

## Hospitals

### Lawmakers Keep Up the Pressure on Tax-Exempt Hospitals

Amped up Republican lawmaker pressure on nonprofit hospitals and how they are monitored by the IRS is expected to stop short of leading to legislative changes for the near future.

Nonprofit hospitals have faced scrutiny in recent years, including allegations of cherry-picking insured patients over other patients and not meeting certain community benefit standards, including providing charity care, which are required to maintain tax-exempt status. These concerns have led to numerous inquiries by lawmakers who question whether the hospitals are doing enough to maintain their tax exempt status. Also under the microscope is the IRS and how it's watching the hospitals to ensure they provide sufficient benefits to their communities.

Lindsay Bealor Greenleaf, director at the health reimbursement and policy consulting firm ADVI, said the tax exemption status for nonprofit hospitals might be ripe for changes. "These tax exemptions are under constant scrutiny because billions are spent every year on these tax breaks," she told Bloomberg Law. "There is a sense among some that that bar is set pretty low for these hospitals to qualify for these tax exemptions."

Any changes to tax status for nonprofit hospitals could have a large impact across the U.S. health-care system, in terms of cutting benefits to communities and raising tax revenues. Nearly 60 percent of the 4,840 community hospitals in the U.S. are nonprofit, according to the American Hospital Association. For-profit hospitals make up another 20 percent of U.S. hospitals, and state or local government-owned hospitals make up the remainder.

The exact amount of tax dollars forgone as a result of hospital tax exemptions has been hard to pin down, but available data seems to support the conclusion that exempt hospitals give back more than they receive. An analysis by Ernst and Young, released by the American Hospital Association in October 2017, pinned the amount at about \$6 billion in 2013. Sara Rosenbaum, a health policy and law professor at George Washington University, looking at 2011 data, put the number closer to \$25 billion. Estimates of the value of nonprofit hospitals' contributions to their communities came in closer, with Ernst and Young calculating a \$67.4 billion benefit for 2013 and Rosenbaum estimating it at \$62.4 billion in 2011.

**Nonprofit Probes** The latest salvo from lawmakers over hospitals' tax-exempt status came in a letter to the Internal Revenue Service by Sens. Orrin Hatch (R-Utah) chairman of the Senate Finance Committee, and Sen. Charles Grassley (R-Iowa). The senators asked Acting IRS Commissioner David Kautter Feb. 15 for details regarding the agency's monitoring and of nonprofit hospitals and enforcement efforts involving them.

"Given the importance of these institutions to their communities, and the forgone federal revenue associated with their tax-exempt status, it is important that both Congress and the IRS conduct oversight to ensure their activities are in line with the benefits they enjoy under the Internal Revenue Code," the senators said in the letter.

The senators noted that, for a hospital to qualify for charitable organization status with the IRS, it must meet a community benefit standard that mandates the hospital make contributions to their community.

Among the requests from Hatch and Grassley: updates on the number of charitable hospitals reviewed by the IRS, and whether the agency has given guidance to hospitals on meeting the standard of aiding their community. The GOP senators requested an IRS response by March 26. The senators' offices didn't respond to Bloomberg Law's request for comment about the request and any future plans affecting hospitals.

The letter is not the first from Grassley regarding nonprofit's tax exemptions. In 2016, the Iowa Republican asked the IRS about its oversight of nonprofit hospitals in the wake of an investigation the lawmaker conducted into aggressive collection practices by a Missouri hospital. In 2015, Grassley expressed disappointment that a long-awaited IRS report on charity care spending by U.S. hospitals contained no qualitative analysis that would allow comparisons between the charitable contributions of the taxable and tax-exempt sectors.

"What has sometimes come out of these investigations is that the federal government believes it is overpaying hospitals either through reimbursements or programs like the 340B drug discount program," Dan Mendelson, president of Washington-based consultant Avalere Health, told Bloomberg Law. The 340B drug pricing program allows certain health-care providers, including many safety-net hospitals that are exempt organizations, to receive discounted pharmaceuticals. The program, however, has been under heavy scrutiny by congressional Republicans and the pharmaceutical industry.

**Political Prospects** Julius Hobson Jr., a senior policy adviser for Polsinelli PC in Washington, told Bloomberg Law he doubts that anything will be done legislatively this year affecting the exempt hospital sector.

If Republicans lose one or both houses of Congress in the November elections, they could try to push hospital legislation in a lame-duck session, Hobson said Feb. 23. “If they hold onto both Houses, I would not rule out a run at this next year.”

He added that Democrats don’t seem interested in the Republicans’ probe. Democratic staff on the Senate Finance Committee didn’t respond to Bloomberg Law’s request for comment.

**ACA’s Role** Hospitals defend nonprofits’ tax exemptions as well-earned in the face of new technology and staffing requirements. The Affordable Care Act also added requirements for hospitals to maintain their tax-exempt status, including conducting community health needs assessments, reigning in aggressive billing and collection practices, and revising financial assistance policies to ensure those entitled to charity care are able to obtain it.

“Nonprofit hospitals are struggling in a marketplace that has been greatly disruptive” since the 2010 enactment of the ACA, C. Timothy Gary, a Nashville-based health-care attorney at Dickinson Wright and CEO of of Crux Strategies, a global strategy firm, told Bloomberg Law. He added that hospitals are facing uncertainty around potential declines in Medicaid coverage of their patients, constantly changing reimbursement schedules, and demands for hospitals to take on more risk of financial loss under bundled payment models.

“When hospitals see falling revenues, the tendency is to be more cautious with spending, and charity care is going to be part of that,” he said.

**Possible Harsh Impact on Smaller Hospitals** Some nonprofits would be hit harder than others if tax exemptions were scaled back. Gary said that smaller nonprofit hospitals would fare poorly if they lost their tax exemptions. “Every nonprofit is different,” he said. “Here in Tennessee we have everything from the massive Vanderbilt University Medical Center to Houston County Community Center, which has gone bankrupt several times. It’s smaller, vulnerable hospitals like this that would be hurt by this.”

He added that eliminating tax exemptions is not going to give Congress what it wants: more community benefits. “If Congress revokes this status, both charity

care and the number of hospital beds will decrease,” Gary said. “That’s the logical conclusion, and that’s not going to give Congress what they want.”

Fred Bentley, vice president at Avalere said because of the letter, the IRS “might be looking at this more than before because now they’re under scrutiny from powerful senators.” He added that hospitals might also scale back their use of collection agencies and invest more in community programs because they’re now in the spotlight.

**Hospital Groups Push Back** While lawmakers haven’t explicitly said they’re considering changes to the tax exemptions, hospitals are already pushing back. Erin O’Malley, director of policy for America’s Essential Hospitals, said hospitals already incur significant uncompensated costs related to charity care.

“The savings our hospitals achieve through tax-exempt status is a crucial part of the support they need to remain viable,” she told Bloomberg Law. “We understand and share the senators’ concern for transparency and accountability for tax-exempt organizations [but] we urge policymakers to guard against unintended consequences to the safety net as they examine the oversight of tax-exempt entities.” AEH describes itself as an industry group of hospitals dedicated to high-quality care for all, including the most vulnerable.

Rick Pollack, president and CEO of the American Hospital Association, said nonprofit hospitals are already accountable to their communities and report annually to the IRS the benefits they provide. “For every dollar invested in hospitals and health systems by means of their federal tax exemption [nonprofit hospitals] deliver \$11 in benefits back to their communities,” he told Bloomberg Law. “No other health care sector can claim anything close in terms of providing such value for the public benefit it receives.”

Selected nonprofit health systems, including Trinity Health in Livonia, Mich., and Ascension, based in St. Louis, contacted by Bloomberg Law for comments on community health benefits didn’t respond to a request for comments on the senators’ inquiry to IRS.

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