

Washington State Society of Healthcare Attorneys
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Tax Update

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Overview of Hot Tax Issues

- Healthcare Reform: New Requirements for Exempt Hospitals
- 2009 Form 990
- Executive Compensation
- Illinois Supreme Court denies hospital property tax exemption in *Provena*



Patient Protection and Affordable Care Act: New Requirements for Exempt Hospitals

- New Code Section 501(r)
 - Imposes 4 new requirements for hospital tax exemption
 - Applies to an organization that operates a facility required to be licensed or registered as a hospital under state law
 - An organization that operates more than one facility must meet the new requirements separately for each facility
 - Effective for tax years beginning after March 23, 2010



New Requirements

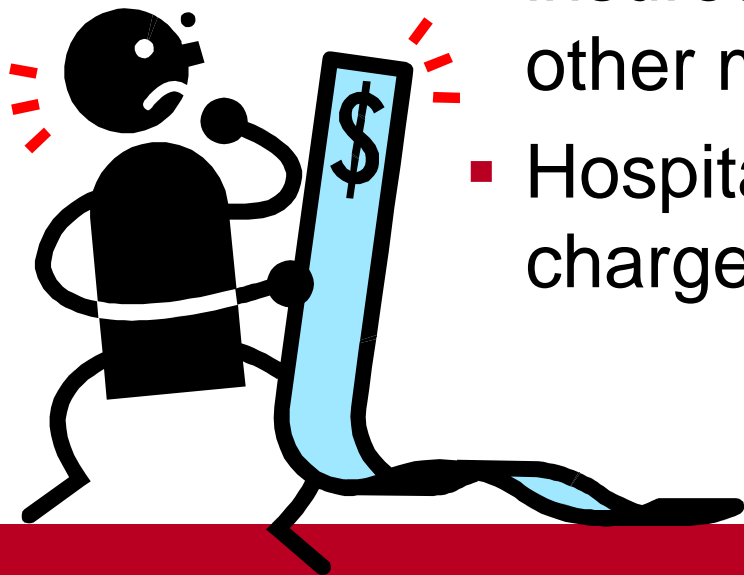
- Community Health Needs Assessment
 - Required at least once during any three-year period
 - Effective for tax years beginning Jan. 1, 2013 (for calendar-year organizations)
 - Must get input from a broad cross-section of the community the hospital serves, including those with special knowledge or expertise in public health
 - Must adopt an implementation strategy
 - Must make widely available to the public
 - New Code Section 4959: excise tax of \$50,000 for failure to conduct assessment

New Requirements (cont'd)

- Financial Assistance and Emergency Medical Care Policies
 - Must have written policies to address financial assistance and emergency medical care
 - Must address eligibility criteria and whether assistance includes free or discounted care
 - Must address application process, basis for calculating charges, and measures to publicize within the community
 - Must require provision of care without discrimination for emergency medical conditions regardless of ability to pay or patient's eligibility under financial assistance policy
 - Billing and collections policy must set out the actions the hospital may take if its bills are not paid

New Requirements (cont'd)

- Limitation on charges
 - Hospital may not charge individuals who are eligible to receive financial assistance under the hospital's policy more than amounts generally billed to insured individuals for emergency and other medically necessary care
 - Hospital must prohibit use of "gross charges"

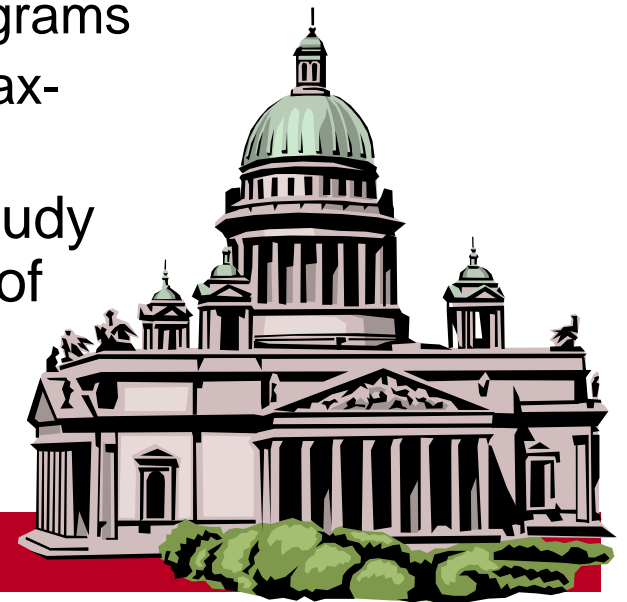


New Requirements (cont'd)

- Billing and Collection
 - Hospital must make “reasonable efforts” to determine if a patient is eligible for assistance before taking “extraordinary actions” to collect unpaid bills
 - “Extraordinary actions” is not defined but may include lawsuits, arrests, liens on residences, and similar methods
 - Treasury to define “reasonable efforts” by regulation, e.g.:
 - Notify patient of financial assistance policy at time of admission
 - Submitting invoices, written and oral communications, actions before taking collection actions or reporting to credit rating agencies

- New Reporting Requirements: Section 6033(b)
 - Community Health Needs Assessment: must report on Form 990 how needs are being met, describe needs that are not being met and explain why not
 - Must include audited financial statements with Form 990

- Treasury Study and Reports
 - IRS must review the community benefit activities of each tax-exempt hospital at least once every three years (presumably through Schedule H)
 - Treasury must submit an annual report to Congress, in consultation with HHS
 - Information for tax-exempt, taxable and public hospitals
 - Charity care provided, bad debt expense, unreimbursed costs for services provided under means-tested government programs
 - Community benefit expenditures by tax-exempt hospitals
 - Treasury and HHS must conduct a study and submit a report within five years of enactment on trends in annual data



What's Not in the New Law: Minimum Charity Care

- Spring 2009: Finance Committee options included minimum charity care requirement
- Dropped in Sen. Baucus' plan released in fall 2009



Community Benefit Standard Remains in Place

- Rev. Rul. 69-545, “community benefit” standard; no specific charity care requirement
- Factors:
 - Community board
 - Full-time emergency room open to all
 - Open medical staff
 - Providing inpatient care to Medicare and Medicaid patients
 - Excess funds applied to expansion and replacement of facilities, improving patient care, medical training, education and research

2009 Form 990

- Schedule H for Hospitals must be completed
- Schedule K regarding Tax-Exempt Bonds must be completed
- Changes for future years to address new Section 501(r)

Executive Compensation



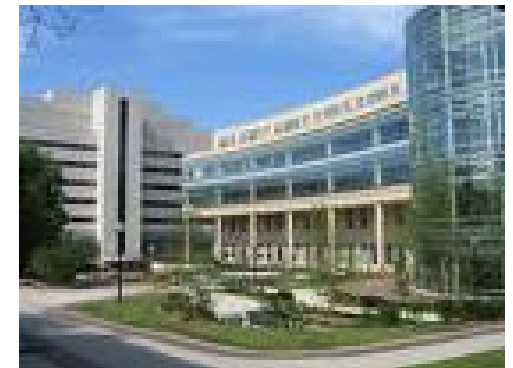
- IRS Final Hospital Compliance Report (Feb. 2009)
 - Total average executive compensation \$490,000; median \$377,000
 - Widespread use of rebuttable presumption procedures and market comparables under intermediate sanctions rules
 - “Disconnect” between what the public might consider reasonable and “what is permitted under the tax law”
 - IRS to continue enforcement through audits and other compliance initiatives
- IRS Audits
 - Looking closely at “quality” of comparability data, especially with use of for-profit comparables, and at use of the initial transaction exception
 - Asserting excess benefit transactions even when rebuttable presumption is met

Executive Compensation (cont'd)

- Sen. Grassley: Proposed amendment to health care legislation to eliminate initial transaction exception to excess benefit rules and require disclosure of comparables used on Form 990
- 2009 Form 990: must disclose whether any reported payments were made under initial transaction exception, and if so whether organization also followed rebuttable presumption procedure

State Property Tax Exemption: *Provena Covenant Medical Center (IL)*

- Procedural History
 - 2002: Applied for state property tax exemption
 - 2006: IL Dept. of Revenue denied exemption
 - 2007: IL Circuit Court reverses Dept. of Revenue, ruling for Provena
 - 2008: IL Court of Appeals (reviewing Dept of Revenue decision) finds no clear error; Provena does not qualify for property tax exemption




- IL Supreme Court (March 18, 2010) Upholds Denial
 - Provena failed to qualify as “charitable organization” because most of funding is from fee for service, not philanthropic gifts
 - Provena’s use of the property was not charitable because charity care was de minimis and the property was used primarily to treat patients in exchange for compensation
 - Rejected argument that a broader “community benefit” standard applies



Implications of *Provena* Beyond IL

- Decision based on specific definitions of charity and charitable use under IL law that don't take into account operation of modern healthcare facility
- Encourages state officials in other jurisdictions to look closely at whether hospitals comply with particular local standard for exemption
- Fuels debate over mandatory charity care minimums at state and federal levels



SEA 14565958v1