

# WHAT WILL HEALTH CARE LEGISLATION HOLD FOR NONPROFIT HOSPITALS?

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**Nonprofit health care institutions should provide extensive explanations of the benefits they provide, lest they be seen as not charitable enough.**

The tax-exempt health care community seems to have dodged the prospect of any immediate, statutorily imposed charitable care requirement. There has been much speculation regarding whether nonprofit health care organizations would be subjected to additional regulation and perhaps excise taxes. Several government studies have questioned whether nonprofit hospitals operate any differently than for-profit hospitals. Thus, extensive thought and discussion has been centered around whether nonprofit hospitals need further statutory requirements.

The broad parameters of the policies under consideration have included codification of the "community benefit" standard. This standard dates back to Rev. Rul. 69-545, 1969-2 CB 117, which established a subjective facts-and-circumstances test to determine whether a hospital or other health care entity is operated for a valid charitable purpose. If the IRS determines the entity is not sufficiently benefiting the community, the only recourse under current law is revocation of the entity's exempt status. That draconian step has rarely been taken. However, health care reform could change the available sanctions, either in this round of legislation or in the inevitable follow-up as Congress works to find a solution to the current health care crisis. The end result could be to impose

more precise parameters on health care institutions to document that they have met the community benefit standard, with intermediate sanctions imposed in the form of excise taxes if the community benefit standard is not met.

The options broadly proposed last May by the Senate Finance Committee included codifying organizational and operational requirements that Section 501(c)(3) hospitals regularly conduct a community needs analysis, provide a minimum annual level of charitable patient care, not refuse service based on a patient's inability to pay, and not pursue collection actions quickly or aggressively against qualifying patients.<sup>1</sup> For those hospitals unable to meet the standards, intermediate sanctions in the form of excise taxes would be imposed where revocation is deemed inappropriate.

The bill offered by Senate Finance Committee Chairman Max Baucus (D-Mont.) on 9/16/09 did not include a 5% minimum charity care provision, but did require an additional "community health needs assessment," additional transparency reporting with penalties for failure to comply, and imposed limitations on nonprofit hospitals' billing practices. A final bill is not likely to expand on this, although the earlier proposals released by the Finance Committee may reappear in subsequent bills.

There is some suggestion that if the percentage of the population without health insurance was reduced,

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