

## *Changes to Safe Harbor not Offered in Health Care Reform Markup*

Two previously planned amendments that would have affected tax-exempt hospitals and other exempt organizations were not offered by Senator Charles Grassley for a vote as part of the Senate Finance Committee's markup of The America's Healthy Future Act.<sup>1</sup> These amendments had been filed for consideration in anticipation of the bill's markup, but Senator Grassley's office stated that with so many other amendments being considered, now might not be the appropriate time to offer them.<sup>2</sup>

The first amendment would have eliminated the rule detailed in HCC Topics' March 2009 issue ("[IRS Issues Report on Not-for-Profit Executive Compensation](#)") that a tax-exempt organization can create a "rebuttable presumption" of the reasonableness of their executive compensation packages by properly following particular procedures and documentation.<sup>3</sup> This amendment, while repealing the rebuttable presumption safe harbor, would have kept the due diligence procedure and documentation requirements.<sup>4</sup> The amendment would have also required exempt organizations to disclose a summary of comparables used in determining the executive's compensation.<sup>5</sup> The IRS had expressed concern in a study released in February of 2009 that despite widespread compliance with the "rebuttable presumption" rule, too wide of a discrepancy existed between executive compensation at different sized non-profit hospitals.<sup>6</sup>

The second amendment would have given the IRS explicit authority to scrutinize and oversee the management and governance of exempt organizations.<sup>7</sup> This amendment was not intended to add any items to the list of information requested by the IRS, but instead would have created statutory authority to support those information requests, eliminating any doubt of the IRS's authority to ask them.<sup>8</sup> The effect of such a measure

would be to preempt any potential legal challenges to that authority, something that Senator Grassley has expressed concern about based on the public statements and indications of some in the industry.<sup>9</sup>

The Senator's office stated that he is leaving the option open to include these amendments in a different bill at a later date.<sup>10</sup> Executive compensation in non-profits has been a subject of continued scrutiny, and the increasing profile of this issue indicates it will continue to remain a key issue for regulators in the future.

<sup>1</sup> "Exempt Organizations: Changes to Compensation Safe Harbor Not Offered in Health Care Reform Markup" by Diane Freda. 18 Health Law Reporter 1344. Bureau of National Affairs. Oct. 8, 2009.

<sup>2</sup> "Baucus Bill Omits Charity Care Minimums, But Grassley Proposal Raises New Concerns" by Diane Freda and Peyton Sturges. 18 Health Law Reporter 1247. Bureau of National Affairs. Sept. 24, 2009.

<sup>3</sup> "Baucus Bill Omits Charity Care Minimums, But Grassley Proposal Raises New Concerns" by Diane Freda and Peyton Sturges. 18 Health Law Reporter 1247. Bureau of National Affairs. Sept. 24, 2009.

<sup>4</sup> "Grassley Amendment #F-9" by Sen. Charles Grassley. Senate Finance Committee.

<http://finance.senate.gov/sitepages/leg/LEG%202009/091909%20AHFA%20Financing%20Amendments.pdf>. pp. 30. (Accessed 10/12/09).

<sup>5</sup> "Baucus Bill Omits Charity Care Minimums, But Grassley Proposal Raises New Concerns" by Diane Freda and Peyton Sturges. 18 Health Law Reporter 1247. Bureau of National Affairs. Sept. 24, 2009.

<sup>6</sup> "IRS Exempt Organizations Hospital Compliance Project Final Report," Internal Revenue Service, February 13, 2009, pp. 9-10, 169-170.

<sup>7</sup> "Baucus Bill Omits Charity Care Minimums, But Grassley Proposal Raises New Concerns" by Diane Freda and Peyton Sturges. 18 Health Law Reporter 1247. Bureau of National Affairs. Sept. 24, 2009.

<sup>8</sup> "Grassley Amendment #F-7" by Sen. Charles Grassley. Senate Finance Committee.

<http://finance.senate.gov/sitepages/leg/LEG%202009/091909%20AHFA%20Financing%20Amendments.pdf>. pp. 29. (Accessed 10/12/09).

<sup>9</sup> "Grassley Amendment #F-7" by Sen. Charles Grassley. Senate Finance Committee.

<http://finance.senate.gov/sitepages/leg/LEG%202009/091909%20AHFA%20Financing%20Amendments.pdf>. pp. 29. (Accessed 10/12/09).

<sup>10</sup> "Exempt Organizations: Changes to Compensation Safe Harbor Not Offered in Health Care Reform Markup" by Diane Freda. 18 Health Law Reporter 1344. Bureau of National Affairs. Oct. 8, 2009.



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