

IRS Proposes Requirements to Make Charitable Hospitals More “Charitable”

On April 5, 2013, the Internal Revenue Service (IRS) published a proposed rule regarding certain requirements for tax exempt hospitals to conduct Community Health Needs Assessments (CHNA).¹ These provisions were made as a part of the 2010 Patient Protection and Affordable Care Act (ACA) in an effort to increase community-based preventive public health services, e.g., weight loss clinics, smoking cessation programs, in lieu of charity medical care.²

The approximately 2,900 tax exempt hospitals across the U.S. receive an estimated \$13 billion in tax benefits annually.³ However, a recent study utilizing 2009 IRS data for more than 1800 charitable hospitals indicated that the level of community benefits provided varied significantly, i.e., from 1.1% to 20.1% of the hospital’s operating expenses. Hospitals spent an average of only 7.5% of operating expenses on community benefits. Of this amount, 85.3% was spent on patient care services and only 5.3% on community health improvement.⁴

In March 2013, the City of Pittsburgh brought forth a civil action complaint against the University of Pittsburgh Medical Center (UPMC) alleging that UPMC failed to meet the criteria to qualify as an *Institution of Purely Public Charity* (IPPC). Included in the list of allegations were that UPMC: (1) subsidized for-profit enterprises in lieu of supporting charitable activities; (2) replaced hospitals in underserved, poor communities with those in areas of higher socioeconomic status; and, (3) paid unreasonable compensation and benefits to UPMC officers, not consistent with the charitable status of UPMC.⁵ UPMC, comprised of more than 20 hospitals, 400 outpatient sites, and over 50,000 employees, boasted annual compensation exceeding \$1 million for over 20 employees in fiscal year 2011, with the highest-paid—UPMC President and CEO Jeffrey Romoff—paid an annual salary of over \$5.9 million.⁶

Previously, tax-exempt hospitals were only required to submit to the IRS a list of community benefits provided on an annual basis.⁷ However, under the the recent proposed rule, hospitals will also be required to conduct and widely publicize the results of a CHNA at least every 3 years, and develop an implementation strategy to address identified community health needs found in the CHNA, to be filed with the Form 990 on an annual basis. The new regulations would go into effect for every tax year after March 23, 2012.⁸

Consequences for failing to adhere to the regulations result in revocation of a facility’s tax exempt status, after a thorough review, as well as any other applicable penalties published in prior rules. In addition, an excise tax may be applied to those tax-exempt hospitals that fail to complete a CHNA under the proposed rule. All rulings and investigations of misconduct will be conducted for hospitals on a case-by-case basis, regardless of hospital subsidy or system ownership, i.e., a tax-exempt health system would retain charitable status, if only one hospital has tax-exempt status revoked.⁹

The provisions detailed in the April 5 proposed rule, while more demanding than previous regulations, were designed to allow charitable hospitals to retain the flexibility of identifying and choosing the method(s) by which to address those particular community needs that are prioritized in the CHNA.¹⁰ Despite this relative “freedom,” it is anticipated that the provision of the proposed regulations would result in greater transparency in the conduct of tax-exempt hospitals, and may have the potential to positively impact healthcare costs and consumer access to healthcare as well.

¹ “Community Needs Assessments for Charitable Hospitals: Notice of Proposed Rulemaking”, Internal Revenue Service, April 5, 2013, 26 CFR Parts 1 and 53, p. 1

² “What Tax Exempt Hospitals Owe Their Communities”, by the editors, Bloomberg, April 24, 2013, <http://mobile.bloomberg.com/news/2013-04-24/what-tax-exempt-hospitals-owe-their-communities.html#footer-container> (Accessed 5/2/2013)

³ *Ibid*, Bloomberg, April 24, 2013

⁴ “Provision of Community Benefits by Tax-Exempt U.S. Hospitals”, by Gary J. Young et al., *New England Journal of Medicine*, April 18, 2013, Vol. 368, p. 1522-1523

⁵ “City of Pittsburgh v UPMC” Court of Common Pleas of Allegheny County, Pennsylvania, No. GD-13 (March 2013), p.5

⁶ *Ibid*, p. 1, 5; “CEO Romoff Remains Top UPMC Wage Earner”, Peter Hart, *University Times* (University of Pittsburgh publication), May 17, 2012, Vol. 44, Issue 18, <http://www.utimes.pitt.edu/?p=21317> (Accessed 5/2/2013)

⁷ *Ibid*, Bloomberg, April 24, 2013

⁸ “Treasury Releases Proposed Guidance for Charitable Hospitals Performing Community Health Needs Assessments”, U.S. Department of the Treasury, April 5, 2013, <http://www.treasury.gov/connect/blog/Documents/Treasury%20ACA%20Charitable%20Hospitals%20Fact%20Sheet.pdf> (Accessed 5/14/13), p. 1

⁹ *Ibid*, p. 1-2

¹⁰ *Ibid*, Internal Revenue Service, April 5, 2013, p. 10



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