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Colorado Hospital Association

May 17, 2024

Dear HCPF Team:

Thank you for the clarification on May 15 regarding HCPF's goals for the term "community investment." CHA appreciates the Department's intent to clarify clear buckets within the broader umbrella of community benefit spending and not exclude categories of what would be recognized as meeting the reporting hospital's community benefit obligation.

As addressed in an April 22 communication, CHA was incredibly concerned by the quick turnaround time between the draft regulations and the proposed rule. With that in mind, we continue to appreciate the Department's willingness to work with all stakeholders to address technical issues in the proposed community benefit regulations as we get updated information.

Given the tight timeline and difficult schedules that made it impossible to clarify this goal with the Department between the proposed regulation on May 3 and the initial hearing before the Medical Services Board on May 10, CHA appreciates the opportunity to revise our recommendation for the term "community investment."

Below are two options to meet the Department's intent and address our significant concerns with the current framing around the term "community investment." These recommendations include feedback from technical hospital community benefit experts, a national community benefit expert, and legal expertise on the statute, and represent CHA's formal position.

It is critically important that all reporting terms are clear and specific to their intent. Community benefit, and all conversations about community benefit, must cover the full scope of community benefit value hospitals provide to their communities. It is critical that this is consistent throughout the proposed regulations, including in the report described in 8.5003. Without clear buckets, there will not be consistency about what is reported to communities, the Department, or the General Assembly.

Below are two options to achieve the goal that HCPF laid out on May 15:

Option A: Delete the term "community investment," and do not replace it.

Rationale: Without the definition of community investment, the regulation would default to all spending spent on community benefit as de-facto community investment. The regulation already defines community benefit.

Option B: Reframe the definition of "community investment" to match community benefit and the statute.

"Community Investment" means a list of investments made by the reporting hospital that were included in Part I, Part II, and Part III of Schedule H of the reporting hospital's Form 990.

Rationale: This definition would align with the statute, the IRS, and fully clarify the scope of items the General Assembly considered to be "community investment."

Background:
As previously stated, many hospitals operate as nonprofit organizations and through that receive a tax-exempt status, which is intended to acknowledge the "community benefit" provided by those institutions. There are eight categories of community benefit that are reportable on tax-exempt hospitals' IRS Form 990 Schedule H:

- Financial assistance at cost (i.e., charity care)
- Unreimbursed Medicaid
- Cost of other means tested government health programs
- Community health improvement services
- Health professions education
- Subsidized health services
- Research
- Cash and in-kind contributions for community benefit

All spending associated with these categories is an investment in the community and a part of the community benefit they provide to their communities.

Within the authorizing statute, the term "investment" is defined below:
C.R.S. § 25.5-1-703.3.d *(I) A list of the investments made by the reporting hospital that were included in part I, part II, and part III of schedule H of the reporting hospital's form 990."*

Those parts include:

- Part I on financial assistance and certain other community benefits
- Part II on community building activities (includes community health improvement services)
- Part III on bad debt and Medicare

Consequently, the term "investments" in this context refers to the entire scope of the hospital's community benefit reporting. "Community benefit" is a separate, defined term in the proposed regulation.

It would be inappropriate to then define "community investment" in regulation in a way that excludes free or discounted health care services, provider education, and research and training. This statutory definition makes it clear what buckets are appropriate. Any definition to the contrary would conflict with the statutory intent.

Problems with "community investment"
"Community investment" is not a term recognized by the IRS. This would be incredibly difficult, if not impossible, to ensure consistent reporting across hospital entities. It is important that the data requests are clear and consistent.

The framing in Document 08, MSB 24-01-03-C inaccurately conflates "community investment" with spending spent on community benefit and within that context, inappropriately excludes crucial pieces of community benefit spending that tax-exempt hospitals invest in their communities. C.R.S. § 25.5-1-703(d)(I)(C) states that the state board may define various categories of investments that address a

community identified need. If this "community investment" definition represents the Department's attempt to do so, it excludes (perhaps unlawfully, or at least in a manner that contradicts the plain language of the statue) categories such as "provider recruitment, education, and research and training." As such, the definition does not comply with the statutory authority granted to the Medical Services Board.

> *"Community investment" means investments made by the Reporting Hospital through direct funding or in kind programs or services for programs that address a health need. They are the sum of Programs that Address Behavioral Health, Programs that Address Community Based Health Care, Programs that Address the Social Determinants of Health, and other all services and programs that addressed Community Identified Health Needs. For the purposes of the report described in 8.5003, they do not include Provider Recruitment, Education, Research and Training, Free or Discounted Health Care Services, or Medicaid Shortfall.*

CHA Recommendation: Eliminate or replace the language currently included in **Document 08, MSB 24-01-03-C**

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As stated above, CHA appreciates the opportunity to revise our community investment definition with the new insight into the Department's goals for this definition. We also appreciate the continued review of our remaining five remaining recommendations reiterated below:

8.5001 Definitions:

1. **Community benefit priorities (p. 1, l. 20-22)** – This definition does not include the full scope of community benefit activities. 26 CFR § 1.501(r) (3)(A) requires a hospital organization to conduct a community health needs assessment (CHNA) every three years and to adopt an implementation strategy to meet the community health needs identified through the CHNA. The CHNA process does not account for programs or activities that respond to a demonstrated health or related community need outside of the CHNA cycle. For example, during COVID-19, many hospitals stepped up to support COVID-19 vaccination campaigns. This activity enhanced public health and was reportable to the IRS as community benefit but did not come up during CHNAs completed prior to the pandemic. It is important that the definition of community benefit priorities is accurate.
    - **Recommendation – rephrase p. 1, l. 20-22 "***Community benefit priorities means priorities of the community that the Reporting Hospital is prioritizing for Community Benefit activities and documented within the Reporting Hospital's Community Health Needs Assessment or otherwise established~~, to be reported, community need for the activity or program must be established~~ pursuant to the IRS Form 990, Schedule H and its instructions."*

2. **Programs that address behavioral health (p. 2, l. 6-15)** – There is duplication in the phrasing of *"programs to prevent tobacco use"* since it uses the term programs at the beginning of the sentence.
    - **Recommendation – rephrase pg. 2, l. 14:** *"~~programs to prevent~~ tobacco use."*
3. **Programs that address community-based health care (p. 3, l. 24-36) –** This is not a term recognized by the IRS. These items should be covered by the community health improvement services category. It would make sense to include some of the nationally accepted IRS terms in this definition to ensure reporting consistency.
    - **Recommendation – include a new line on pg. 2 after line 26:**
      7. Community health improvement services such as community health education, support groups, wellness and health promotion programs, screenings, community based clinical services, and health care support services" (Terms from Catholic Hospital Association Guide, pp. 316-322).

8.5002 Hospital requirements

4. Major newspaper (8.5002.A.9.a, p. 6, l. 4-7) – For some larger regional hospitals, their service areas can span six to 10 counties, and when you consider the myriad of publications associated with those regions, this is a very costly requirement.

- **Recommendation – amend pg. 6, l. 4-7 - "***placed in each major newspaper published in the hospital's Community at least 30 days prior to the scheduled meeting. A major newspaper is a newspaper that ~~has a community-focused scope, and~~ is accessible, ~~and~~ known to members of the Community, and is the newspaper of record for the respective community.*

8.5003 Department Requirements:

5. Total operating expenses (8.5003.3.c, p. 10, l. 19-20) – Net patient revenue does not take into account a hospital's operating expenses. At a time when operating expenses are on the rise, it is critical that any reporting include a wholistic view of the hospital financial realities. According to CHA data, over 70 percent of hospitals are currently operating without sustainable margins.

- **Recommendation – amend pg. 10, l. 19-20:** *Community Benefits as defined in part I and Part II of the Schedule H as a percentage of Reporting Hospital's patient revenues and as percentage of total operating expenses.*

As previously stated on April 22 and April 26, CHA recognizes that HB 23-1243 includes reporting by certain categories, such as behavioral health, and requests that HCPF create a crosswalk to help hospitals determine what IRS-reportable categories apply to the buckets HCPF is looking into. For example, is funding for a child mental health organization considered behavioral health, community-based health care, or both?

We appreciate the ongoing dialogue and partnership on these very important issues.

Sincerely,
/S/ Megan Axelrod
Megan Axelrod

Director, Regulatory Policy and Federal Affairs, Colorado Hospital Association.