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## United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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February 19, 2019

### VIA ELECTRONIC TRANSMISSION

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Dear Commissioner Rettig:

As you know, non-profit hospitals are integral to their communities. They provide care to patients most in need, and because of their key role they do not pay the same taxes as for-profit hospitals. Congress determined that to qualify for this tax-exempt status, non-profit hospitals must meet a statutory community benefit standard requiring them to make contributions to their surrounding communities. Specifically, under § 501(r) of the Internal Revenue Code, a tax-exempt hospital must meet (1) community health needs assessment requirements, (2) financial assistance policy requirements, (3) requirements on charges billed to patients, and (4) billing and collection requirements.

Unfortunately, according to reports, it appears that at least some of these tax-exempt hospitals have cut charity care, despite increased revenue, calling into question their compliance with the standards set by Congress.<sup>1</sup> So, on February 15, 2018, I sent a letter to the IRS to inquire about how the agency reviews non-profit hospital compliance with § 501(r) of the Internal Revenue Code.<sup>2</sup> Acting Commissioner Kautter responded that the IRS annually reviews one third of the approximately 3,000 U.S. tax-exempt hospitals by reviewing Forms 990, hospital websites, and other information in order to identify the hospitals with the highest likelihood of

<sup>1</sup> Dan Diamond, *How Hospitals Got Richer Off Obamacare*, POLITICO (July, 17, 2017), <https://www.politico.com/interactives/2017/obamacare-non-profit-hospital-taxes/>.

<sup>2</sup> Letter from Senator Grassley and Senator Hatch to David Kautter, Acting Commissioner, Internal Revenue Service, (Feb. 15, 2018), <https://www.finance.senate.gov/chairmans-news/hatch-grassley-press-irs-for-answers-on-nonprofit-hospitals/>.

noncompliance.<sup>3</sup> The IRS then assigns either a compliance check or examination to those hospitals that appear to be most at risk of noncompliance.<sup>4</sup>

To help us in our ongoing efforts to ensure the Internal Revenue Code is enforced vigilantly, please answer the following questions:

1. Since your office's April 2018 response, how many additional tax-exempt hospitals has the IRS reviewed for the purpose of determining compliance with § 501(r)?
  - a. How many of those reviews has the IRS completed?
  - b. How many of those reviews did the IRS close without further action?
  - c. How many of those reviews did the IRS follow up with a compliance check?
  - d. How many of those reviews did the IRS follow up with an examination?
  - e. Of the hospitals that the IRS followed up with either a compliance check or an examination, how many were or appeared to be out of compliance with these requirements?:
    - i. Community health needs assessment
    - ii. Financial assistance policy requirements
    - iii. Requirements on charges billed to patients
    - iv. Billing and correction policies
2. How many of those cases that have resulted in examinations have been closed, and what are the results of those closed cases?
3. How many hospitals that the IRS reviewed engaged in debt-collection practices involving patients eligible for financial assistance policies (FAPs), as defined by 26 CFR § 1.501(r)-1?
  - a. How many of those hospitals did the IRS find to be noncompliant when it comes to making their FAPs widely publicized under 26 CFR § 1.501(r)-4?
  - b. How many of those hospitals did the IRS find to be engaged in extraordinary collection actions in violation of 26 CFR § 1.501(r)-6?
  - c. Of those noncompliant hospitals, describe how the IRS instructed them to come into compliance or otherwise sanctioned them.
4. A tax-exempt hospital must make a reasonable effort to determine if a patient is qualified to participate in its FAP before taking extraordinary collection action against the patient.
  - a. How many hospitals did the IRS review for determining if the hospitals made reasonable efforts to determine the FAP statuses of their patients?
  - b. How many hospitals did the IRS find to have made reasonable efforts to determine FAP status?
  - c. Generally describe some of those efforts that the IRS determined to be reasonable.

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<sup>3</sup> Letter from David Kautter, Acting Commission, Internal Revenue Service, to Senator Charles Grassley (April 24, 2018).

<sup>4</sup> *Id.*

- d. How many hospitals did the IRS find did not make reasonable efforts to determine FAP statuses of their patients?
  - e. Generally describe some of those efforts that the IRS determined were not reasonable.
  - f. What corrective action, if any, did the IRS take upon finding those efforts unreasonable?
5. In the April 2018 response, your office indicated that the IRS issued 99 written advisories to non-profit hospitals about potential noncompliance.
- a. How has the IRS followed up on those written advisories?
  - b. Of those 99 hospitals, how many has the IRS determined to have, in fact, not been in compliance?
  - c. Of those, what corrective actions have been taken?
6. Based on the IRS' May 2018 *Report to Congress on Private Tax-Exempt, Taxable, and Government-Owned Hospitals* at page 13, the total percentage of unreimbursed Medicaid expenses increased 20.6 percent over the course of 2011 through 2014 while the charity-care expenses decreased 16.5 percent over the same period of time.
- a. Based on the IRS' review of 2015 data, is this trend continuing?
  - b. What, to the best of your knowledge, explains this trend?
7. 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 your responses to these questions. Making sure that tax-exempt hospitals abide by their community benefit standards is a very important issue for me. As chairman of the Senate Judiciary Committee, I oversaw an investigation into the billing practices of the Mosaic Life Care hospital. That investigation resulted in debt relief of almost \$17 million for thousands of low-income patients. This issue is still just as important to me now that I am chairman of the Senate Finance Committee.

Pursuant to the Committee's authority under § 6103(f)(1) and (4) of the Internal Revenue Code, this is to designate the following individuals as agents to receive briefings and responses related to this letter: DeLisa Ragsdale, Mark Warren, John Schoenecker, Caitlin Soto, Chris Allen, and Chris Conlin. We ask that you respond to the Committee no later than April 1, 2019. We also ask that you answer the questions on a question-by-question basis, indicating which questions you are answering. Thank you in advance for your assistance in this matter.

  
Charles E. Grassley  
Chairman  
Senate Finance Committee