Hospital Community Benefit Program

The Hilltop Institute

analysis to advance the health of vulnerable populations

Community Benefit Briefing

May 2013

With news updates, research, and policy analysis, the Community Benefit Briefing *provides timely information for state and local policymakers and others interested in community benefit-related legislative and regulatory activity, as well as other significant developments at the federal, state and local levels. The* Community Benefit Briefing *is provided for informational purposes only and does not provide legal advice. The Hilltop Institute does not enter into attorney-client relationships.*

In This Issue

News

Community Benefit State Law Profiles and Hospital Community Benefits after the ACA: The State Law Landscape Released

Launched last month by Hilltop's Hospital Community Benefit Program, the Community Benefit State Law Profiles present an open-access online resource that provides comprehensive analysis of each state's community benefit landscape as defined by its laws, regulations, tax exemptions, and, in some cases, policies and activities of state executive agencies. In addition, the Profiles identify tax exemptions available to nonprofit hospitals in most states, and link directly to each statute, regulation, or other online resource supporting the analysis. The Profiles and a companion brief, *Hospital Community Benefits after the ACA: The State Law Landscape*, examine state community benefit requirements organized into eight categories reflecting those of §501(r) of the Internal Revenue Code:

- Community benefit requirement
- Minimum community benefit requirement
- Community benefit reporting requirement

- Community health needs assessment
- Community benefit plan/implementation strategy
- Financial assistance policy
- Financial assistance policy dissemination
- Limitations on charges, billing, and collections

As state policymakers and community stakeholders assess their state's community benefit environment in the wake of national health reform, the Profiles provide a context for consideration of these policies and those of other states in comparison to federal community benefit benchmarks.

Treasury/IRS Notice of Proposed Rulemaking Published

On April 5, 2013, the Treasury Department and the Internal Revenue Service (IRS) published a Notice of Proposed Rulemaking (NPRM) that adds to and modifies the agency's earlier guidance, Notice 2011-52 and the 2012 Treasury/IRS NPRM. The new proposed rule interprets key provisions of §9007 of the ACA, §501(r) of the Internal Revenue Code, focusing on those concerning community health needs assessments and implementation strategies. It advances federal policy for inclusive and transparent community health needs assessment (CHNA) processes, collaboration among hospital facilities, flexibility, and accountability. Highlights of the NPRM include provisions:

- Clarifying that a hospital may not, for purposes of its CHNA, define the community it serves in a way that excludes "medically underserved" populations. However, a hospital may define its community to include populations in addition to those it serves and include geographic areas outside its service area.
- Establishing specific adequacy standards for public and expert input into the CHNA process. At a minimum, a hospital must take into account input from a state, local, tribal, or regional public health department or equivalent; members of the community's medically underserved, low-income, and minority populations or individuals/organizations serving or representing the interests of these populations; and written comments received on the hospital's most recent CHNA and implementation strategy.
- Permitting collaborating hospital facilities to submit a joint CHNA report if each adopts the same community definition, the CHNA is conducted jointly, the joint CHNA report clearly identifies the hospital facilities to which it applies, and an authorized body of each hospital facility adopts the CHNA report for its facility.
- Permitting collaborating hospital facilities that adopt a joint CHNA report to also adopt a joint implementation strategy, provided it clearly identifies the hospitals to which it applies, identifies their roles and responsibilities, and includes a summary identifying which parts of the joint implementation strategy relate to each hospital facility.

- Clarifying how a hospital makes its CHNA report "widely available to the public" and requiring that the report remain available until two subsequent CHNA reports have been made public.
- Clarifying that an implementation strategy must be adopted by the end of the same taxable year in which a hospital makes its CHNA "widely available to the public" and providing that the release of a CHNA report marked "draft" will not be considered to have been made widely available to the public.

Written comments and requests for a public hearing must be received by the IRS by July 5, 2013.

Pittsburgh, Pennsylvania Challenges UPMC's Tax-Exempt Status

The city of Pittsburgh has filed suit against the University of Pittsburgh Medical Center (UPMC) to compel it to pay payroll taxes. The regional medical center is the city's largest employer and Allegheny County's largest nonprofit land owner. The city's complaint argues that UPMC is not an "institution of purely public charity" (IPPC) because it fails to satisfy each of the five elements of the "HUP" test articulated by the Pennsylvania Supreme Court in *Hospital Utilization Project v. Commonwealth*, 507 Pa. 1 (1985):

- Advancing a charitable purpose
- Providing a substantial portion of its services without charge
- Benefitting a "substantial and indefinite" class of persons who are "legitimate subjects of charity"
- Relieving government burden
- Operating "entirely free of profit motive"

A legal memorandum prepared for the City Solicitor states that UPMC fails to meet at least three of these five criteria (Strassburger McKenna Gutnick & Gefsky, 3/5/13). UPMC counters that the $622 million in charity care and other community benefits it provided in 2012 is more than adequate to support its tax-exempt status, that it pays taxes on roughly half of its property, and that the remainder is hospital property that is "unquestionably" tax exempt (TribLive, 3/20/13). Pittsburgh Mayor Ravenstahl estimates that a successful challenge to UPMC's exemption from both payroll and property tax would mean $20 million in additional annual revenues for the city (WTAE Pittsburgh, 3/20/13).

This tax exemption controversy in Pittsburgh is reminiscent of the issues addressed by the Illinois Supreme Court in *Provena Covenant Medical Center v. Department of Revenue* (236 Ill. 2d 368; 925 N.E.2d 1131 (2010). *Provena* sparked a national discussion of whether property owned by a charitable organization is being "used exclusively for charitable purposes"—the standard for property tax exemption in effect when the case was decided. Illinois overhauled its statutory criteria for hospital

property tax exemption in 2012. For more information on Illinois' new tax exemption standards, see the *July 2012 issue of Community Benefit Briefing*.

California Health Facilities Community Benefit Bill Amended

As introduced, AB No.975 would have amended California's Revenue and Taxation Code to require private nonprofit hospitals and nonprofit multispecialty clinics to provide, as a condition of nonprofit status and property tax exemption, a minimum level of charity care equivalent to 5 percent of their net revenue. The minimum requirement was amended out of the bill in committee. At present, only five states—Illinois, Nevada, Pennsylvania, Texas, and Utah—require tax-exempt hospitals to provide a specified minimum amount of charity care or other community benefits.

The amended bill would modify California's Health and Safety Code to:

- Establish new community benefit requirements for nonprofit hospitals and nonprofit multispecialty clinics relating to needs assessment, community input, community benefit plans, and transparency
- Require nonprofit hospitals and nonprofit multispecialty clinics to file their federal 990 forms with the Office of Statewide Health Planning and Development (OSHPD), which will post them on the OSHPD website
- Define "community benefits" to include community building activities
- Require the OSHPD to formulate community benefit reporting standards similar to those required at the federal level, develop a standardized methodology for estimating the economic value of community benefits, and issue a report to the public of the aggregated amount of community benefits reported annually by nonprofit hospitals and multispecialty clinics

At the time of this writing, the amended bill remained in committee, following a public hearing on April 29, 2013.

Hospital Financial Assistance Rules Proposed in Illinois

In March, the Illinois Office of the Attorney General proposed rules requiring hospitals to include specifically-prescribed language in financial assistance applications. For example, the proposed rules require financial assistance applications to include an opening statement advising applicants that they may be eligible for free or discounted care and that they are not required to provide a Social Security number. A required certification at the end of the document must include the text that the rule prescribes, and none other (proposed 77 Ill. Adm. Code §4500.30(a), (h); 37 Ill. Reg. 2626-30 (March 8, 2013)).

The proposed rules also require hospitals to develop a "Presumptive Eligibility Policy" requiring an initial eligibility determination "without further scrutiny by the hospital." The following specified

categories of patients must be included in the policy's criteria (proposed 77 Ill. Adm. Code §4500.40; 37 Ill. Reg. 2630-33 (March 8, 2013)):

- Homeless
- Deceased, with no estate
- Mentally incapacitated, with no one to act on their behalf
- Medicaid-eligible, but not enrolled on the date of service or for a non-covered service

Illinois' Hospital Uninsured Patient Discount Act was amended in 2012 to require hospitals to provide free or discounted care based on hospital type and family income to patients who have submitted an application for financial assistance.

2013 County Health Rankings Released

County Health Rankings & Roadmaps, a joint project of the Robert Wood Johnson Foundation (RWJF) and the University of Wisconsin Population Health Institute, released its 2013 County Health Rankings on March 20. The 2013 rankings feature new analytical tools, including county-level trend graphs that allow users to view changes over time with regard to specific factors shown to influence health status. These factors include teen birth rates, childhood poverty, smoking rates, obesity levels, high school graduation and college attendance rates, and access to physicians and dentists. View the 2013 County Health Rankings. View the archived March 27 webinar for an overview of the program and new features.

Notable New Resources

Provision of Community Benefits by Tax-Exempt U.S. Hospitals

A special report published in the April 18, 2013 issue of the New England Journal of Medicine presents community benefit expenditure data reported to the IRS by over 1800 tax-exempt hospitals for their 2009 tax years. Author Gary Young (of the Northeastern University Center for Health Policy and Healthcare Research) and colleagues reported substantial variation in community benefit spending among the hospitals studied. In the aggregate, community benefit expenditures amounted to 7.5 percent of operating expenses, of which over 85 percent was directed to charity care and the provision of clinical services. Only 5 percent was directed to initiatives in which hospitals participated directly in community health improvement efforts.

A Healthier America 2013: Strategies to Move from Sick Care to Health Care in Four Years

A new report from Trust for America's Health (TFAH) outlines policy approaches responding to evidence that:

- Most Americans live with one or more serious chronic conditions, most of which are preventable

- Today's children may become the first American generation to live shorter and less healthy lives than their parents

A section of the report titled "Partner with Nonprofit Hospitals to Maximize Community Benefit Programs' Impact on Prevention" recognizes hospital community benefit programs as important prevention vehicles. It calls on hospitals to engage in cross-sector collaborations to provide preventive services, promote healthy and safe community environments, foster community empowerment, and eliminate health disparities.

Hospitals Building Healthier Communities: Embracing the Anchor Mission

A new report by The Democracy Collaborative at the University of Maryland provides an in-depth look at six hospitals in five cities that are rethinking their economic and community engagement strategies. These hospitals have recognized that improving health is more than just treating the patients who come through their doors; they are beginning to adopt an "anchor institution mission" that can help build not only more prosperous but also healthier communities. Author David Zuckerman presents detailed case studies and other best practices from across the nation that are intended to expand the anchor institution conversation and encourage new strategic economic approaches by not just hospitals but also local philanthropy, community-based organizations, and policymakers.

Upcoming Events

Webinar: The Proposed Rule for the Community Health Needs Assessment Requirement in the Affordable Care Act – What's New?

May 7, 2013, Noon - 1:30 p.m. EDT

This webinar will provide an overview of the recent IRS proposed rule, released April 5th, implementing the community health needs assessment (CHNA) requirements of the ACA. As discussed in this newsletter, the proposed rule includes important modifications and clarifications to guidance previously published in Notice 2011-52 and in the 2012 Treasury/IRS NPRM. Preston Quesenberry of the IRS, one of the proposed rule's primary authors, will provide a review and take questions from participants. The webinar is free to CHA and VHA members. For other registrants, registration is $60. To register for this event, click here.

Webinar: Built Environment Approaches for Improving Community Health

May 9, 2013, 1:30 p.m.–2:30 p.m. EDT

This free webinar presented by the American Public Health Association examines how two counties approached changing "the built environment"—human-made features of neighborhoods and communities where we live, learn, work, and play—to increase physical activity levels, improve access to healthy food, and modify transportation behaviors for better population health outcomes.

Public health and development officials from Kane County, Illinois and Manatee County, Florida will describe how they utilized land use, transportation, and public works policy levers to improve population health in their communities. Registration is required.

Academy Health Annual Research Meeting

June 23 – 25, 2013, Baltimore, MD

Hilltop's Hospital Community Benefit Program Director Martha Somerville will participate in a panel discussion on community health needs assessment. In addition, she and Policy Analyst Gayle Nelson will present a poster on the Community Benefit State Law Profiles. Click here for more information.

NACCHO Annual 2013

July 10-12, 2013, Dallas, TX

Public Health by the Numbers. Our Story. Our Time. Our Future.

NACCHO Annual 2013 will provide an interactive setting for local health officials and their public health partners from around the country to examine strategies, share ideas, and plan actions for sustaining or reinventing their organizations. Attendees will discover how to address preventing the leading causes of death, examine the effective use of data across all operational aspects of a public health agency, and discover how to maximize organizational performance, influence policy, and maintain fiscal sustainability. Hilltop's Hospital Community Benefit Program will be presenting a poster at the conference on the Community Benefit State Law Profiles. To register, go to http://www.nacchoannual.org/register/.

The Hilltop Institute at UMBC is a non-partisan health research organization—with an expertise in Medicaid and in improving publicly financed health care systems—dedicated to advancing 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 is committed to addressing complex issues through informed, objective, and innovative research and analysis.

Hilltop's Hospital Community Benefit Program is a central resource created specifically for state and local policymakers who seek to ensure 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 together for improved population health and a more accessible, coordinated, and equitable 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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