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Intersection of ESG, health equity, and 501(r) compliance

by Rebekuh Eley and Richard Kes

We are at a critical moment of change when it comes to truly addressing health inequities in this country. With the intersection of environmental, social, and governance (ESG) reporting and the added commitment to addressing disparities in social determinants of health (SDOH), these efforts could drive real change, innovation, and prioritization in the healthcare industry and communities. At the same time, governing bodies like the Centers for Medicare & Medicaid Services (CMS) and The Joint Commission have created standards and metrics for various healthcare provider programs to further advance improvements in health outcomes and address inequities.

Indeed, the healthcare industry is ripe for change with ESG emphasis and new standards compliance. Let's explore what's happening along with some key considerations for healthcare providers.

Data and programs work hand in hand to address disparities

As electronic health record systems were the main focus of technological advances for the healthcare industry in the past two decades, this allowed massive volumes of patient-centered data to be harnessed and, as a result, has given the healthcare industry real data insights and statistics to support the understanding of disparities that exist today. Given that the healthcare industry is at a pivotal point in addressing these issues, opportunities lie within to increase the velocity at which the core issues can be addressed. We anticipate throughout the 2020s that ESG initiatives will drive improvements and potentially help reduce disparities in SDOH, which will hopefully benefit all stakeholders in the healthcare industry. Adding to ESG strategies are new governmental programs focusing on climate and health change.

In January 2021, the U.S. Department of Health & Human Services established the Office of Climate Change and Health Equity (OCCHE) as directed by President Joe Biden.^[1] OCCHE serves as a hub to coordinate policies, programming, and analysis related to climate change's impact and the health of the American people. The new priorities will include identification, research, and outreach associated with the affect climate hazards pose on vulnerable populations and proposed solutions to create health equity.

Likewise, in 2021, the CMS Innovation Center released its strategic objectives through 2030. All five of their core strategic objectives have social determinants of health weaved into their ultimate goal of achieving equitable outcomes through high-quality, affordable, and person-centered care: driving accountable care, advancing health equity, supporting innovation, addressing affordability, and partnering to achieve system transformation.

In addition, The Joint Commission also announced new standards related to health equity as part of their accreditations for healthcare providers starting in 2023. These standards range from assessing social needs and food insecurity to evaluating sociodemographic characteristics.

The data requirements for establishing, monitoring, and improving the items that The Joint Commission and other agencies will be evaluating could be a potential issue for providers and time-consuming to compile and monitor. We expect that as healthcare organizations continue to have operational challenges with their workforce and considering the margin challenges within the industry, healthcare providers will look to the efficiencies of technology to track and monitor the data required.

Efforts can deliver further value

With efficiency in mind, that brings up the questions: Where else could the healthcare organization use data collection and assessment? And, regarding overall ESG and compliance efforts, are there multiple uses that providers could leverage in other ways that are valuable to the organization?

The Patient Protection Act of 2010 enacted several requirements for tax-exempt hospitals under section 501(r) to maintain tax-exempt status (unless otherwise noted, all section references contained herein are to the Internal Revenue Code of 1986, as amended). In addition to compliance with 501(r), tax-exempt hospitals must meet a community benefit standard to maintain tax-exempt status. Annually, hospitals disclose this compliance and their activities on Form 990 to the IRS and the public. Hospitals can use these requirements as another venue to direct and report their ESG activities.

Community health needs assessment and implementation strategy

Section 501(r)(3) requires a hospital to conduct a community health needs assessment (CHNA) once every three years and adopt an implementation strategy to meet the community health needs identified within CHNA. The Treasury regulations set forth the requirements of conducting a CHNA, including the compilation of data needed to identify the health disparities within communities because of environmental factors. CHNA must also define the community served by the hospital and assesses the community's health needs.

A community served by a hospital includes geographic areas, target populations, and a primary focus or function. The definition of a community or population served by the hospital must be inclusive to all within the geographic area; it cannot exclude minorities, the medically underserved, or low-income patients. Therefore, a hospital may include a population with exposure to climate hazards as a part of its community and the needs demonstrated by the community. This inclusion ties into one purpose of OCCHE: identifying vulnerable populations due to environmental factors.

After defining its community, the hospital identifies and assesses the significant health needs of that community and prioritizes those needs. Health needs include the factors necessary to improve or maintain the health status of the community. The needs may include illness prevention and social, behavioral, and environmental factors that influence health in the community. When identifying these needs, some of the criteria used may include health disparities due to climate impacts—which is also one of the priorities of OCCHE.

The hospital must also document how it will or will not meet the health needs of its community identified through the CHNA process by a written implementation strategy. This document, in particular, may serve as a mechanism to underscore the hospital's ESG activities. For example, hospitals typically include data related to SDOH in their CHNAs: surveying their communities on strengths and weaknesses around access to care, quality of housing, and access to healthy food. Diving into the insight of these details helps organizations stand up appropriate population health initiatives to deliver and execute an appropriate ESG strategy.

Form 990 and Schedule H

Hospitals can also report ESG data and analysis on their publicly available Form 990, the annual information return filed with the IRS. Form 990 discloses a hospital's financial information, describes the activities furthering its exempt purpose, and shows how it met its tax compliance and governance policies and procedures. Hospitals must also complete Schedule H, which reports the hospital's compliance with section 501(r) and community benefit activities.

Community benefit

A hospital discloses its community benefit data to various stakeholders and the general public in various formats, including annual reports, regulatory filings, and Form 990. Some of the data relates to the provision of charity care including financial assistance and Medicaid. Other areas reported may include the cost to execute the plan to address health needs identified within CHNA and the action steps identified within the implementation strategy. The cost of these accomplishments can be tied back to ESG data points including community health improvement services and community-building activities.

Community health improvement services and community benefit operations

For Form 990 reporting purposes, community health improvement services are activities or programs subsidized by a hospital and carried out or supported to improve community health. Community benefit operations is an activity associated with conducting a CHNA, community benefit program or activities associated with fundraising, or grant writing for community benefit programs. Both community health improvement and community benefit operations must be a program established to address a particular need. The need can be established through CHNA conducted or assessed by the hospital, a request from a public health agency or community group, or a collaborative effort between the hospital and other tax-exempt and/or government entities for the express purpose of improving community health. An example of community benefit activities includes those needs addressed by federal, state, or local public health priorities. Those would include the health disparities for communities identified by OCCHE with disproportionate exposures to climate hazards and vulnerable populations.

Community building

Community-building activities, as defined for Form 990 reporting, are those activities that a hospital engages in to protect or improve the community's health or safety but do not meet the definition to be reported as a community benefit. This may be a program that improves a community's health but does not necessarily rise to the level of an identified health need at this point in time. In particular, community-building activities include environmental improvements—which may be part of the hospital's ESG activities and reporting.

Environmental improvements include activities addressing environmental hazards that impact overall community health. Some examples include alleviating water or air pollution, safely removing or treating garbage or other waste products, and other actions to protect the community from environmental hazards.

The takeaway

Healthcare providers and systems can truly be change agents in addressing health disparities that have long plagued communities. With robust ESG strategies, a commitment to understanding SDOH, using data analysis and CHNA, as well as a provider's stringent compliance to standards and metrics, meaningful change and health equity can be a goal within reach.

Takeaways

- New focus on health inequities and environmental, social, and governance (ESG) reporting has created a need for hospitals to dive into their ESG efforts and to report.
- The requirements from The Joint Commission and other agencies may pose issues for providers as they accumulate data for reporting purposes.
- Hospitals may already have established avenues to collect and report data, including those through 501(r) compliance.
- Hospitals are required to conduct a community health needs assessment under 501(r) and maintain a certain level of community benefit to preserve tax-exempt status.
- There is overlap with procedures used to acquire data for the community health needs assessment and community benefit reporting with ESG—all can be externally reported on Form 990.

¹ U.S. Department of Health & Human Services, “About the Office of Climate Change and Health Equity (OCCHE),” last reviewed July 25, 2022, <https://www.hhs.gov/ash/ocche/about/index.html>.

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