

Hospital Community Benefit Program



The Hilltop Institute

analysis to advance the health of vulnerable populations

Hospital Community Benefits after the ACA: *The Emerging Federal Framework*

SUMMARY

BACKGROUND ON HOSPITAL COMMUNITY BENEFIT POLICY

Tax exemption for institutions dedicated to the pursuit of “charitable purposes” has been part of the United States’ income tax structure since income taxation began in the 1890s. Charity care by hospitals was first regulated federally under the Hill-Burton Act in 1946. In exchange for grants funding hospital construction, grantee facilities were obligated to provide free or discounted care. In 1975, enforcement mechanisms were established; in 1979, required levels of charity care were defined under Hill-Burton.

Charity care was first introduced as a requirement for nonprofit hospitals’ federal tax exemption in 1956. That year, the Internal Revenue Service (IRS) issued a ruling requiring nonprofit hospitals, as a condition of federal tax exemption, to provide as much charity care as they could afford.

In response to the enactment of Medicare and Medicaid in 1965, the IRS shifted the activity that would qualify a nonprofit hospital for federal tax exemption from charity care to “community benefits.” The new ruling broadened the scope to include activities that benefit the community as a whole.

In 2008, the IRS redesigned Form 990, a federal tax reporting form that tax-exempt organizations have been required to file since 1950. The new Form 990 includes Schedule H, which lists and disaggregates cost categories that may qualify as community benefit expenses. Neither Schedule H nor any IRS guidance details the specific overall level or composition of various forms of community benefits that a nonprofit hospital must provide.

Schedule H contains six parts:

- Charity Care and Certain Other Community Benefits at Cost
- Community Building Activities
- Bad Debt, Medicare, and Collection Practices
- Management Companies and Joint Ventures
- Facility Information
- Supplemental Information

State and local governments, which separately confer significant tax exemptions (e.g., property tax, state and local income tax, and state and local sales tax), have taken various approaches to community benefit standards. Fifteen states have hospital community benefit requirements in law or regulation, and another 9 have established community benefit requirements through other guidelines or standards. Overall, 14 states have mandatory community benefit reporting, 20 states have voluntary reporting requirements, and 10 states have both mandatory and voluntary reporting requirements.

A 2010 Illinois Supreme Court decision, *Provena Covenant Medical Center v. Department of Revenue (Provena)*, spurred considerable discussion about community benefit policy. The decision was based on a state law concerning whether land owned by the hospital system qualified for an Illinois property tax exemption. The qualification turns on whether the property is owned by a charitable institution and whether the property is used “exclusively for charitable purposes,” a standard different than that of federal community benefit doctrine.

NEW COMMUNITY BENEFIT REQUIREMENTS OF THE ACA

The Affordable Care Act (ACA) includes numerous coverage, subsidy, and penalty provisions in order to extend insurance coverage to almost all Americans in 2014. As these provisions are implemented, fewer patients will rely on charity care. To ensure that nonprofit hospitals continue to provide community benefit, Section 9007 of the ACA sets forth a new set of requirements for nonprofit hospitals.

Community Health Needs Assessments. The ACA requires nonprofit tax-exempt hospitals to perform community health needs assessments at least every three years. These assessments must take into account input from persons who represent the broad interest of the community served by the hospital facility. The results of the assessment must be made available to the public, and hospitals must adopt implementation strategies to meet identified needs. The ACA does not define community health needs assessment or specify the contents of or process for conducting one. Public health organizations have suggested that future regulations require the inclusion of local public health agencies in the hospitals’ community health needs assessment process.

Financial Assistance and Emergency Care Policies. Nonprofit hospitals must establish a written financial assistance policy that includes:

- Eligibility criteria
- An indication of whether the policy includes free or discounted care
- The basis for calculating charges
- The method for applying for financial assistance
- Measures to widely publicize the policy within the community served by the hospital

The ACA does not define key terms such as “community served by the hospital” or “widely publicized.”

Limits on Charges, Billing, and Collection Activities. The ACA limits charges, billing, and collection activities directed to uninsured individuals. Hospitals may not engage in extraordinary collection actions before making reasonable efforts to determine eligibility for financial assistance. Further, hospitals may not charge individuals eligible for financial assistance more than they would charge insured individuals for the same care. “Extraordinary collection actions,” however, is another key term that the ACA neglects to define.

Hospitals must report to the IRS the results of the community health needs assessment, an implementation plan to meet the needs identified by the assessment, a description of how the hospital is meeting those needs, and an explanation of why any identified needs are not being addressed. Hospitals must also submit audited financial statements. Hospitals that fail to comply with the new reporting requirements are subject to an excise tax penalty of \$50,000.

NEW STATE OPPORTUNITIES AND CHALLENGES

States and localities will need to consider reconciling their existing policies with new federal requirements, as well as independently instituting state tax exemption standards. Vulnerable populations and their needs differ substantially from one community to another, and state and local leadership will be important in channeling community benefit efforts appropriately.

As states and localities weave together various strands of policy activity, they will be confronted by a range of issues. These questions will require attention as states and localities seek to foster community benefit accountability.

- How can states and localities ensure that community needs assessments identify the right set of problems in communities? Attention by states and localities may be necessary to accurately identify community-specific needs.
- How can states and localities ensure the development of responsive community health implementation plans? States may want to provide guidance supportive of broad-based decision-making around priority setting.
- What strategies can states and localities adopt to ensure that public health agencies, community stakeholders, and hospitals tackle problems in a collaborative, coordinated, and non-duplicative way?
- What policies can states adopt to ensure that community benefit implementation activities are effective at meeting community needs?
- What strategies can better align hospital policies across a community or state?
- Will more consistent financial aid and collection policies among hospitals lead to improved access to care and better overall community health?

About The Hilltop Institute

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. To learn more about The Hilltop Institute, please visit www.hilltopinstitute.org.

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 more 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).