

IRS Compliance Check Questionnaire Sent to 600 Tax-Exempt Hospitals

As Internal Revenue Service officials had warned, tax-exempt hospitals have begun receiving questionnaires, Form 13790, "Compliance Check Questionnaire for Tax Exempt Hospitals," from the IRS requesting information on how they meet the community benefit standard of IRC Section 501(c)(3). The questionnaire is nine pages and contains three parts asking about hospitals' organization, community benefit activities, uninsured billing and collections, charity care, governance and compensation practices.

Hospital Operations

There are 72 questions divided into the following nine sections regarding the "charitable" status of the hospital: (1) Patients; (2) Emergency Room; (3) Board of Directors; (4) Medical Staff Privileges; (5) Medical Research; (6) Professional Medical Education and Training; (7) Uncompensated Care; (8) Billing Practices; and (9) Community Programs. In these sections, hospitals are requested to document the policies addressing the community benefits they provide, the resources allocated to those benefits, the amount of community benefits delivered, and the activities that satisfy the community benefit standard.

The questions in the first four sections directly address the five elements of the community benefit standard originally outlined in IRS Revenue Ruling 69-545 as the criteria for "charitable status" for tax exempt purposes:

- The compensation and independence of the governing board;
- Medical staff privileges available to all qualified physicians in the community;
- Emergency care available to all regardless of ability to pay;
- Health care available to all with the ability to pay, including ability through Medicare, Medicaid and other public assistance;
- Surplus funds used to improve the quality of patient care, expand and update facilities and equipment, and advance medical training, education, and research programs.

In addition to the questions on the IRS-established five elements of the community benefit standard, two sections address charity and uninsured care practices that the IRS considers significant to determining if a hospital provides sufficient community benefits for charitable status. The Uncompensated Care questions relate to the hospital's provision of health care to those who are unable to pay. The Billing Practices questions address issues similar to those presented in the recent class action suits against hospitals for alleged discriminatory billing and aggressive collection practices by hospitals toward the uninsured. The questions are more focused than the 2001 Field Services Advice 200110030 issued by the IRS to its field agents examining health care services for the poor and indigent.

The questions on Medical Research, Professional Medical Education and Training and Community Programs allow hospitals to explain the possible community benefits that are being offered in the form of medical research, education, training and health promotion and disease prevention programs in the local community.

Hospital Compensation Practices

The nine questions in the final part of the questionnaire address compensation paid to hospital executives, board members and physicians. The questions are similar to the compensation questions presented to hospitals in the 2004 IRS executive compensation compliance check. This questionnaire, though, broadens the compensation inquiry and requires the hospital to identify all disqualified persons using the Section 4958 intermediate sanctions' facts and circumstances test of an individual's extent of influence or control over the hospital. The questions challenge hospitals to make the determination of who is a disqualified person beyond board members and officers, to provide details on the process for establishing compensation, and to identify business relationships with officers, directors, trustees or key employees that may expose conflicts of interest.

Resources

The questionnaire is accessible at http://www.irs.gov/pub/irs-tege/ao_hospital_questionnaire.pdf, and the following private resources offer general guidance on how tax-exempt hospitals may document the community benefits of their institution:

- Public Health Institute, "Advancing the State of the Art in Community Benefit: A User's Guide to Excellence and Accountability," at <http://www.phi.org/pdf-library/ASACB.pdf>;
- The Catholic Health Association of the United States ("CHAUSA"), "Community Benefits Reporting: Guidelines and Standards for Social Accountability," by CHAUSA, VHA Inc., and Lyon Software, at <http://www.chausa.org/NR/rdonlyres/1E9B545E-BD93-4F46-B6F2-3FE18578CB41/0/commbenefguidelines.pdf>; and
- Association for Community Health Improvement, Sample Community Benefit Policies, Plans and Reports, at <http://www.communityhlth.org/communityhlth/resources/communitybenefit.html>.

Completing the Questionnaire

The Compliance Check Questionnaire reflects IRS, Congressional and general public views that the requirements for tax exempt status are evolving and changing just as the health care industry has changed since 1969. The importance of charity care policies and their implementation, fair uninsured billing, discount and collection practices, and transparency with respect to executive compensation and business relationships that pose conflicts of interest is evident in this IRS examination of hospitals' justification for their tax-exempt status as charitable institutions. A hospital's responses to the questionnaire may lead to an audit. In completing the questionnaire, hospitals should be:

- Careful – Access to the form may be provided to, or gained through discovery by State Attorney Generals, hospital licensing agencies, local appraisal and taxing authorities, other state regulators, class action plaintiffs, media and other interested individuals and organizations.

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- Thoughtful - The questionnaire provides exempt hospitals a unique opportunity to describe to the IRS examples of community benefit activities, their charitable mission emphasis, active involvement of their governing boards in determining and addressing community needs, the devotion of hospital's financial resources to patients who cannot afford to pay in whole or in part, and hospital subsidies for unprofitable health services, health professionals training and education and research, and community service support.

If you would like more information about the questionnaire or assistance in the process of identifying and quantifying community benefits and responding to the IRS questionnaire, please contact Jeff King, Lew Lefko or Tom Mayo listed below with the other attorneys in the Haynes and Boone Health Care Practice Group.

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