



HEALTHCARE REGULATORY ROUND-UP - Episode #57

The Pursuit Is On: Community Benefit

September 28, 2023

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WE ARE AN INDEPENDENT MEMBER OF HLB—THE GLOBAL ADVISORY AND ACCOUNTING NETWORK

PYA by the Numbers



Introductions



Debbie Ernsberger
Principal
dernsberger@pyapc.com



Abigail Campbell
Senior Manager
acampbell@pyapc.com



pyapc.com
800.270.9629

ATLANTA | CHARLOTTE | HELENA | KANSAS CITY | KNOXVILLE | NASHVILLE | TAMPA

Schedule H: Then and Now



ABOUT NEWS CONTACT SERVICES

CHUCK GRASSLEY

News · News Releases

10.24.2007

Grassley Announces Roundtable On Staff Discussion Draft On Non-Profit Hospitals

This screenshot shows the top portion of a news release on the Chuck Grassley website. The navigation menu includes 'ABOUT', 'NEWS', 'CONTACT', and 'SERVICES'. The name 'CHUCK GRASSLEY' is prominently displayed in the center, with a small map of Iowa above it. To the right, there is a search icon and five social media icons for Facebook, Twitter, Instagram, YouTube, and LinkedIn. Below the navigation, a breadcrumb trail reads 'News · News Releases'. The main content area features the date '10.24.2007' and the headline 'Grassley Announces Roundtable On Staff Discussion Draft On Non-Profit Hospitals'.



ABOUT NEWS CONTACT SERVICES

CHUCK GRASSLEY

News · News Releases

02.15.2018

Grassley, Hatch Press IRS For Answers On Nonprofit Hospitals

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Form 990 Community Benefit Reporting Timeline



2008

- Schedule H was introduced to the Form 990, with mandatory filing starting in tax year 2009.

2012

- The Affordable Care Act (ACA) put into place the Community Health Needs Assessment requirement, with mandatory compliance beginning after March 2012.

2023

- Four senators publish a letter to the Internal Revenue Service and the U.S. Treasury Inspector General for Tax Administration expressing concerns about the efficacy of community benefit reporting and the IRS's role in analyzing community benefit.

What Was Intended vs. What Actually Happened



- IRS does not analyze data as expected.
 - *While IRS is required to review hospitals' community benefit activities at least once every 3 years, it does not have a well-documented process to ensure that those activities are being reviewed. IRS referred almost 1,000 hospitals to its audit division for potential PPACA violations from 2015 through 2019. However, IRS could not identify if any of these referrals related to community benefits. GAO's analysis of IRS data identified 30 hospitals that reported no spending on community benefits in 2016, indicating potential noncompliance with providing community benefits.*
 - From <https://www.gao.gov/products/gao-20-679>
- The American Hospital Association with help from an independent third party, the Catholic Health Association, and other non-governmental organizations step in to provide guidance and analysis.
- A few tax-exempt hospitals become the target of news articles and studies centered around community benefit reporting.
- Inconsistent methodology by third-party stakeholders when calculating community benefit muddies the reporting waters.

AHA blog: Lown Institute once again cherry-picks data to fit their preconceived notions about hospitals

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THE WALL STREET JOURNAL.

A close-up photograph of a person wearing a white lab coat, with their face partially visible in the upper center. The background is dark and out of focus.

Big Hospitals Provide Skimpy Charity Care—Despite Billions in Tax Breaks

Nonprofit medical institutions get federal benefits in exchange for providing support to their communities but often lag behind their for-profit peers

State Focus Increases

- States focus on community benefit and tax-exempt hospital reporting requirements:
 - Oregon: 2019 HB 3076 – focus on community benefit floors
 - Colorado: 2023 HB 23-1243 – focus on public meetings
 - Illinois: 2021 SB 1840 – focus on uninsured individuals and financial assistance
 - Montana: 2023 HB 45 – focus on reporting of community benefit spending and community health needs assessments

State Focus Increases



https://www.communitybenefitinsight.org/?page=national_analysis.home

<https://hilltopinstitute.org/our-work/hospital-community-benefit/hospital-community-benefit-state-law-profiles/>

<https://hilltopinstitute.org/our-work/hospital-community-benefit/hcbp-state-comparison/>

Where We Are Today



United States Senate

WASHINGTON, DC 20510

August 7, 2023

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

The Honorable Edward T. Killen
Commissioner
Tax Exempt and Government
Entities Division
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Werfel and Commissioner Killen:

We write today regarding our concern over the growing amount of medical debt,¹ and the role your agencies can play in providing greater transparency and oversight into nonprofit hospitals, which hold a portion of this debt.²

Items for the IRS

1. Provide a list of the **most commonly reported community benefit activities** that qualified a nonprofit hospital for tax exemptions in FY2021 and FY2022. Please categorize by charity care, unreimbursed costs of Medicaid, community health improvement activities, professional development, other.
2. Describe the **updates the IRS has made since September 2020** to the instructions to Form 990 Schedule H to modify how community benefit information is identified and provided.
 - a. Describe the rationale for these updates to Form 990 Schedule H.
 - b. Describe how these updates to Form 990 Schedule H have improved clarity in reviewing community benefit information.
 - c. What additional updates did IRS consider in its review of Form 990?

Items for the IRS (continued)

3. How many hospitals did **IRS identify as “at risk” for noncompliance with the community benefit standard** since Spring 2021 when IRS implemented several of GAO’s recommendations related to establishing a well-documented process to identify hospitals “at risk” for noncompliance?
 - a. Describe how these changes impacted the effectiveness of reviewing hospitals’ community benefit activities.
4. Provide **a list of the nonprofit hospitals that the IRS referred to its audit division** for potential Patient Protection and Affordable Care Act (ACA) violations from FY2019 to FY2022.
 - a. How many of these hospitals were referred because of noncompliance issues related to the community benefit standard?
 - b. How many nonprofit hospitals reported no spending on community benefits in 2022?
5. Provide **a list of nonprofit hospitals that lost their tax-exemption** due to noncompliance with the community benefit standard since the full implementation of the ACA on January 1, 2014.

Items for the IRS (continued)

6. Provide a **list of nonprofit hospitals that had their IRS Form 990 rejected** for failing to meet requirements related to community benefit reporting.
7. Provide a **list of nonprofit hospitals that failed to file an annual Form 990** with the IRS between FY2019 to FY2022.
 - a. How many of these nonprofit hospitals were issued penalties for this failure?
 - b. How many of these nonprofit hospitals had their tax-exempt status revoked?
8. What other **challenges does the IRS face** in its ability to oversee tax-exempt hospitals?

Items for the Treasury

1. Determine whether the IRS is effectively ensuring that nonprofit hospitals comply with tax-exempt requirements and are **providing sufficient community benefit**.
2. Evaluate the **IRS' process for identifying hospitals "at risk" for noncompliance with the community benefit standard** and its resolution process to ensure future compliance.
3. Assess the **effectiveness of the IRS' controls to detect and prevent hospitals underinvestment in improving community health**.
4. Review and **assess the effectiveness of the community benefit standard**, as outlined in Rev. Rul. 69-545, in its ability to determine whether a hospital is organized and operated for the charitable purpose of promoting health.
5. Evaluate the **adjustments the IRS made to Form 990 Schedule H instructions** for transparency, consistency, and comprehensiveness in reporting.

Items for the Treasury (continued)

6. Evaluate the **existing standards for financial assistance policies and practices that reduce unnecessary medical debt** from patients who qualify for free or discounted care.
7. Review the effectiveness of IRS' efforts to ensure hospitals make “reasonable efforts” to **determine whether individuals are eligible for financial assistance before initiating extraordinary collection actions.**
8. Identify the pervasiveness of **nonprofit hospitals billing patients with “gross charges.”**
9. Identify the **challenges IRS faces in its ability to oversee tax-exempt hospitals.**

What Can Tax-Exempt Hospitals Do Now?

- State pressures
- Congressional pressures
- Third-party watchdogs
- ACCURACY



What Can Tax-Exempt Hospitals Do Now?

- Gather an internal team
 - Accounting/finance
 - Tax
 - Marketing
 - Development
 - Outreach
 - Community Benefit/Community Health
 - Research
 - Internal Audit
 - Education Director
 - Volunteer services

What Can Tax-Exempt Hospitals Do Now?

- Schedule focused meetings
 - Review Schedule H
 - Consider each line of community benefit
 - Historic
 - Current
- Fresh set of eyes



What Can Tax-Exempt Hospitals Do Now?

- Establish a process for gathering reportable items on Schedule H
 - Who, what, when and how to gather and document items
 - Identify all reportable programs
 - Tracking departments to analyze for subsidized health losses
 - Are these being reviewed annually?

What Can Tax-Exempt Hospitals Do Now?



- Establish a process for gathering reportable items on Schedule H
 - Actual expenses, not opportunity costs
 - Review cost accounting method for accuracy
 - Consider indirect costs



What Can Tax-Exempt Hospitals Do Now?

- Review other policies
 - Charity care and discounted care thresholds
 - Medicaid expansion impact

What Can Tax-Exempt Hospitals Do Now?

- Review financial assistance policy and process for determination
 - Opportunities to make sure we are categorizing care as charity on the front end
 - Presumptive basis decisions

What Can Tax-Exempt Hospitals Do Now?

- Consider current legal organizational structure
 - Where are community benefit activities occurring?
- Consider restrictive contributions

What Can Tax-Exempt Hospitals Do Now?

- Continuous internal education
 - Identify key departments and team members
 - Billing and collection personnel
 - Focus on community benefit culture

What Can Tax-Exempt Hospitals Do Now?



- Tell your story
 - Community benefit outside what is defined on Schedule H
 - Are you communicating this care and benefit?
 - Marketing focus on telling this story widely to the public



How can we HELP?





A national healthcare advisory services firm
providing consulting, audit, and tax services