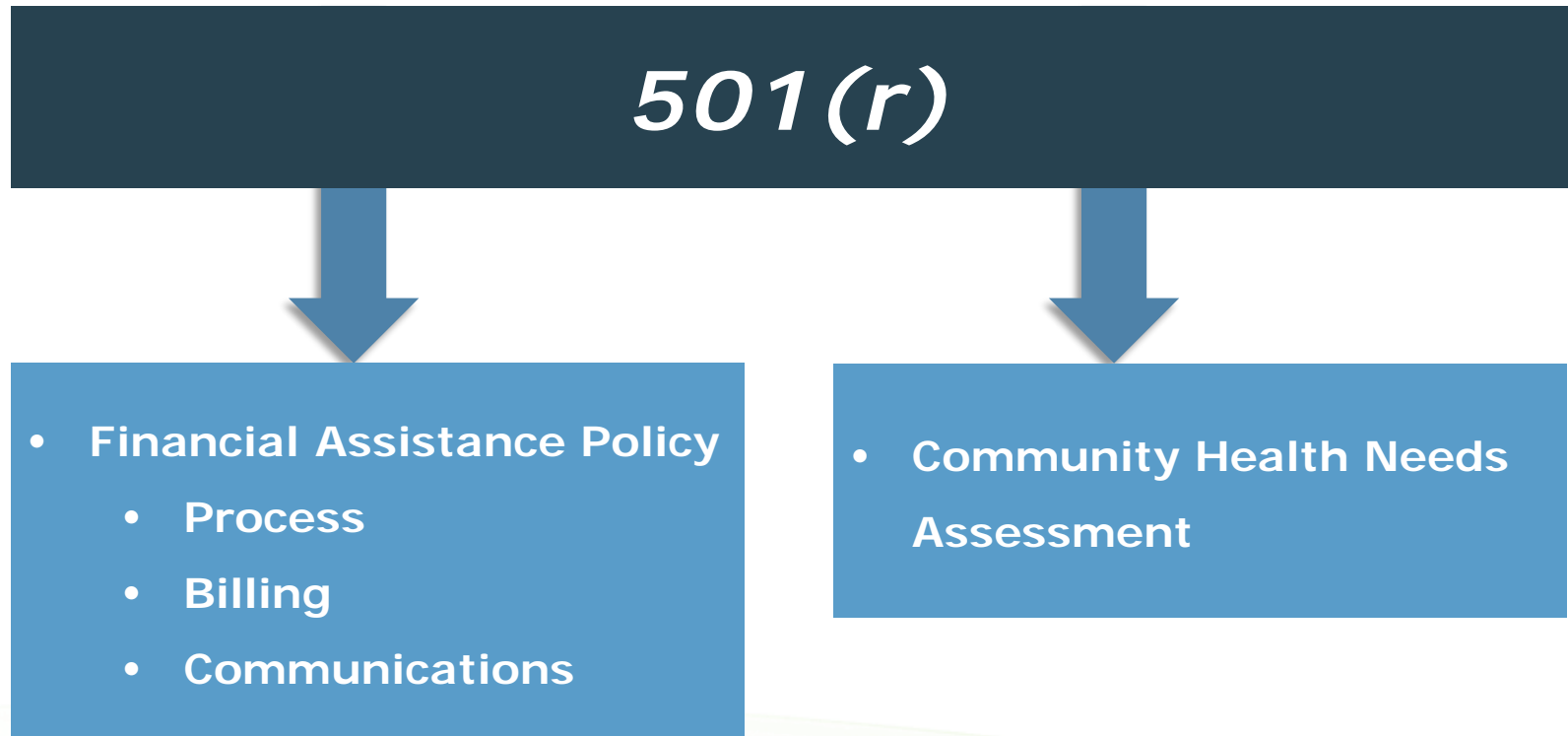
- HTMS Consulting Director
- More than thirty (30) years of experience in the healthcare industry
- Revenue cycle experience
- Focus - impacts to hospitals of the newly enacted Affordable Care Act.
- Previously with Chamberlin Edmonds.
- Was responsible for the geographic extension of the CEA's operations
- Was the point person at CEA for research, analysis and preparation for hospital customers
- Known speaker at hfma conferences,
- RN and holds her B.A. from Barry University.

Which one is NOT related to 501(r)?



Impacts of IRS Tax Code 501(r)¹

With the announcement of the final regulations for 501(r) in late December, 2014, the hospital market has undergone another change due to the ACA. This particular requirement may take the market by surprise with the complexity and depth of the requirements



¹ Section 501(r) was added to the Tax Code by the Patient Protection and Affordable Care Act, [Public Law 111-148](#) (124 Stat. 119 (2010)) (the Affordable Care Act), enacted March 23, 2010, and imposes additional requirements on charitable hospital organizations

IRS 501(r) Overview: New Requirements for Charitable 501(c)(3) Hospitals

The Affordable Care Act (ACA), enacted March 23, 2010, added new requirements that hospital organizations must satisfy in order to be described as 501(c)(3) organizations that operate one or more hospital facilities (hospital organizations). All non-profit hospitals are required to meet four general requirements pursuant to 501(r)(2)(A)(i) .

- 1 Establish written policies** for financial assistance and emergency medical care
- 2 Limit amounts charged** for emergency or other medically necessary care to individuals eligible for assistance under the hospital's financial assistance policy
- 3 Make reasonable efforts to determine an individual's eligibility** for assistance under the hospital's financial assistance policy **before engaging in extraordinary collection actions** against the individual
- 4 Conduct a community health needs assessment (CHNA)** and adopt an **implementation strategy** at least once every three years.

The ACA also added new section 4959, which imposes an excise tax for failure to meet the CHNA requirements, and added reporting requirements under section 6033(b) related to sections 501(r)

(These CHNA requirements are effective for tax years beginning after March 23, 2012).

What are the **risks** of not doing this?

Loss of non-profit status increasing the amount of taxes significantly, removing exemptions from ¹

- Federal and state taxes,
- Local property taxes
- Access to low-cost capital to build new hospitals and modernize facilities
- Sales taxes
- Medicaid shortfall
- Cost of educating professionals, i.e. Medical Students

Reputation Risk

- Loss of respectable position in community
- Loss of ability to obtain grant funding for specific projects and research

Compliance Benefits

Barnes-Jewish Hospital (BJH) and its 12 fellow hospitals in the BJC Healthcare organization own property worth about \$1.5 billion¹ and including their foundations have investment portfolios totaling about \$3 billion. These investments had earnings of \$372 million last year — but because of their non-profit status pay no capital gains taxes.

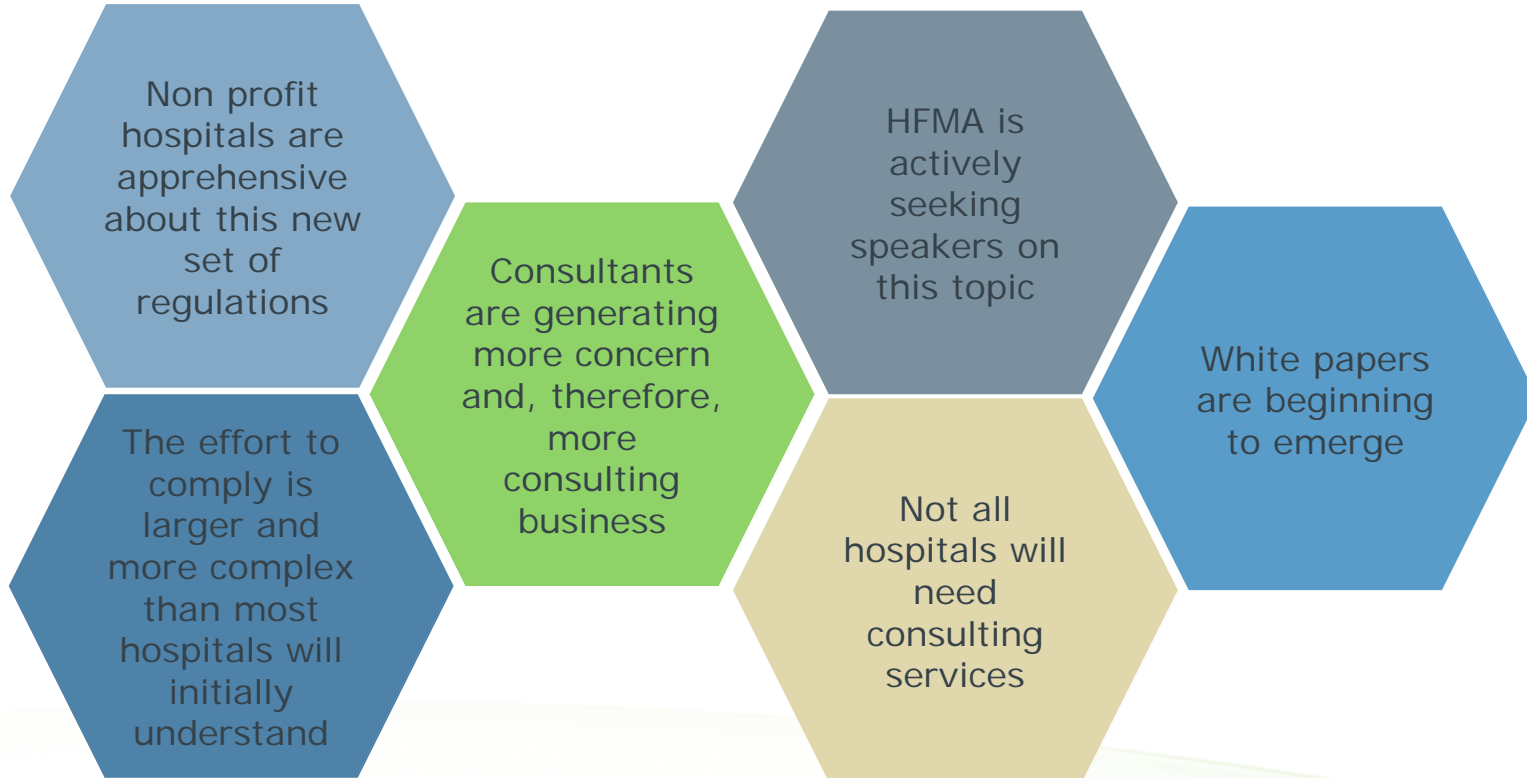
In 2005, Barnes Jewish Collaborative issued about \$162 million in tax-exempt bonds, saving additional millions of dollars.²

UPMC Pittsburgh³ estimates savings from some payroll and property tax as a non-profit = \$20M annually

1: http://www.stltoday.com/business/local/nonprofit-hospitals-huge-tax-breaks-under-increasing-scrutiny/article_4a0dcd17-40b3-589f-b0e7-c3dc14b62804.html

2: http://www.nytimes.com/2013/12/17/us/benefits-questioned-in-tax-breaks-for-nonprofit-hospitals.html?_r=0

What Are We Seeing In The Market?



First Polling Question

Q1.

How prepared is your organization to meet the upcoming regulatory changes to Section 501(r) made by the IRS?

- A. Fully Prepared
- B. Getting Prepared
- C. Have not begun preparing
- D. Unsure
- E. Unfamiliar with 501(r) changes

Our analysis identified several key compliance components

The implications of 501(r) are widespread and will require attention from all areas of the Revenue Cycle as well as ER physicians and vendors

Communication of Financial Assistant Policy

- Must be widespread
 - Website
 - Signage
- Patient notification requirements
- Eligibility
- Limited English Proficiency

Plain language Summary of FAP process

- Development
- Communication

Translation of FAP and associated process

Billing process related to:

- ECA (Extraordinary Collection Actions)
- AGB (Amounts Generally Billed)
- Notification requirements

Eligibility

Application process

Hospital owned ER operations and fees

Departments Involved

- Patient Access
- Financial Counseling
- Billing
- Collections
- ER Physicians
- All owned / joint venture hospitals

Second Polling Question

Q2

Has your organization's **marketing and communications** department been involved in preparing for Section 501(r) changes?

- A. Yes, they have taken a leadership role
- B. Yes, they have assisted in developing materials
- C. No, they have not been engaged

Financial Assistance Policy

Financial Assistance Policy

What is 501(r):

Part of the ACA that requires all non-profit and government hospitals to develop, communicate and implement two significant items

- Community Health Needs Assessment (CHNA)
- Financial Assistance Policy (FAP)

Regulations are promulgated by IRS

- First proposed in 2012
- Comment section followed
- Final regulations released 12/31/2014

Many non-profit hospitals had Financial Assistance Policies / FAP

- These new regulations will require uniformity in many areas previously left to individual hospital
- Penalties will be applied for non-compliance

Regulatory guidance / interpretation generally follows the release of new regulations

- Not released to date
- Result is there are many unanswered questions

Experts predict there will be ongoing auditing requirement

- Who and how not determined yet
- Likely IRS

Some states have additional Financial Assistance regulations

- California
- Illinois
- Compliance to State regulations does NOT qualify as compliance to 501(r)

Our analysis identified these key requirements for the Financial Assistance Policy (FAP)

NEW Components of FAP¹

1. Eligibility

- Whether, and what, sources other than those given by the patient are utilized to determine eligibility
- Limit amounts charged for emergency or other medically necessary care to individuals eligible for assistance under the hospital's financial assistance policy
- Does assistance include free or discounted care?

2. Basis for calculating amounts patients will owe

3. Publicity Plan, including methodology

- Plain language summary
 - **Available on website and paper**
 - Translation threshold will be the same as Medicare / Medicaid
- Website
- Phone number, location

"Need help paying your bill?"

You may be eligible for Financial Assistance. Click [here](#) for more information."



1: § 501(r) 79 FR 78971

Third Polling Question

Q2

Are you familiar with the new regulations for **Extraordinary Collection Actions** (ECA) taken against patients?

- A. Yes
- B. No

Our analysis identified these key requirements for the Financial Assistance Policy (FAP) ¹ (cont.)

4. Extraordinary Collections Actions (ECA)

- Process for non-payment
- Collection agencies
- Credit agencies reporting

5. Plain language summary on one post-discharge statement conspicuously displayed

- Notification focused on those for whom extraordinary efforts will be engaged in for collection efforts

6. Extraordinary Collection Actions (ECA) prohibited before making reasonable efforts to determine if patient is eligible for FAP

7. If patient is eligible for Charity on balance after insurance

- FAP is charged on only the amount patient would be responsible, after contractual adjustments and discount have been applied



1: § 501(r) 79 FR 78975

Fourth Polling Question

Q4

Which of the following required **patient facing steps** does your organization think is most important?

- A. Updated the website to make FAP and CHNA information easier to locate
- B. Created FAP signage to be displayed at your facilities
- C. Updated patient billing statements to include FAP language
- D. Updated patient notifications before taking Extraordinary Collections Actions (ECA)
- E. Other?

Our analysis identified these key requirements for the Financial Assistance Policy (FAP)¹ (cont.)

And keep these in mind as well

The FAP must list any third parties not covered by the FAP who are delivering emergency care in the hospital.

The FAP must apply to all emergency and other medically necessary care provided in a hospital facility by any entity owned in part by hospital.

The FAP must list sources of information that a hospital may use, in addition to information provided by the applicant, to determine eligibility, including whether the hospital will use a prior eligibility determination to presumptively determine eligibility for assistance.

1: § 501(r) 79 FR 78973

What Does This Mean to You?

Most likely, your FAP needs updating ... and it's time to get started

Applicability

Review the regulations

Read position papers

No official regulatory guidance has been issued yet

For Profit are exempt

Review Your Policy

Policy

Communication

Who owns marketing / publications process

Financial Counseling Processes

Billing Process

Billing Policy

Gap Analysis

Identify Needs

Establish Team

Team Lead

Perform Detailed Gap Analysis


Determine items that need changing

Develop Project Policy and assign responsible persons

Timeline

Sample Gap Analysis

This is just a subset of the htms gap analysis format. Our consultative template offers over 127 rows of items that need to be addressed

|  <small>an Emdeon company</small> | GAP ANALYSIS | | | | | | |
|---|--------------|---------|-----------------|-----|-----------------|-----------------|-------------------|
| Item | Document | Process | Current Process | GAP | Optimal Process | Required by IRS | Required by State |
| Establish written financial assistance and emergency medical care policies, | x | | | | | x | |
| Communication of FAP | | | | | | | |
| Plan language summary of FAP | x | | | | | x | |
| FAP must be widely communicated within the organization | | x | | | | x | |
| Complete FAP must be available on the website | x | | | | | x | |
| FAP phone contact and physical location for assistance | x | | | | | x | |
| Explain FAP process: | | x | | | | x | |
| Plain language in languages related to 5% or 1,000 persons | | x | | | | x | |
| With LEP - Limited English Proficiency | x | | | | | x | |
| Must include how to apply | x | | | | | x | |
| Translating the FAP | | | | | | | |
| Translation threshold will be the same as Medicare / Medicaid | | x | | | | x | |
| 5% or 1000 person threshold | | x | | | | x | |
| Related to EMTALA | | | | | | | |
| Following the EMTALA law is consistent with these regulations | | x | | | | x | |
| FAP may include how hospital handles emergency care in accordance with EMTALA | x | x | | | | x | |
| Amounts Generally Billed (AGB) | | | | | | | |
| Two accepted methodologies to determine AGB rate | | x | | | | x | |
| Look back period based on actual claims - | | x | | | | x | |
| Prospective | | x | | | | x | |
| May change methodology at any time | | x | | | | x | |
| Final regulations also adopted the ability to use Medicaid rates for (Adult Hospitals) alone or in combination with Medicare FFS rates | | x | | | | x | |
| May use all claims not just those for emergency or other medically necessary care | | x | | | | x | |
| Related to co-pay / deductible portion of insured individual | | | | | | | |
| If a FAP wants to include only medically necessary care as covered, it may use the Medicaid definition per its state for this process | | x | | | | x | |
| Final regs prohibit use of gross charges as means of discounting | | x | | | | x | |
| Billing and Collection | | | | | | | |
| Plain language summary on one post-discharge statement conspicuously displayed | x | | | | | x | |
| Notification focused on those for whom extraordinary efforts will be engaged in for collection efforts | | x | | | | x | |
| Hospital cannot engage in Extraordinary Collection Actions (ECA) against someone before making reasonable efforts to determine if they are eligible for FAP | | x | | | | x | |
| The hospital is responsible for the actions of debt collection agencies it uses | | x | | | | x | |
| Extraordinary Collection Actions (ECA) | | | | | | | |
| Actions that require a legal or judicial process, involve selling an individual's debt to another party or reporting adverse information to a credit agency | | x | | | | x | |
| Proceeds of settlements, judgments or compromises arising from a patient's suit against a third party who caused the injuries and hospital liens against these are not considered ECA | | x | | | | x | |
| Sale of debts is considered ECA | | x | | | | x | |
| Deferring non-emergent care and / or requiring a deposit prior to providing non-emergent care are NOT considered ECA | | x | | | | x | |
| However, the above (row 37) is considered ECA if it is based on non-payment of previous bills alone. | | x | | | | x | |
| 120 days from the first post-discharge bill is the appropriate time period before pursuing ECA | | x | | | | x | |
| For tax purposes, the application period is considered to be 240 days from the first post-discharge bill | | | | | | x | |
| Episode of Care | | | | | | | |

Fifth Polling Question

Q5

Do you have a clear understanding of how to write or develop an **FAP plain language summary**?

- A. Yes
- B. No
- C. No, and I am unfamiliar with plain language summaries

HTMS advisory and support services for 501(r) compliance

- Review current process and policy
- Develop Gap Analysis
- Re-write policy
- Re-write process
- Train applicable staff
- Meet with vendors if necessary
- Meet with Revenue Cycle leadership to inform and provide trusted advisory services
 - CFO
 - Finance Committee
 - Vendors

Community Health Needs Assessments (CHNA)

Summary of Community Health Needs Assessment (CHNA) Regulations¹

The hospital must...

- Define the community it serves
- Assess the needs of that community
- Document in a written report
- Implement a Policy to address health needs of the community

Due:

Every 3 years
Taxable years beginning after
March 23, 2010

The CHNA must be completed every three years and is not considered "Complete" until it has been widely published

1: § 501(r) 79 FR 78962

Steps in CHNA Process

1 Define community with data

2 Assess community health needs
Represented by broad interest of community

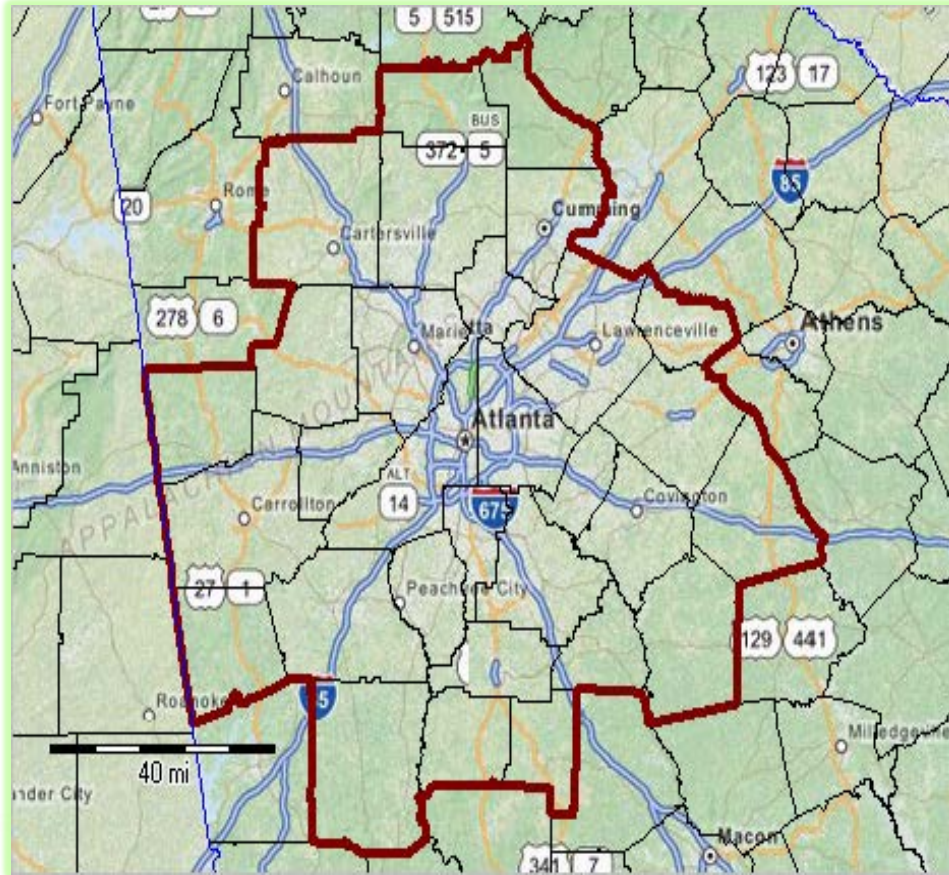
3 Document the CHNA
Collaboration

4 Communicate the CHNA
Widely available including hospital website

5 Develop the Implementation Policy
Includes rationale & Policy for addressing significant health needs

6 Identify when the Policy is considered complete

Define Your Community¹



Required Elements to Define Your Community

- Geographic boundaries
- Population
 - *Women*
 - *Children*
 - *Disease entity*
- Collaborate with at least one of the following:
 - *Tribe*
 - *Local or regional Public Health Department*
 - *Medically underserved, low income, or minority*
- Written comments from last implemented CHNA

1: § 501(r) 79 FR 78962

Defining Your Community – Who Do You Serve?

Must include “medically underserved,” those at risk of not receiving adequate medical care due to

- Coverage: uninsured or underinsured
- Geography
- Language, including low English proficiency (LEP)
- Finances
- Low income
- Transportation difficulties
- Minority populations

Community Input

- Identify what resources the community has to address significant community health needs
- Assess health needs of the community while doing the CHNA including input from all of the following sources:
 - One local, tribal or governmental public health department
 - Members of medically underserved, low-income and minority population or organizations representing their interests
 - Written comments received from most recent CHNA and the implementation strategy
- Prioritize community needs according to community input

If community input is not forthcoming, documentation of the reasonable efforts to obtain it must be provided.

The intent of the regulation is to

- *ensure the non-profit hospital communicates with its community;*
- *require that it both solicit and utilize community input; and*
- *allow the hospital flexibility to seek input from sources that make sense in their market*

- The two most recent reports must be available
- Paper copies upon request

Getting Input from the Community – Examples



- WHAT ARE WINDSHIELD AND WALKING SURVEYS?
- WHY WOULD YOU CONDUCT WINDSHIELD AND WALKING SURVEYS?
- WHEN SHOULD YOU CONDUCT WINDSHIELD AND WALKING SURVEYS?
- WHO SHOULD CONDUCT WINDSHIELD AND WALKING SURVEYS?
- HOW DO YOU CONDUCT WINDSHIELD AND WALKING SURVEYS?



CSHCN



Community Health Needs Assessment Survey

Print Email this page



Programs Communications Toolbox Public Health Advocacy Press Room Memberships

Programs Framework > Clearinghouse

» Community Health
» Environmental Health

Clearinghouse Phase 3: Community Health

St. Francis Hospital, The Heart Center is conducting a Community Health Needs Assessment Survey. By taking a few minutes to complete the questions, you will help us identify the most important health issues in your community so that we can develop goals to meet them.

[Take survey](#)

TAKING THE PULSE



OF OUR COMMUNITY

Learn About Our
**COMMUNITY HEALTH
NEEDS ASSESSMENTS**

Documentation

- *Definition of community served*
How the community was determined
Data sources utilized
- *Description of process and methodology utilized*
- *Process for incorporating input from broad representation of the community*
- *The prioritized health needs that were identified*

Resources potentially available to address some or all of these needs

- *Collaboration*
Joint reports have to contain all the same information as any one entity
- *Policy needs steps for implementation as well as the research conducted.*

The CHNA report needs to include the implementation plan and must be adopted by the authorized body of the hospital. For a government entity, that may mean the County Commissioners.

Sixth Polling Question

Q6

How concerned is your organization about **meeting 501(r) regulatory deadlines?**

Use a scale from 1 to 5:

1 is not at all concerned and 5 is very concerned

1. Not At All Concerned
2. 2
3. 3
4. 4
5. Very Concerned

Collaboration

The final regulations encourage, but do not require, collaboration.¹

- **Must define a common community**
 - Community may include overlapping but different communities
 - Areas that are relevant to shared communities may be identical
 - May adopt substantively identical CHNA reports as appropriate
 - Should differ in the areas where there are material differences in their communities
- **Adopting a CHNA of local Public Health Department**
 - If the communities are the same
 - If the health department covers all or part of the community
 - Portions of the hospital's CHNA may be substantively identical to those same portions of the health department's CHNA

1: § 501(r) 79 FR 78967

Implementation of the CHNA

- **Describe how the hospital will meet the health needs**
- **Identify the needs the hospital will not meet and why**
- **Implementation strategy** (one per facility)

Must be tailored to the hospital facility's specific programs, available resources, and the anticipated impact of these programs/resources on the health needs

- **Must attach the most recently updated Implementation Policy to Form 990.**

Reporting due taxable years after March 23, 2012

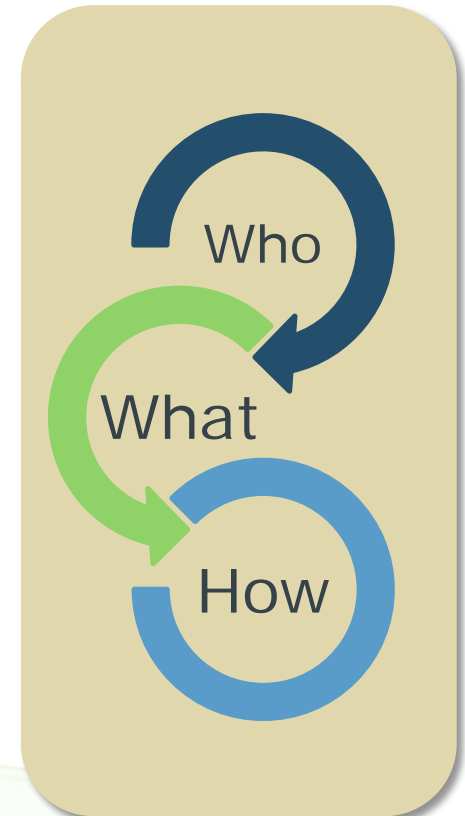
- **Collaborate with other facilities** and organizations, even if unrelated

Should identify those organizations in implementation Policy

Implementation of the CHNA

Problem Identification and Implementation of Assistance

| <i>CHNA Requirement</i> | <i>Details</i> |
|---|---|
| List all significant health needs | <ul style="list-style-type: none"> • How hospital will address these • The community-level indicators • How many people are affected by the problem and the severity of its effects • How feasible it is to address the issue • Possible impact and/or consequences of addressing the problem/goal |
| Describe the barriers and resources for addressing the identified health needs | <ul style="list-style-type: none"> • What resources and assets are available • How those resources can be accessed |



Communication of the CHNA

IRS defines “widely communicating” the hospital’s Community Health Needs Assessment as posting it on the hospital’s website

Key considerations

- *Must have clear instructions on how to access the document*
- *Able to be downloaded, viewed and printed in the “exact” image of the original report*
- *Must remain widely available until a new version has been approved and posted*
- *Is not considered complete until approved by Governing Body*
- *There may be future regulatory guidance that will expand this language*

Questions / Feedback



Please fill out your surveys... I welcome your feedback.

For more information...or help with either of these areas -

Contact:

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Email for more
information or
questions