

## **8.5000 HOSPITAL COMMUNITY BENEFIT ACCOUNTABILITY**

PURPOSE: To require hospitals to report to the Department of Health Care Policy and Financing information on their Community Benefit activities, planning and investments.

### **8.5001 DEFINITIONS**

1. "340b Drug Market Rate Costs" means the aggregated market rate costs for 340b drugs purchased during the period.

2. "340b Drug Acquisition Costs" means the aggregated acquisition costs for 340b drugs purchased during the period.

3. "Annual 340b Savings" means the difference between the aggregated market rate costs and the aggregated acquisition costs for 340b drugs.

4. "Community" means the community that a hospital has defined as the community that it serves pursuant to 26 CFR § 1.501(r)-3(b).

5. "Community Based Organization" means a public or private nonprofit organization of that represents a community or significant segments of a community or work towards community-focused goals beyond one particular community and provides educational or related services to individuals in the community under 20 USC § 7801(5).

6. "Community Benefit" means the actions that hospitals take to qualify as an organization organized and operated for the charitable purpose of promoting health pursuant to § 501(c)(3) of federal Internal Revenue Code. These actions include demonstrating that the hospital provides benefits to a class of persons that is broad enough to benefit the community, and that it operates to serve a public rather than private interest. Community Benefit may also refer to the dollar amount spent on the community in the form of Free or Discounted Health Care Services; Provider Recruitment, Education, Research and Training; and Community spending activities.

7. "Community Benefit Implementation Plan" means a plan that satisfies the requirements of an implementation strategy as described in 26 CFR § 1.501(r)-3(c).

8. "Community Benefit Priorities" means Community Benefit activities that are documented within the Reporting Hospital's Community Health Needs Assessment or otherwise established pursuant to the IRS Form 990, Schedule H and its instructions.

9. "Community Health Center" means a federally qualified health center as defined in 42 U.S.C. § 1395x (aa)(4) or a rural health clinic as defined in 42 U.S.C. § 1395x (aa)(2).

10. "Community Health Needs Assessment" means a community health needs assessment that satisfies the requirements of 26 CFR § 1.501(r)-3(b).

11. "Community Identified Health Need" means a health need of a Community that is identified in a Community Health Needs Assessment.

12. "Free or Discounted Health Care Services" means health care services provided by the hospital to persons who meet the hospital's criteria for financial assistance and are unable to pay for all or a portion of the services, or physical or behavioral health care services funded by the hospital but provided without charge to patients by other organizations in the Community. Free or Discounted Health Care Services do not include the following:

1. Services reimbursed through the Colorado Indigent Care Program (CICP);
2. Bad debt or uncollectable amounts owed that the hospital recorded as revenue but wrote off due to a patient's failure to pay, or the cost of providing care to such patients;
3. The difference between the cost of care provided under Medicaid or other means-tested government programs or under Medicare and the revenue derived therefrom;
4. Self-pay or prompt pay discounts; or
5. Contractual adjustments with any third-party payers.

13. "Health System" means a larger corporation or organizational structure that owns, contains, or operates more than one hospital.

14. "Local Public Health Agency" means a county or district public health agency established pursuant to C.R.S. § 25-1-506, or a local department of public health.

15. "Medicaid Shortfall" means the cost of Medicaid reflected on the IRS Form 990, Schedule H, Worksheet 3.

16. "Programs that Address Behavioral Health" means funding or in-kind programs or services intended to improve an individual's mental and emotional well-being and are reportable on the IRS Form 990, Schedule H and its instructions. Programs that Address Behavioral Health are designed to address, but are not limited to:

1. Mental health disorders;
2. Serious psychological distress;
3. Serious mental disturbance;
4. Unhealthy stress;
5. Tobacco use prevention; and
6. Substance use.

17. "Programs that Address Community Based Health Care" means funding or in-kind programs or services that improve types of person-centered care delivered in the home and community and are not billable to a third party. A variety of health and human services can be provided. Community Based Health Care addresses the needs of people with functional limitations who need assistance with everyday activities such as getting dressed or bathing.

18. "Programs that Address the Social Determinants of Health" means funding or in-kind programs or services that improve social, economic, and environmental conditions that impact health in the Community. Social and economic conditions that impact health include education; employment; income; family and social support; and Community safety. Environmental conditions that impact health include air and water quality, housing, and transit. Programs that Address the Social Determinants of Health include but are not limited to the following:

1. Job training programs;
2. Support for early childhood and elementary, middle, junior-high, and high school education;

3. Programs that increase access to nutritious food and safe housing;
4. Medical Legal Partnerships; and
5. Community-building activities that could be included in Part II of Schedule H of the Form 990.

19. "Provider Recruitment, Education, Research and Training," "Workforce development," "Health professions education," and "Research" defined within the Internal Revenue Service form 990 as:

1. "Workforce development" means the recruitment of physicians and other health professionals to medical shortage areas or other areas designated as underserved, and collaboration with educational institutions to train and recruit health professionals needed in the Community (other than the health professions education activities entered on Part I, line 7f),
2. "Health Professions Education" means educational programs that result in a degree, a certificate, or training necessary to be licensed to practice as a health professional, as required by C.R.S. 12-240-110, or continuing education necessary to retain state license or certification by a board in the individual's health profession specialty,
  - a. Health Professions Education does not include education or training programs available exclusively to the organization's employees and medical staff or scholarships provided to those individuals. However, it does include education programs if the primary purpose of such programs is to educate health professionals in the broader community. Costs for medical residents and interns can be included, even if they are considered employees for purposes of Form W-2, Wage and Tax Statement.
3. "Research" means any study or investigation the goal of which is to generate increased generalized knowledge made available to the public (for example, knowledge about underlying biological mechanisms of health and disease, natural processes, or principles affecting health or illness; evaluation of safety and efficacy of interventions for disease such as clinical trials and studies of therapeutic protocols; laboratory-based studies; epidemiology, health outcomes, and effectiveness; behavioral or sociological studies related to health, delivery of care, or prevention; studies related to changes in the health care delivery system; and communication of findings and observations, including publication in a medical journal). The organization can include the cost of internally funded research it conducts, as well as the cost of research it conducts funded by a tax-exempt or government entity.

20. "Reporting Hospital" means

1. A hospital licensed as a general hospital pursuant to Part 1 of Article 3 of Title 25 of the Colorado Revised Statutes and exempt from federal taxation pursuant to Section 501(c)(3) of the federal Internal Revenue Code, but not including a general hospital that is federally certified or undergoing federal certification as a long-term care hospital pursuant to 42 CFR § 412.23(e) or that is federally certified or undergoing federal certification as a critical access hospital pursuant to 42 CFR § 485 Subpart F,
2. A hospital established pursuant to C.R.S. § 25-29-103, or
3. A hospital established pursuant to C.R.S. § 23-21-503.

21. "Safety Net Clinic" means a Community clinic licensed or certified by the Department of Public Health and Environment pursuant to C.R.S. § 25-1.5-103 (1)(a)(I) or (1)(a)(II).

22. "Total Operating Cost" means the total sum of all operating expenses. Total operating costs shall match total operating expenses reported to the state department for the report pursuant to section 25.5-4-402.8(2)(b)(III) for the most applicable year.

23. "Total Costs Related to Providing Charity Care" means the estimated costs for financial assistance at cost as defined by the Internal Revenue Service for the Form 990 Schedule H worksheet 1.

## **8.5002 HOSPITAL REQUIREMENTS**

### **8.5002.A PUBLIC MEETING REQUIREMENTS**

1. Each Reporting Hospital shall convene a public meeting at least once per year to seek feedback regarding the hospital's Community Benefit activities during the previous year and the hospital's Community Benefit Implementation Plan for the upcoming year.
2. Reporting Hospitals may convene a joint public meeting with one or more other participating hospitals that share some or all of the hospital's Community.
3. Reporting Hospitals may convene multiple Community Benefit meetings throughout the year.
4. During at least one public meeting the Reporting Hospitals shall at minimum:
  - a. Present priority areas identified in the Reporting Hospital's most recent Community Health Needs Assessment and any other Community spending options recommended by the Reporting Hospital. Each priority recommendation presented shall clearly identify the source of the recommendation;
  - b. Solicit public input for the Reporting Hospital's recommendations and any additional Community Benefit activity;
  - c. Present the Reporting Hospital's specific Community Benefit activities;
  - d. Present the amount funded for each specific Community Benefit activity; and
  - e. Present a description of how the Community Benefit activities and funding amounts align with the Community Identified Needs.
5. Reporting Hospitals may only add Community Benefit Priorities to the Reporting Hospital's Community Benefit Implementation Plan if:
  - a. The Community Benefit Priorities were presented during at least one public meeting;
  - b. The public was provided an opportunity to provide feedback through either public testimony to be recorded in the minutes of the public meeting(s) or through correspondence including, but not limited to email, written letter, or phone call. The Reporting Hospital will summarize this feedback in its annual submission materials;
  - c. The Reporting Hospital shall maintain a submission period of 30 days following the Community public meeting to allow for additional comments and

recommendations from Community members. Nothing in this process will preclude hospitals from integrating priorities pursuant to the Internal Revenue Service's Community Health Needs Assessment process;

- d. The reporting hospital shall inform all community members through a public communication of a summary of the feedback received, whether or not the recommendation was incorporated into the Reporting Hospital's Community Benefit Implementation Plan, and if the recommendation was not incorporated, an explanation for its absence. A Reporting Hospital may post the summary of feedback on a public facing website and provide notice through the Reporting Hospitals standard community outreach practices; and
  - e. The Reporting Hospital shall indicate that the implemented Community Benefit Priorities are either a result of community feedback or based upon the Reporting Hospital's recommendation.
6. Reporting Hospitals may conduct a public meeting combines the purpose of this Section 8.5002.A with other purposes, such as those required by the Community Health Needs Assessment process provided at 26 CFR § 1.501(r)-3, or other Community engagement efforts, so long as the public meeting meets the minimum requirements in this section.
7. Each Reporting Hospital shall invite, at a minimum, representatives from the following entities to participate in the meeting if any such entities operate in the hospital's Community:
- a. Local Public Health Agencies;
  - b. Local chambers of commerce and economic development organizations;
  - c. Local health care consumer organizations;
  - d. School districts;
  - e. County governments;
  - f. City and town governments;
  - g. Community Health Center;
  - h. Certified rural health clinics or primary care clinics located in a county that has been designated as a rural or frontier county;
  - i. Area agencies on aging;
  - j. Safety Net Clinics;
  - k. Health care consumer advocacy organizations;
  - l. The general public,
  - m. Tribal councils of Colorado's land-based tribes, specifically including members of the tribal council or its designees;
  - n. Urban Indian Organizations, specifically including their members; and



- d. Upon request, provide American Sign Language services and, for individuals with limited English proficiency, provide language and interpretation services to ensure meaningful access such as those described in 45 C.F.R. § 92.201.
  - e. Reporting Hospitals may also undertake additional activities including but not limited to the following:
    - i. Advertise the public meeting in additional newspapers in the Community, including those that are published in languages other than English;
    - ii. Advertise the public meeting via radio stations broadcast in the Community, including radio stations that broadcast in languages other than English;
    - iii. Use neutral or external facilitators to lead Community meetings. To the extent possible facilitators should represent the demographics of the Community members being engaged and, if possible, the facilitator should not be employed by the Reporting Hospital;
    - iv. Schedule the public meeting outside of the typical workday hours and consider hosting meeting(s) at Community locations other than hospital campuses;
    - v. Provide multiple avenues for Community meetings by conducting hybrid meetings, with simultaneous in-person and virtual participation options. For virtual meetings, Reporting Hospital staff should provide appropriate orientation, technical assistance, captioning, and other assistive services;
    - vi. Schedule multiple meetings to be held on different days or at different times in order to accommodate a broader range of participants' schedules;
    - vii. Provide transportation and childcare for participants in the public meeting, and
    - viii. Provide reimbursement for transportation and childcare expenses incurred for the purposes of participating in the public meeting.
    - ix. Collaborate with Local Public Health Agencies operating wholly or partially in the Reporting Hospital's Community on public meetings planning and execution including but not limited to:
      - a. Meeting time and location;
      - b. Meeting topics; and
      - c. Communications notifying Community members of the meeting.
12. Reporting Hospitals should ensure that Community engagement goals reflect partnerships and collaboration with the Community and not solely state or federal requirements.

1. Each Reporting Hospital shall complete a Community Health Needs Assessment at least every three (3) years and shall submit a copy of the Community Health Needs Assessment to the Department on or before September 13, 2024, and then on or before July 1 every year thereafter.
  - a. Acquired or new hospitals shall complete their first Community Health Needs Assessment as described under 26 CFR § 1.501(r)-3(d).
2. Each Reporting Hospital shall complete a Community Benefit Implementation Plan that addresses the needs described in the Community Health Needs Assessment and that shall be submitted to the Department on or before September 13, 2024, and then on or before July 1 every year thereafter.
  - a. Each Reporting Hospital is required to complete a Community Benefit Implementation Plan that:
    - i. Addresses the needs described by the Reporting Hospital's Community Health Needs Assessment,
    - ii. Includes an explanation of the Community served by the hospital facility, and
    - iii. Describes how the Community was determined pursuant to 26 CFR § 1.501(r)-3(b).
3. Each Reporting Hospital shall submit to the Department on or before September 13, 2024, and then on or before July 1 every year thereafter a report on its most recent public meeting held to satisfy its Community Health Needs Assessment requirements under 26 CFR § 1.501(r)-3.
4. Each Reporting Hospital shall submit to the Department a report on the public meetings held during the previous reporting cycle on or before September 13, 2024, and then shall provide a report on the public meeting held after the submission date from the previous year on or before July 1 every year thereafter.
5. Each public meeting report shall include at minimum:
  - a. Date, time, and location of the meeting;
  - b. Outreach efforts to ensure broad Community participation and accessibility;
  - c. Individuals and organizations, including the populations served by the organizations, invited to the meeting;
  - d. To the extent this information is provided by attendees, a list of individual meeting attendees and organizations represented;
  - e. Meeting agenda;
  - f. A summary of the meeting discussion;
  - g. Actions taken as a result of feedback from meeting participants;
  - h. Content of meeting discussion including the Community Benefit Priorities discussed and the decisions made regarding those Community Benefit Priorities;

- i. Community feedback received and how the Reporting Hospital plans to incorporate the feedback into the Reporting Hospital's Community Benefit Implementation Plan; and
    - j. Any demographic data collected voluntarily from attendees, such as data concerning race, ethnicity, and income. This data may be reported in a deidentified and aggregate manner.
- 6. Each Reporting Hospital shall submit to the Department on or before September 13, 2024, and then on or before July 1 every year thereafter a report on Community Benefits that shall include the following:
  - a. A copy of the most recently submitted Form 990 to the federal Internal Revenue Service including Schedule H. Associated worksheets may be submitted.
    - i. Reporting Hospitals that are part of a Health System or other corporate structure that files a consolidated form 990 to the federal Internal Revenue Service shall provide information that was included in Parts I, II, III, and V of Schedule H of Form 990 for each Reporting Hospital separately. Associated worksheets may be submitted.
    - ii. Reporting Hospitals not required to submit Schedule H of the Form 990 to the federal Internal Revenue Service shall complete Parts I, II, III, and V of Schedule H of Form 990 available on the federal Internal Revenue Service's website. Associated worksheets may be submitted.
  - b. A description of spending made by the Reporting Hospital or related entities that were included in Parts I, II, and III of Schedule H of Form 990 that includes at a minimum the following:
    - i. Cost of the Community Benefit spending, the amount funded for each activity,
      - 1) If a Reporting Hospital receives grants or philanthropic funding that would be classified as restricted funding by the Internal Revenue Service and cannot be counted for the purposes of Community Benefit, the reporting hospital may provide additional information to the Department about the activity.
    - ii. Indicate if the Community Benefit activity addressed a Community Identified Health Need.
    - iii. For any Community Benefit activity spending that addressed a Community Identified Health Need the Reporting Hospital shall provide each specific Community Benefit activity within the following applicable categories, and shall distinguish if the activity was funded through direct cash or cash expenditures from in-kind contributions:
      - 1. Free or Discounted Health Care Services;
      - 2. Programs that Address Behavioral Health;
      - 3. Programs that Address the Social Determinants of Health;
      - 4. Programs that Address Community Based Health Care;

5. Provider Recruitment, Education, Research, and Training; distinguishing if educational activities were invested internally or externally; and
  6. All services and programs that addressed Community Identified Health Needs.
- iv. For any Community Benefit activity that addressed one or more Community Identified Health Needs provide evidence that shows how the spending improves Community health outcomes and directly corresponding to the relevant Community Identified Health Needs.
- c. The Reporting Hospital's total expenses included in Line 18 of Section 1 of the submitted Form 990. Reporting Hospitals not required to submit Form 990 to the federal Internal Revenue Service shall complete Line 18 of Section 1 of Form 990 available on the federal Internal Revenue Service's website.
  - d. The Reporting Hospital's revenue less expenses included in Line 19 of Section 1 of the submitted form 990. Reporting Hospitals not required to submit Form 990 to the federal Internal Revenue Service shall complete Line 19 of Section 1 of Form 990 available on the federal Internal Revenue Service's website.
  - e. **The Reporting Hospitals shall include the following information in the annual report:**
    - i. **340B Drug Market Rate Costs**
    - ii. **340B Drug Acquisition Costs**
    - iii. **Total Operating Costs of the Reporting Hospital**
    - iv. **Total Costs related to providing charity care**
    - v. **Description of how the hospital uses savings from participation in 340B program**
7. In the event that the due date falls on a weekend or state holiday, the reporting deadline shall be extended to the next business day.
  8. Each Reporting Hospital shall post the report to their public website and submit to the Department the website address where the report has been posted.
  9. A hospital licensed as a general hospital pursuant to part 1 of Article 3 of Title 25 that is not a Reporting Hospital may report on Community Benefits, costs, and shortfalls consistent with this section.
  10. Reporting Hospitals may provide additional information on Community Benefit spending that are not reportable on the IRS Form 990, Schedule H that address Community-Identified Health Needs.

### **8.5003 DEPARTMENT REQUIREMENTS**

1. The Department shall develop a website or web-based reporting platform for each Reporting Hospital to submit its reports and ensure that the reports are available to the public on the Department's website.

2. The Department shall review each Reporting Hospital's Community Health Needs Assessment and each Reporting Hospital's annual Community Benefit Implementation Plan before the release of the report authorized in C.R.S. § 25.5-4-402.8, to identify the highest priority areas reported by Reporting Hospital's Communities.
3. As part of the report authorized in C.R.S. § 25.5-4-402.8, the Department shall submit to the General Assembly a report that includes the following:
  - a. Community Benefits as defined in Part I and Part II of the Schedule H as a percentage of total expenses.
  - b. Community Benefit as defined in Part I and Part II of the Schedule H as a percentage of total operating expenses.
  - c. The amount each Reporting Hospital invested in the following areas, including that amount as a percentage of total Community Benefit spending in Part I and II of Schedule H:
    - i. Free or Discounted Health Care Services that addressed Community identified health needs;
    - ii. Programs that Address Behavioral Health;
    - iii. Programs that Address Social Determinants of Health;
    - iv. Programs that Address Community Based Health Care;
    - v. Provider Recruitment, Education, Research and Training; and
    - vi. All services and programs that addressed Community identified health needs.
  - d. Community Benefits as defined in Part I and Part II of the Schedule H as a percentage of Reporting Hospital's patient revenues.
  - e. A summary of Community Benefits as defined in Part I and Part II of the Schedule H for each Reporting Hospitals compared to comparable categories expended by for profit hospitals within Colorado, if available.
  - f. The reported Medicaid Shortfall for each Reporting Hospital.
  - g. Relevant service line spending or activity reported by each Reporting Hospital that are not reportable as Community Benefit to the Internal Revenue Service but do address Community-Identified Health Needs.
  - h. A summary of Community Benefit legislation or activities being performed outside of Colorado.
  - i. A summary of each Reporting Hospital's Community Benefit spending and evidence that shows how the spending improves Community health outcomes.
  - j. A summary of each Reporting Hospital's compliance with Community Benefit requirements. Reporting Hospitals deemed non-compliant with Community Benefit reporting will be provided an opportunity to comment on the department's

assessment of compliance prior to the publication of the report pursuant to C.R.S. § 25.5-1-703.

- k. The highest priority areas as reported by Communities from the Reporting Hospital's Community Health Needs Assessment and Implementation Plan compared to the Reporting Hospital's reported spending.
  - l. The highest priority areas as identified in Local Public Health Agencies community health assessments and public health improvement plans to the extent possible that the information is provided to the Department.
  - m. Legislative recommendations for the General Assembly.
  - n. The estimated federal and state income tax exemptions and the property tax exemptions received by each Reporting Hospital, which shall be calculated by the Colorado Department of Revenue.
  - o. Any other information the Department determines will be useful for the General Assembly and members of the public to understand the effectiveness of Reporting Hospitals' Community Benefit and other financial implications to the Reporting Hospital, such as Medicaid Shortfall.
4. The Department shall post the reports submitted to the General Assembly to a public web page created for that purpose.
5. The Department shall provide documentation submitted by Reporting Hospital's under Section 8.5002.B to Local Public Health Agencies upon request. Information that contains personally identifiable information shall be deidentified prior to delivery to Local Public Health Agencies.

#### **8.5004 HOSPITAL COMMUNITY BENEFIT ACCOUNTABILITY COMPLIANCE AND CORRECTIVE ACTION PROCESS**

1. If the Department finds that a reporting hospital is not in compliance with the state's Community Benefit requirements under C.R.S. § 25.5-1-702 and 703, the Department shall:
- a. Notify the Reporting Hospital of its noncompliance and identify the information that needs to be provided;
  - b. Notify the non-compliant Reporting Hospital of the due date of requested information;
  - c. If the Reporting Hospital does not provide the requested information, the Department shall require the Reporting Hospital to submit a corrective action plan within 120 days for approval by the Department. The Department shall not publicly report on noncompliance until after a corrective action plan would be due to the Department.
  - d. If noncompliance continues or the Reporting Hospital fails to submit a corrective action plan, or if the Department determines the Reporting Hospital's noncompliance is knowing or willful or a repeated pattern of noncompliance exists the Department shall consider the size of the hospital and the seriousness of the violation in setting a fine amount,
    - i. For Reporting Hospitals owned by or affiliated with a hospital system comprised of three or more hospitals, the fine shall not be more than \$20,000 per week, per violation.

- ii. For all other Reporting Hospitals, the fine shall not be more than \$5,000 per week, per violation.
- e. Reporting Hospitals shall expend the amount fined on Community Benefit priorities described in the Reporting Hospital's current Community Benefit Implementation Plan within one year after the fine is imposed. Each Reporting Hospital shall report on how the money collected through fines is expended in the Reporting Hospital's annual report to the Department.

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