

# Governance Feature

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## Board Monitoring of the Tax-Exempt Status Controversy

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**The governing boards of tax-exempt health systems and hospitals may wish to establish a special process to monitor the evolving controversy over whether—and if so, under what circumstances—Section 501(c)(3) status may be revoked.**

This controversy has its roots in highly publicized disputes between the Trump Administration and several leading colleges and universities over a variety of governance and academic practices of those institutions. The Administration has publicly discussed its intention to use the Executive Order process to revoke the Section 501(c)(3) status of a prominent university.

More recently, coverage from *The Wall Street Journal*<sup>1</sup> and other media outlets report that the Trump Administration (including leadership of the Internal Revenue Service) has been conducting high level internal discussions on how the IRS may more aggressively investigate the tax-exempt status of select Section 501(c)(3) organizations, and their endowments.

To be clear, the hospital and health system sector *has not been publicly targeted* by the Trump Administration as part of these discussions. However, Section 501(c)(3) is the same provision of the Internal Revenue Code under which hospitals and health systems may qualify for tax-exempt status. Thus, the Administration's legal basis for threatening (or pursuing) a revocation action against a university could conceivably have application to a hospital or health system.

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1 Brian Schwartz, Joel Schectman, and Richard Rubin, ["Trump Officials Explore Ways of Challenging Tax-Exempt Status of Nonprofits,"](#) *The Wall Street Journal*, May 3, 2025.

The controversy has evolved to the point where it may be prudent for hospital/health system leadership to establish a formal board-level process to monitor developments, identify related organizational risks, and identify possible responsive measures. While a logical approach to this monitoring would be through an established board-level committee (e.g., audit or finance), or a special board committee, there is no “one size fits all” approach. The key is to pursue a level of monitoring sufficient to inform the board and position it to collaborate with management on possible responses.

The specific focus of such a committee or other board mechanism would logically include (but not be limited to):

- Education and information flow to the board, both as to Section 501(c)(3) status in general and emerging developments in particular
- The organizational benefits of Section 501(c)(3) status and organizational risks should such status be revoked
- Where applicable, appropriate communications with bond counsel (and, potentially, bondholders)
- The exercise of the corporate social voice, through trade associations, elected government officials, or other appropriate conduits
- Internal and external constituency communications
- Monitoring related Code Sec. 501(c)(3) status developments in Congress (e.g., the tax bill reconciliation process)
- With assistance of counsel, conduct diligence on Executive Order compliance
- Preparation of a risk response plan, which might include the need for targeted business contingency/resiliency planning
- Recommendations on ways in which the organization can more directly support its commitment to its charitable mission, consistent with expectations of tax-exempt status

As these developments continue to evolve, it is important to recognize that tax-exempt status as recognized by the Internal Revenue Service is different and distinct from state non-profit corporation status as recognized through established regulatory processes.

Hospitals and health systems should, however, be alert to how revocation of Section 501(c)(3) status could affect their status as a charitable non-profit corporation under state law, including the ability to solicit charitable donations.

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