

Senate Proposes Minimum Charity Care Requirements

As discussed in the February 2009 Issue of *Health Capital Topics*, top ranking Republican on the Senate Finance Committee, Chuck Grassley (Iowa) stated his intention to introduce legislation that set minimum requirements for charity care that must be met in order for hospitals to maintain their 501(c)(3) status. The Senate Finance Committee released its second healthcare reform document in May 2009, which included a recommendation for minimum charity care requirements for non-profit hospitals.¹

Currently, non-profit hospitals are exempt from federal and state tax, receive tax-exempt financing, and are able to accept charitable (tax-deductible) donations. Many hospitals' 501(c)(3) status is granted because of the hospitals' mission to serve indigent populations. However, there is no requirement for a minimum level of charity care or community benefit that must be provided in order for hospitals to maintain their current non-profit status. Revenue Ruling 69-545 provided parameters to help define "community benefit," including providing care to all patients regardless of their ability to pay. Non-profit hospitals also complete Schedule H of Form 990 which provides information on the hospital's mission, programs, community benefit, and charity care programs. Additionally, Form 990 requires reporting on executive compensation practices.² While Form 990 is intended to solidify charity care practices at non-profit hospitals, it does not provide a minimum standard that must be applied in order to maintain 501(c)(3) status.

The Senate Finance Committee's May 2009 proposal would require non-profit hospitals to: (1) treat all patients regardless of ability to pay; (2) conduct regular community needs assessments; (3) provide a minimum level of charity care; and, (4) follow certain guidelines prior to sending patients to collections for overdue hospital bills. The proposal exempts hospitals "that are critical to the communities they service or which have an independent basis for tax exemption (e.g., an educational or scientific research organization)" from providing a minimum level of charity care. Additionally, the proposal calls for immediate sanctions that would stimulate compliance with the new requirements.³

The proposal has received opposition from several nonprofit hospitals organizations. In a letter to the

Senate, the Catholic Health Association (CHA), stated that certain of the Senate's concerns cited in the proposal did not need to be addressed by creation of additional federal legislation, including: (1) community needs analyses, which are already conducted and need not be mandated by federal legislation; (2) provisions to mandate care to all patients regardless of ability to pay as this is already mandated by EMTALA; and, (3) procedures that must take place prior to sending patients to collections as these are already discussed in the Form 990. Further, the CHA called the legislation premature as current healthcare reform efforts will likely expand access to healthcare and may therefore reduce the amount of charity care needed by indigent populations. Setting a charity care standard prior to any healthcare reform legislation may set the benchmark too high. Finally, the CHA contended that setting a minimum dollar amount on charity care services ignores the value of such services as certain low cost programs may be more effective and extensive than other, more expensive programs.⁴ The American Hospital Association (AHA) expressed similar concerns, stating that many of the "requirements" in the Senate's proposal are already addressed in other legislation or Form 990. The AHA suggested that the IRS and Senate should instead review those forms prior to creating new federal legislation. Additionally, the AHA stated that hospitals should not be forced to meet a minimum level of charity care and should instead continue to operate under the current community benefit standard as doing so allows hospitals to address the needs of their local communities.⁵

¹ "Description of Policy Options: Financing Comprehensive Healthcare Reform: Proposed Health System Savings and Revenue Options," United States Senate, Finance Committee, May 20, 2009, p.31-34

² "Exempt Organizations Work Plan, 2009" Internal Revenue Service, November 25, 2008, p. 10, http://www.irs.gov/pub/irs-tege/finalannualrptworkplan11_25_08.pdf; "Grassley Considering Legislation to Establish Charity Care Standards for Exempt hospitals," BNA's Health Law Reported, December 25, 2008

³ "Description of Policy Options: Financing Comprehensive Healthcare Reform: Proposed Health System Savings and Revenue Options," United States Senate, Finance Committee, May 20, 2009, p. 33-34

⁴ "Letter to Senate," the Catholic Health Association of the United States, May 27, 2009, p. 3-5, http://www.chausa.org/NR/rdonlyres/2BE2CAB9-65A5-45B9-BCAD-28DE8EE630F5/0/090527_SFCpaperFinancingHealthCareReform.pdf (Accessed 6/22/09)

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⁵ “Schedule H Filings Will Provide Clearer Picture of Community Benefit,” American Hospital Association, AHA News Now, June 8, 2009, http://www.ahanews.com/ahanews_app/jsp/display.jsp?dcrpath=AHA

NEWS/AHANewsArticle/data/AHA_News_090608_scheduleH&domain=AHANEWS (Accessed 6/22/09)



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