



**HEALTH REFORM PROPOSAL AFFECTS
TAX EXEMPT HOSPITALS**

John Ward Weiss, Esquire
September 17, 2009

Yesterday, Senate Finance Committee Chairman Max Baucus (D-MT) released the 220-page [Chairman's Mark](#) of the America's Health Future Act, the committee's healthcare reform proposal. As noted by Baucus last week, the proposal addresses changes to the requirements for Section 501(c)(3) tax-exempt hospitals. However, the proposal does not impose specific charity-care or community-benefit requirements like those suggested in the minority staff discussion draft last summer. Much of what the proposal requires tax-exempt hospitals to provide or undertake is consistent with the revised Form 990 and the best practices we have suggested to our exempt clients.

Specifically, the narrative requires the following by tax exempt hospitals:

- **Community Health Needs Analysis.** Every hospital must conduct or participate in a community-needs analysis at least once every three years, involving significant input from a broad cross section of the community. The hospital must make the community-needs analysis public and thereafter report on its implementation, including a description of the reasons why the identified needs were not addressed if applicable. This is not a new concept, having been included in the 1993 healthcare reform proposal.
- **Financial Assistance Policy and Limitation on Charges.** Every hospital must have, make widely available, and implement a financial assistance policy that specifies the eligibility criteria and, for discounted care, how the amounts that are billed to patients will be determined. Calculation of the patient's discounted balance must be based on Medicare rates or "best" commercial rates (with the option of averaging the three "best" rates), not chargemaster rates. The policy also must provide for non-discriminatory emergency care, though to a large extent that may be protected already under the COBRA anti-dumping rules. Other details of the policy, including qualifications for assistance, are presumably left to the hospitals inasmuch as they are not specified in the narrative description.
- **Collection Safeguards.** The hospital must make reasonable attempts to notify patients of its financial assistance policy before initiating various collection actions or reporting the account to a credit rating agency; reasonable attempts include notifying the patient of the policy on admission, on bills, and in telephone calls.

- **Financial Statements.** The hospital must make its audited financial statements widely available. If the hospital is part of a consolidated financial report, the consolidated entity's statement must also be widely available.

In addition, the proposal requires the IRS to conduct a review of exempt hospital community need benefit activities at least once every 3 years based on the data reported on Schedule H to the Form 990. Both the IRS and HHS must report annually to Congress on the charity care, bad debt and unreimbursed costs to government programs. It is unclear if the proposal will satisfy Senator Grassley, who has historically led the charge challenging community benefit as an outdated means for determining tax exemption, but it is clear that community need and charity care will continue to be a focus point for exempt hospitals in the future.