



Community Benefit Briefing

July 2012

Through news updates, state research and policy analysis, and policy questions, this newsletter is meant to assist state and local policymakers to understand and monitor hospital community benefit activities. The Community Benefit Briefing will report, discuss, and analyze various aspects of hospital community benefits, including the effects of the Affordable Care Act (ACA). The information in this newsletter is provided for informational purposes only and is not intended as legal advice. The Hilltop Institute does not enter into attorney-client relationships.

News

In this edition, we discuss new developments in [activities at the federal level](#), [state tax exemption and charity care requirements](#), [community benefit reporting](#), and [community health needs assessment](#).

Activities at the Federal Level

Community Benefit Regulations Proposed

More than two years after the ACA became law (and on the last business day before the Supreme Court upheld it¹), the IRS released a Notice of Proposed Rulemaking (NPRM), interpreting key provisions of ACA §9007, “Additional Requirements for Charitable Hospitals.” The proposed rules clarify many of the law’s ambiguities with respect to financial assistance policies, limitations on charges, and billing and collection requirements under [I.R.C. §501\(r\)\(4\)-\(6\)](#).

The proposed rules do not address the community health needs assessment (CHNA) requirement of I.R.C. §501(r)(3), but the preamble to the NPRM indicates that hospital organizations may “continue to rely” on the “anticipated regulatory provisions described in Notice 2011-52” with respect to needs assessments “made widely available to the public, and any implementation strategy adopted until six months after IRS has issued further guidance regarding community health needs assessment” ([77 Fed. Reg. 38148, 38151 \(June 26, 2012\)](#)). Nor do the proposed rules address the consequences of noncompliance with §501(r) requirements, indicating that this will be addressed in a separate guidance ([77 Fed. Reg. 38148, 38149-51 \(June 26, 2012\)](#)).

¹ With the exception of mandatory Medicaid expansion, *National Federation of Independent Business v. Sebelius*, No. 11-393, U.S. Supreme Court (June 28, 2012) upheld the constitutionality of the Affordable Care Act.

For a comprehensive analysis of the provisions of the proposed rules, see Sara Rosenbaum's article "[Update: Financial Assistance Policies for Nonprofit Hospitals that Seek Federal Tax-Exempt Status](#)" in *Health Reform GPS*.

Highlights of the NPRM

On Hospital Financial Assistance Policies (FAPs)

- Specifies what a hospital's FAP must include, such as:
 - A description of all financial assistance programs the hospital offers, and the eligibility criteria for each program
 - The basis for calculating amounts charged to patients
 - How to apply for financial assistance
 - Actions the hospital may take in the event of nonpayment
 - Measures to widely publicize the FAP in the community
- Provides guidance as to how a hospital may comply with the requirement that it "widely publicize" its FAP (proposed 26 C.F.R. §1.501(r)-4(b)(5), at 38164)

On Limitation on Charges

- Clarifies the meanings of "amounts generally billed" and "gross charges," and sets forth acceptable methodologies for calculating amounts generally billed (proposed 26 C.F.R. § 1.501(r)-5, at 38165-66)

On Billing and Collection

- Defines "extraordinary collection actions" as including (but not limited to) the sale of an individual's debt to a third party, reporting adverse information to a credit agency, or any actions that require a legal or judicial process, such as establishing a lien or foreclosing an individual's property, seizing bank accounts, initiating a civil action, causing an individual's arrest, or garnishing an individual's wages (proposed 26 C.F.R. § 1.501(r)-6(b), at 38166)
- Clarifies what hospital actions are required to satisfy the requirement that a hospital make a "reasonable effort" to determine an individual's eligibility for financial assistance before engaging in extraordinary collection actions (proposed 26 C.F.R. § 1.501(r)-6(c), at 38166)

Congressional Oversight Activity on Charitable Organizations

The House Ways and Means Oversight Subcommittee has begun a series of hearings focusing on tax-exempt organizations, including nonprofit hospitals. Issues to be examined by the Subcommittee include the Form 990 redesign, the IRS compliance initiative regarding universities, tax-exempt entities' organization and governance, and recent tax code changes affecting charitable organizations. Witnesses at the first hearing on May 16, 2012, included representatives of public charities, universities, and nonprofit hospitals. [Read the testimonies>>](#)

[A second hearing](#) focusing on organizational and compliance issues relating to public charities, their organizational structures, and “whether the newly redesigned Form 990 is promoting increased compliance and transparency” was held July 25, 2012.

State Tax Exemption/Charity Care Requirements

States continue to examine how nonprofit organizations—notably hospitals—are fulfilling their community benefit obligations as institutions of public charity. Recently, Illinois and Montana addressed this issue in different ways.

Illinois joined **Pennsylvania**,² **Texas**,³ and **Utah**⁴ in establishing a minimum charity care requirement (SB 3261, 2012 Ill. Pub. L. No. 97-0690). This new Illinois law requires both nonprofit and for-profit hospitals to provide charity care to individuals with family income below specified levels. A second new Illinois law establishes standards for nonprofit hospitals’ property and sales and use tax exemptions that require nonprofit hospitals seeking exemption to provide specified services and activities at levels at least equivalent to what the hospital otherwise would be required to pay in property taxes. For-profit hospitals would receive an income tax credit for charity care services, up to the amount of their property tax liability (SB 2194, 2012 Ill. Pub. L. No. 97-0688). [Read about Illinois’ minimum charity care requirement>>](#) [See the property and sales and use tax exemption standards>>](#)

For more information on minimum expenditure requirements in Pennsylvania, Texas, and Utah, see the [June 2011 edition of the Community Benefit Briefing](#).

Montana’s Legislative Services Division is conducting a four-phase study of Montana’s income and property tax exemptions for nonprofit corporations to determine whether these tax exemptions are justified. The tax treatment of hospitals is expected to play a significant role in the study, which is scheduled for completion by September 15, 2012. [Learn more>>](#)

Community Benefit Reporting

Maryland established a new community benefit reporting requirement (Md. Code Ann., Health-Gen. §19-303(c)(vii)). Nonprofit hospitals are required to describe efforts to track and reduce health disparities within their communities. [Read more>>](#)

Community Health Needs Assessment

Stemming from ACA requirements that nonprofit hospitals assess, document, and address their communities’ health needs, some hospital organizations are adopting collaborative approaches to conducting CHNAs on a cross-jurisdictional or system-wide basis.

² 10 Pa. Cons. Stat. Ann. §§371-85

³ Tex. Health & Safety Code Ann. §§ 311.031-.048

⁴ Utah State Tax Commission. (2011, May). *Property Tax Exemption Standards of Practice: Appendix 2D*. Retrieved from <http://propertytax.utah.gov/library/pdf/standards/standardo2.pdf>

In Oregon, a four-county (Washington, Multnomah, Clackamas, and Clark) CHNA, driven by the state's hospital association and facilitated by Multnomah County, will allow hospitals within the four-county region to draw on the specific strengths and resources of each participating facility. [Learn more about Oregon's CHNA process>>](#) [Read about the selection of Multnomah County as facilitator of the four-county CHNA>>](#)

A **Maryland** hospital system—Medstar Health—has conducted its first system-wide CHNA. Each of the system's nine hospitals convened an advisory task force of public stakeholders, which provided recommendations on what each hospital should identify as its community benefit service area (CBSA) and community benefit health priorities. Based on these recommendations, each hospital identified its CBSA and related health priorities and developed an implementation strategy that was endorsed by the strategic planning committee of the system's board of directors. [Read more>>](#)

Publication of Note

Investing in America's Health

The Trust for America's Health March 2012 *Investing in America's Health: A State-by-State Look at Public Health Funding and Key Health Facts* reports on the levels of public health funding and key health statistics by state, identifies the public health obligations of federal and state governments, and catalogues examples of "prevention in action"—local programs across the country that aim to reduce preventable illness. A key premise of the report is that residence should not determine health status. The report recommends increasing the funding of core public health functions and making funding decisions transparent and targeted to maximize the effectiveness of these investments in lowering disease rates and improving health. Go to <http://healthyamericans.org/assets/files/Investing.pdf>.

Upcoming Webinars

County Health Rankings and Roadmaps "Take Action" series, 3:00 – 4:00pm EST,
<http://www.countyhealthrankings.org/media-library>

- Choose Effective Policies and Programs – August 14, 2012
- Choose Effective Policies and Programs In-Depth – August 28, 2012
- Act on What's Important – September 11, 2012
- Act on What's Important In-Depth – September 25, 2012
- Evaluate Actions – October 9, 2012

Archived Webinar Related to Supreme Court's Decision on the Affordable Care Act

National Academy for State Health Policy (NASHP)

- *The Curtain Rises on the Next Act: Implications of the Supreme Court's ACA Decision.* July 9, 2012.
<http://www.nashp.org/webinar/curtain-rises-next-act-state-implications-supreme-courts-aca-decision>

Upcoming Conferences

Network for Public Health Law

Practical Approaches to Critical Challenges, October 10 – 12, 2012, Atlanta, GA

This event will provide participants with a broad examination of legal approaches for addressing public health issues. For more information and registration, go to

http://www.networkforphl.org/network_resources/public_health_law_conference_2012/

Catholic Health Association

Community Benefit 101: The Nuts and Bolts of Planning and Reporting Community Benefit, October 16 – 17, 2012, St. Louis, MO

This event will provide participants with a broad overview of how community benefit is defined (at the federal and state level) and demonstrates the organizational mission; steps to develop and implement community benefit programs; and policies needed to support community benefit programs. For more information and registration, go to

http://www.chausa.org/Pages/Events/Programs/Community_Benefit_101/Overview/.

The Hilltop Institute at the University of Maryland, Baltimore County (UMBC) is a nationally recognized policy and research center dedicated to improving the health and wellbeing of vulnerable populations. Hilltop conducts research, analysis, and evaluations on behalf of government agencies, foundations, and nonprofit organizations at the national, state, and local levels.

***Hilltop's Hospital Community Benefit Program** is the central resource created specifically for state and local policymakers who seek to assure that tax-exempt hospital community benefit activities are responsive to pressing community health needs. The program provides tools to state and local health departments, hospital regulators, legislators, revenue collection and budgeting agencies, and hospitals, as these stakeholders develop approaches that will best suit their communities and work toward a more accessible, coordinated, and effective community health system. The program is funded for three years through the generous sponsorship of the Robert Wood Johnson Foundation (www.rwjf.org) and the Kresge Foundation (www.kresge.org).*

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