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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

A JAY KHOSLA, STAFF DIRECTOR
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February 15, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable David Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Acting Commissioner Kautter:

According to the American Hospital Association (AHA), there are over 2,845 hospitals in the United States operating as nonprofits. These nonprofit hospitals qualify for tax exemption from the Internal Revenue Service (IRS) as charitable organizations. To qualify for status as charitable organizations under IRS rules, hospitals must meet the community benefit standard which mandates that they make contributions to their communities. The IRS allows hospitals broad latitude in determining which activities constitute community benefits. However, some activities may include providing uncompensated care and operation of a 24-hour emergency room.

Hospitals are an integral part of their communities and we commend these entities for the work they perform to ensure access to high-quality, affordable care. We also recognize that hospitals often use their resources for items not often accounted for in basic financial reports, such as reinvesting in new models of care and supporting medical research. Given the importance of these institutions to their communities, and the forgone federal revenue associated with their tax-exempt status, it is important that both Congress and the IRS conduct oversight to ensure their activities are in line with the benefits they enjoy under the Internal Revenue Code (IRC).

On the basis of oversight work by Senator Charles Grassley, then Ranking Member of this Committee, Congress and the IRS implemented a number of reforms on nonprofit hospitals to ensure greater transparency in their activities. These include the creation of the IRS Form 990, Schedule H, which requires that nonprofit hospitals disclose Financial Assistance and Means-Tested Government Program information and other benefits to their communities. In 2010, Congress created IRC Section 501(r), which conditions eligibility for tax-exempt status on a hospital's ability to meet requirements such as completion of a Community Health Needs Assessment (CHNA) and limitations on charges to low-income individuals.

In the wake of these important changes, it is important to examine what information the new transparency requirements have shown and the degree to which nonprofit hospitals are benefiting their communities. Several news reports in recent months have questioned these benefits, including a recent Politico story that claimed that charity care has fallen in recent years, and that the “community benefit” standard was being met in part through education costs mostly associated with training new residents, fellows, and other clinical staff. We have also received allegations of nonprofit hospitals cherry-picking patients and disregarding many others on the basis that they were low-income patients. One hospital allegedly used collection agencies, wage garnishment, and other aggressive means to compel payments from people who should have received charity care under state law.

To help us better understand how the IRS monitors compliance with the law and how it considers enforcement actions, please provide answers to the following questions:

1. When a hospital submits its Form 990, Schedule H, how does the IRS evaluate the form to make sure that the hospital is in compliance with the law? Specifically, how does the IRS monitor and oversee compliance with the CHNA requirement?
2. Hospitals have broad discretion to define the community they service and to determine which needs are significant based on all the facts and circumstances. Does the IRS provide any guidance to hospitals to help them make this determination? If so, please provide us the citation to this guidance. If not, why not?
3. As required by the ACA, the IRS is responsible for reviewing hospitals’ compliance with § 501(r). In its Tax Exempt and Government Entities FY 2017 Work Plan (FY 2017 Work Plan), the IRS highlighted that it had completed 968 reviews and referred 363 hospitals for field examination as of September 30, 2016.
 - a. In an April 6, 2017 question for the record in response to Senator Grassley, the IRS said “[o]ut of the 163 hospitals that had been referred, we have closed 55 cases as of March 31, 2017, with the following results for 45 of those cases: (1) 15 cases closed with no changes or adjustments; (2) 4 cases have been assigned to an examiner; and (3) 26 cases closed with a written advisory sent to the taxpayer and no follow-up actions required. To avoid disclosure of specific taxpayer information, we cannot disclose the results for the remaining 10 cases.” Further, separate from the 163 hospitals identified, the IRS said that as of April 28, 2017, they identified “436 additional charitable hospitals that have been referred for examination for potential violations of various provisions under section 501(r).” Of the 436, how many cases have been closed by the IRS? For those examinations that have concluded, please detail the result of each examination and the corrective action employed by the IRS.

- b. After April 28, 2017 and for the remainder of that year, how many additional charitable hospitals did the IRS review and examine? For those hospitals, how many examinations have concluded and what were result of each examination and the corrective action employed by the IRS?
 - c. How many non-profit hospitals has the IRS found to be out of compliance with § 501(r) of the IRC? Identify whether the hospital was out of compliance with CHNA, financial assistance and/or emergency medical care policies, or billing and collection requirements. Have these hospitals been referred for further compliance checks?
 - d. Early this year, the IRS revoked the tax-exempt status of an unnamed hospital for failure to comply with § 501(r) of the IRC, specifically the requirement to conduct a CHNA. This was the first time a hospital's tax-exempt status has been revoked under the ACA. Explain why the IRS revoked this hospital's non-profit status.
4. Provide an update on the status of this year's report to Congress on private tax-exempt, taxable, and government owned hospitals.

We look forward to receiving your response to my questions on IRS enforcement efforts. Pursuant to the Committee's authority under IRC §§ 6103(f)(1) and (4), we designate the following individuals as agents to receive briefings and responses related to this letter: Christopher Armstrong, Dan Burd, Caitlin Soto, Erin Dempsey. For Senator Grassley's staff, the designees are Chris Conlin and Josh Flynn-Brown. We ask that you provide this information to the Committee no later than March 26, 2018. We also ask that you answer the questions on a question by question basis, indicating which questions that you are answering. Thank you in advance for your assistance in this matter.

Sincerely,



Orrin G. Hatch
Chairman
Senate Finance Committee



Charles E. Grassley
Chairman
Senate Judiciary Committee