

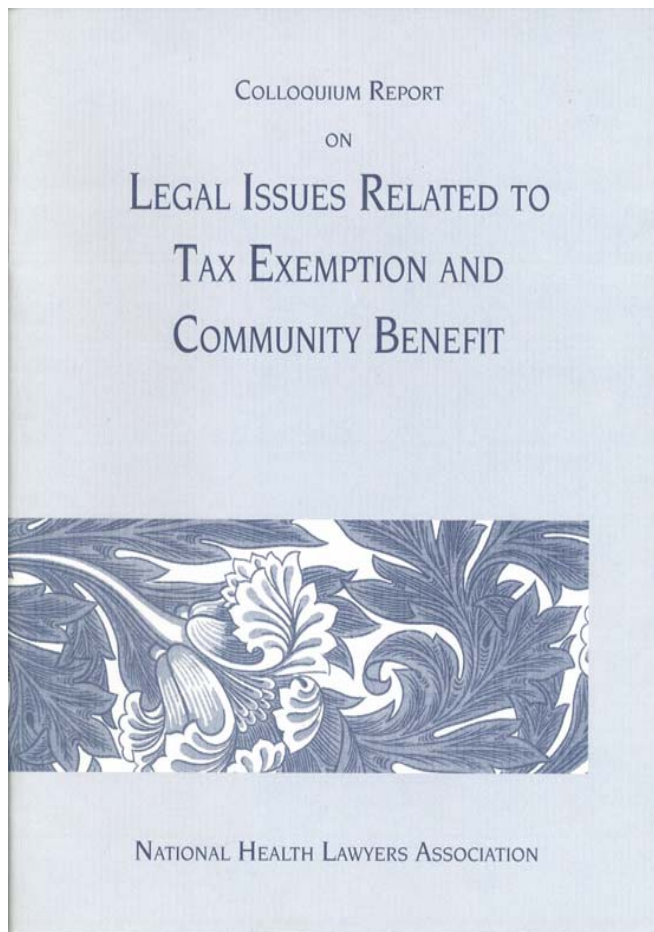
# National Congress on the Un and Under Insured

## Hospital Charity Care and Community Benefit Obligations

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# 1996 NHLA Colloquium Report



*"The community benefit standard, to some minds, remains clouded by uncertainties and ambiguities. It is an area in which fear of the dead hand of bureaucracy inhibits even the most community-minded nonprofit healthcare providers from demanding clear answers to the question: Exactly what does society expect in return for exemption?"*

# Federal Tax Law--Why Are Hospitals Exempt In the First Place?

The Code - § 501(c)(3)

Organized and operated exclusively for charitable purposes

The regulations - "charitable"

Promotion of health is a recognized charitable purpose

# Revenue Ruling 56-185

"...operated to the extent of its financial ability for those not able to pay for the services rendered and not exclusively for those who are able and expected to pay."

"...must not...refuse to accept patients in need of hospital care who cannot pay for such services."

# 1959 Treasury Regulations

Term “charitable” is used “in its generally accepted legal sense”

Not limited to relief of the poor or underprivileged

# Revenue Ruling 69-545

“...operates a full time emergency room and no one requiring emergency care is denied treatment.”

“...limits its admissions to those who can pay...either themselves, or through private health insurance, or with the aid of public programs such as Medicare.”

# Revenue Ruling 69-545

## The Community Benefit Standard

- Organized and operated exclusively for charitable purposes
- Promote the health of a class of persons broad enough to benefit the community as a whole, even though not benefiting all persons directly

# The Community Benefit Standard

Governed by a community board

Open medical staff

Serve Medicare and Medicaid patients

Emergency room open to all without regard to ability to pay

Surplus to additional services or facilities



# Revenue Ruling 83-157

State health planning agency  
determined emergency room  
would duplicate other facilities

ER not absolutely require--Other  
significant factors may be  
considered

*Eastern Kentucky Welfare Rights Org. v. Simon* (D.C. Cir. 1974) (2-1)

69-545 is a valid administrative interpretation

Interpretive ruling not subject to APA

Rationale for limited definition of “charitable” has largely disappeared

Requirement of ER and acceptance of Medicare and Medicaid patients may benefit poor more than 56-185

*Eastern Kentucky Welfare Rights Org. v. Simon* (D.C. Cir. 1974) (2-1)

J. Skelly Wright Dissent: millions of poor could be denied medical care without procedural protections

Supreme Court: disadvantaged patients have no standing to challenge exemption

# The Community Benefit Standard

## IRS Field Service Advice ("FSA") Memorandum: February 2001

- Don't look just at stated policy: Look at what the provider actually does and how it documents its actual activities
- Carefully document charity care and other community benefit activities

# FY 2002 CPE Text

No suggestion of charity care component of community benefit standard

Confirms ER not required, especially for non-hospital providers

Examples: free dental clinic; medical clinic for uninsured

# *IHC Health Plans* (10th Circuit 2003)

CB standard is “somewhat amorphous”  
but workable

Serve all in the community PLUS provide  
sufficient CB to demonstrate that public  
purpose is primary

“Plus” means free or below cost care,  
open ER, or serving Medicaid and  
Medicare populations

# Congressional Hearings

*Ways and Means Oversight Subcommittee - June  
22, 2004*

## Former Ch. Bill Thomas –

- Announces general examination of EOs
- Focuses first on tax-exempt hospitals and charity care/discounts
- Asks what nonprofits do for exemption (equity)
- Revenue raisers
- Critical of high salaries (*e.g.*, hospital CEO)
- Critical of employer-based coverage. Favored consumer-directed care (HSAs).
- Asked GAO to compile information on for-profit v. not-for-profit hospital uncompensated care (Mar. '05)

# Congressional Hearings

*Ways and Means Oversight Subcommittee –  
April 20, and May 26, 2005*

Second hearing focused on EOs broadly

Third hearing – “A Review of the Tax-Exempt Hospital Sector”

- Thomas sharply critical of CB standard
- Criticized IRS for making health policy in 1969
- Former Commissioner asked for more resources, urged caution, defended CB standard
- Former Commissioner has criticized whole hospital joint ventures and suggested not-for-profit hospitals should do more charity care

Thomas retires (January 2007)



# Congressional Hearings

*Finance Committee (1) – June 22, 2004*

## Former Ch. Chuck Grassley/Ranking Max Baucus

- Calls for general reexamination of EOs
- Not focused on hospitals
- After tax shelters, donor advised funds, car donations
- Looking for revenue raisers
- Pressures IRS for enforcement; can't increase funding

## Staff-driven

- White Paper (ideas for discussion)
- CHA-VHA comments

# Congressional Hearings

*Energy and Commerce - June 24, 2004*

Narrow purposeful focus on discounts, billing, and collection

Careful study began in July '03

Hospital witnesses cited changes underway

→ Tenet reduced litigation and liens by 90%

Follow up in April '05 – written request for documentation of current practices to ten systems

Sunshine and threat of future legislation

# Congressional Hearings Finance Committee

## Grassley Gram (May 25, '05)

- Letter to 10 not-for-profit health systems
- Asked about charity care/CB
- Payments, charges, collection practices
- Joint ventures (including charity care in JVs)
- Research
- Compensation arrangements
- Responses “raised more questions than answers”
- Continuing concern regarding compensation, charity care, charges

# Congressional Hearings Finance Committee

## Grassley AHA Letter (March 8, 2006)

- Proposes to work with AHA and nonprofits for clarity surrounding legality of discounts
- Wants to clarify and make consistent definitions of CB/charity care using CHA/VHA model
- Wants better AHA data collection on charity care
- Wants improved IRS/FASB accounting requirements

## Grassley CHA Letter (March 8, 2006)

## Grassley IRS/Treasury Letters

# Finance Committee

Minority Staff Discussion Draft  
proposes 5% minimum charity  
care standard

Roundtable Oct. 30 produces  
consumer group support, hospital  
group opposition



# IRS Community Benefit Questionnaire

400 Forms 13790 - compliance check  
sent in mid-2006

Not an “examination”

How the hospital meets the CB  
standard

Asked 9 questions about executive  
compensation

Not likely to result in CB examinations

# New Draft Form 990 (June 2007)

First redesign in 25 years – will be used for 2008 tax year

Draft released June 14, comments due September 14.

Grassley/Baucus letter to Treasury (May 29) gave IRS “cover.”

Core Form and 15 specific schedules

Core Form obtains overview of activities, asks about governance, conflicts of interest, and whistle blower policy.

Total number of individuals receiving >\$100K, emphasis on loans.

Goals – enhance transparency, promote compliance, minimize burden (2 out of 3)

Will affect behaviors and policies now.

→ Did governing body review this Form 990?

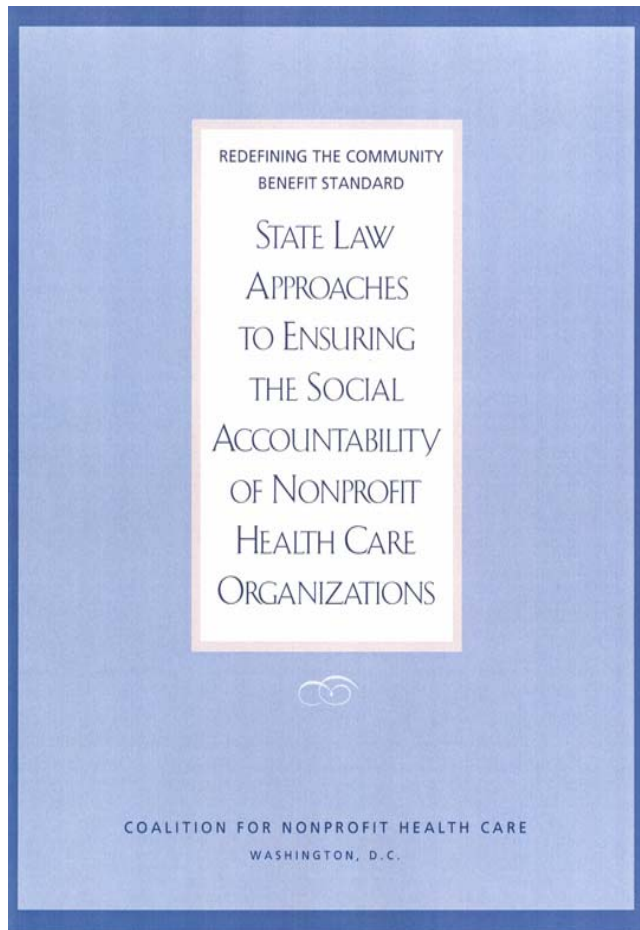
# New Draft Form 990

## Schedule H for hospitals and organizations that provide medical care

- Community Benefit (Based on CHA's Guide for Planning and Reporting Community Benefit)
  - charity care at cost
  - CB Report?
  - Charity care policy? (inform the public?)
  - Uniform standard of reporting – instructions and work sheets
  
- Big issue—Does Bad Debt or Medicare Shortfalls count?



# State Law Approaches to Community Benefit



## State and Local Tax Exemption

- PILOTS
- SILOTS
- Needs Assessment, Planning, and Reporting Requirements

# State Legislative Action

No Congressional or significant IRS interest 1992-2004

Activity shifted to state level

State activity began in Utah courts in 1986, regularly shifts from courts to legislatures

State activity continues despite federal resurgence

# Three States Have Expenditure Standards

Utah requires “annual gift to the community” that exceeds property tax exemption

Pennsylvania: 1997 institutions of purely public charity act

→ Specified minimum amount of community service per seven specified standards

Texas also has expenditure thresholds

→ Must meet one of three charity care and CB criteria

# Sixteen States Require Planning or Reporting

New York and California gained attention

Expanded during the 1990s

Clinton Health Security Act would have adopted

Massachusetts is voluntary

Good summary on Mass. AG website

# Example of State CB Law - - IL (2003)

Applies to non-rural hospitals over 100 beds and health systems

Mission statement, CB plan, and annual report

Goals and objectives for CB and charity care

Charity care at cost, audited financials

January 2006 - - Illinois AG proposed minimum charity care/CB expenditures and discount policies; Illinois Fair Patient Billing Act results

# Illinois, Illinois, Illinois

## The Hotbed State 2006-2007

Provena Covenant, Carle Foundation have property tax-exemption revoked

AG Madigan has many hospitals "under review." Proposed minimum charity care legislation

State constitutional law is very narrow as to charitable use - - binding on courts

Hospitals likely will need legislative relief  
- - Pandora's box



# Helpful Resources

CHA and VHA Inc., *A Guide for Planning and Reporting Community Benefit* (2006)  
(Available from CHA –  
[www.chausa.org/resources](http://www.chausa.org/resources))

The Patient Friendly Billing Project;  
[www.patientfriendlybilling.org](http://www.patientfriendlybilling.org)

# Community Benefit is

Not just a hospital tradition - - a federal tax law requirement

Not well-defined, even after 38 years

Not as simple as just being there, but access remains important

Sometimes provided by, but not required of, for-profits

Not just charity care or relief of the poor

Still largely based on ER despite EMTALA

A quid pro quo for exemption

Once again, in play at the Federal/State levels

Likely to be measured and reported more consistently