

Tax Exemption Under a Microscope

Understanding the Board's Duties during This Time of Scrutiny

December 5, 2023

A Governance Institute Webinar
presented by

Don Stuart, Partner
&
Jesse C. Neil, Partner

Holland & Knight



Today's Presenters



Don Stuart

Partner, *Holland & Knight*

Don Stuart is a Partner in Holland & Knight's Nashville office and practices in the areas of tax and mergers and acquisitions. Mr. Stuart advises on a wide range of complex tax and business issues for clients. Business owners, general counsel, in-house tax officers, financial officers, and others rely on him for his keen ability to not only navigate the tax laws and find practical and understandable solutions, but to also follow through and help clients implement their goals and strategies through all stages.



Jesse C. Neil

Partner, *Holland & Knight*

Jesse Neil is a veteran healthcare attorney in Holland & Knight's Nashville office. Mr. Neil's background helps clients bridge two complex worlds—healthcare operations and public policy. He advises senior management and healthcare company boards regarding policy, governance, and regulatory matters. He also serves as strategic counsel to healthcare providers throughout the U.S.

Learning Objectives

After participating in this Webinar, attendees will be able to:



Identify several reasons behind the renewed scrutiny of non-profit hospitals' tax-exempt status, executive compensation, and billing/collection practices.



Define the importance of accurate community benefit reporting.



Describe board actions to ensure compliance and help prepare for potential legal challenges along with future legislative changes.

Continuing Education



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In accordance with the standards of the National Registry of CEP Sponsors, CPE credits will be granted based on a 50-minute hour.
Field of study: Business Management & Organization
Program level: Overview
Prerequisites: None
Advanced preparation: None
Delivery method: Group Internet based
Maximum potential CPE credits: 1



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- This educational activity does not include any content that relates to the products and/or services of a commercial interest that would create a conflict of interest. There is no commercial support or sponsorship of this conference.
- None of the presenters intend to discuss off-label uses of drugs, mechanical devices, biologics, or diagnostics not approved by the FDA for use in the United States.

Fast Facts on U.S. Hospitals, 2023

Most Community Hospitals Are Not-for-Profit



Community Hospitals by Ownership Type (Total 5,5157), FY 2021

Source: American Hospital Association. Fast Facts on U.S. Hospitals, 2023.

<https://www.aha.org/statistics/fast-facts-us-hospitals>

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Current Landscape

FORBES > MONEY > TAXES

Putting The Charity Back In Charitable Hospitals — A Bipartisan Agreement?

Dean Zerbe Contributor

I write about tax policy and how it affects business.

Bernie Sanders pushes nonprofit hospitals to provide more charity care



Perspective by [Joe Davidson](#)

Columnist

October 20, 2023 at 6:00 a.m. EDT

Jan. 25, 2023

How Nonprofit Hospitals Put Profits Over Patients

A Times investigation revealed that many of these institutions are abandoning patients and straying from their charitable missions.

ACCOUNTABILITY

Hospitals pushing back on community benefit oversight

BY [Judith Garber](#) | February 13, 2023

Home > Congress > Bipartisan Group of Senators Request Investigation into Nonprofit Hospitals

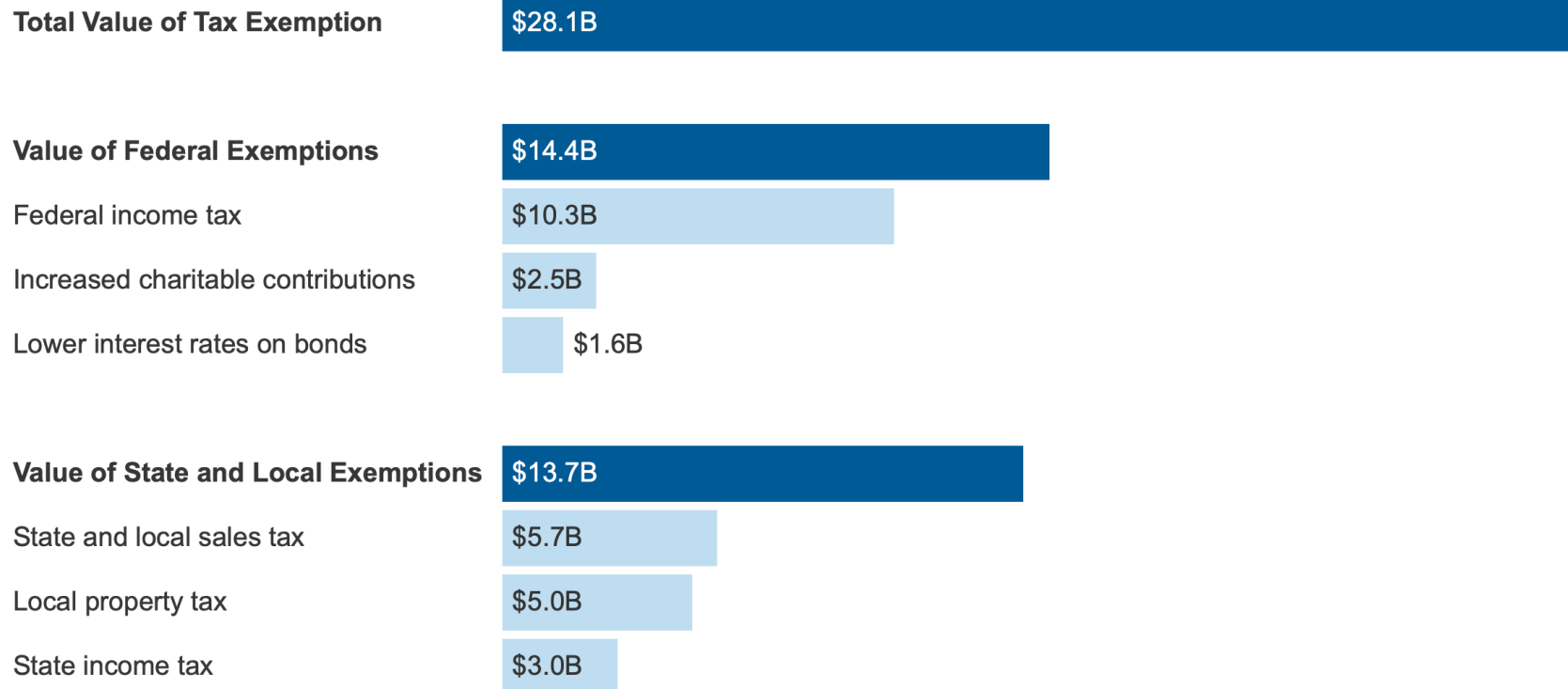
Bipartisan Group of Senators Request Investigation into Nonprofit Hospitals



By [Thomas Sullivan](#) — Last Updated Oct 18, 2023

Figure 1

The Total Estimated Value of Tax Exemption for Nonprofit Hospitals Was About \$28 Billion in 2020



NOTE: Value of tax exemption reflects the estimated benefit of not having to pay federal, state, and local taxes as well as estimated increases in charitable contributions and decreases in bond interest rate payments due to tax-exempt status.

SOURCE: KFF analysis of RAND Hospital Data, 1996-2020; the American Hospital Association (AHA) Annual Survey Database, 2011-2020; and Internal Revenue Service (IRS) Form 990 data, 2011-2020. • [PNG](#)

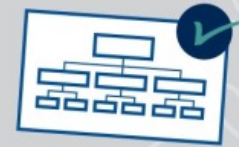


Federal/IRS Requirements for Hospital Tax-Exemption

- Charitable Purpose – Promotion of Health
- Early Financial Ability Standard
- Community Benefit Standard
- Patient Protection and Affordable Care Act – IRC Section 501(r)
- Form 990 and Schedule H for hospitals
- IRS Oversight, Compliance Checks, and Enforcement

ORGANIZATIONAL AND OPERATIONAL REQUIREMENTS

A hospital must be organized and operate to achieve a charitable purpose—the promotion of health for the benefit of the community.



COMMUNITY BENEFITS

Internal Revenue Service has identified six factors that demonstrate community benefit:

- Operate an emergency room open to all, regardless of ability to pay
- Maintain a board of directors drawn from the community
- Maintain an open medical staff policy (i.e., not restrict medical staff privileges to a limited group of physicians)
- Provide care to all patients able to pay, including those who do so through Medicare and Medicaid
- Use surplus funds to improve facilities, equipment, and patient care
- Use surplus funds to advance medical training, education, and research



PATIENT PROTECTION AND AFFORDABLE CARE ACT REQUIREMENTS

Hospitals must:

- Conduct a community health needs assessment
- Maintain a written financial assistance policy
- Set a limit on charges
- Set billing and collection limits

IRS must review each tax-exempt hospital's community benefit activities at least once every 3 years.



Source: GAO review of relevant laws and regulations. | GAO-23-106777

**SCHEDULE H
(Form 990)**

Department of the Treasury
Internal Revenue Service

Hospitals

Complete if the organization answered "Yes" on Form 990, Part IV, question 20a.
Attach to Form 990.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2022

**Open to Public
Inspection**

Name of the organization

Employer identification number

Part I Financial Assistance and Certain Other Community Benefits at Cost

	Yes	No
1a Did the organization have a financial assistance policy during the tax year? If "No," skip to question 6a		
b If "Yes," was it a written policy?		
2 If the organization had multiple hospital facilities, indicate which of the following best describes application of the financial assistance policy to its various hospital facilities during the tax year: <input type="checkbox"/> Applied uniformly to all hospital facilities <input type="checkbox"/> Applied uniformly to most hospital facilities <input type="checkbox"/> Generally tailored to individual hospital facilities		
3 Answer the following based on the financial assistance eligibility criteria that applied to the largest number of the organization's patients during the tax year.		
a Did the organization use Federal Poverty Guidelines (FPG) as a factor in determining eligibility for providing <i>free</i> care? If "Yes," indicate which of the following was the FPG family income limit for eligibility for free care: <input type="checkbox"/> 100% <input type="checkbox"/> 150% <input type="checkbox"/> 200% <input type="checkbox"/> Other _____%	3a	
b Did the organization use FPG as a factor in determining eligibility for providing <i>discounted</i> care? If "Yes," indicate which of the following was the family income limit for eligibility for discounted care: <input type="checkbox"/> 200% <input type="checkbox"/> 250% <input type="checkbox"/> 300% <input type="checkbox"/> 350% <input type="checkbox"/> 400% <input type="checkbox"/> Other _____%	3b	
c If the organization used factors other than FPG in determining eligibility, describe in Part VI the criteria used for determining eligibility for free or discounted care. Include in the description whether the organization used an asset test or other threshold, regardless of income, as a factor in determining eligibility for free or discounted care.		
4 Did the organization's financial assistance policy that applied to the largest number of its patients during the tax year provide for free or discounted care to the "medically indigent"?	4	
5a Did the organization budget amounts for free or discounted care provided under its financial assistance policy during the tax year?	5a	
b If "Yes," did the organization's financial assistance expenses exceed the budgeted amount?	5b	
c If "Yes" to line 5b, as a result of budget considerations, was the organization unable to provide free or discounted care to a patient who was eligible for free or discounted care?	5c	
6a Did the organization prepare a community benefit report during the tax year?	6a	
b If "Yes," did the organization make it available to the public?	6b	

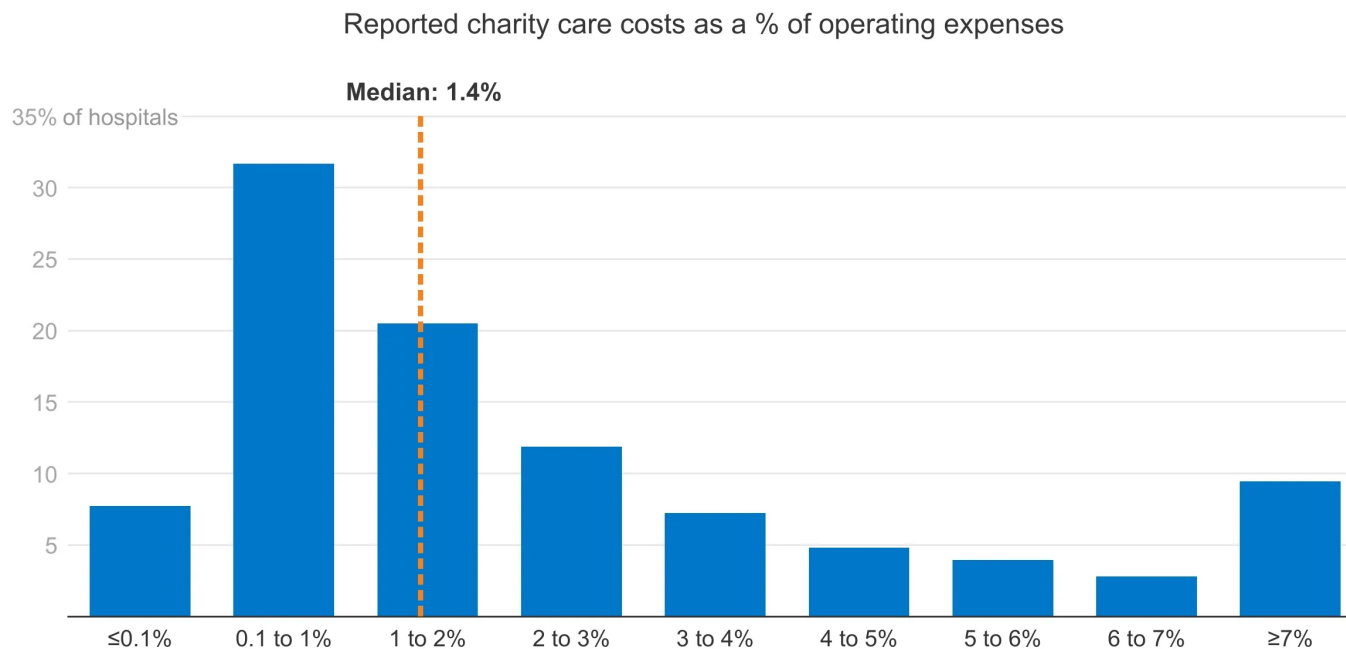
7 Financial Assistance and Certain Other Community Benefits at Cost

Polling Question #1

How often must a hospital conduct a community health needs assessment (CHNA) for Section 501(r) purposes?

- A. Every year
- B. At least once every two years
- C. At least once every three years
- D. At least once every four years

Half of all hospitals reported that charity care costs represented 1.4% or less of their operating expenses in 2020, though the level of charity care varied substantially across facilities



NOTE: Includes 4,279 hospitals in 50 states plus DC. Missing charity care costs recoded as \$0 if hospital reported total unreimbursed and uncompensated care costs but left as missing otherwise. Excludes hospitals with incomplete data for the calendar year, missing or negative operating expenses or charity care costs, or outlier amounts of charity care as a percent of operating expenses ($\geq 38.0\%$).

SOURCE: KFF analysis of RAND Hospital Data, 2020



State/Local Requirements for Non-Profit Hospitals

- Value of state/local tax exemptions often exceed federal exemptions
- Property taxes
- Sources of authority
 - State constitution
 - Statutory
 - Additional and not inconsistent county requirements
- Burden on tax-exempt entity
- Challenges from public and private parties

Congressional Interest and IRS

- Congress
 - House Committee on Ways and Means
 - Senate Committee on Finance
 - Senate HELP Committee
- GAO Report
- IRS and limitations



State/Local and AG Interest

- 3rd Parties
 - Pottstown Hospital example
 - Additional and inconsistent county requirements
- Governmental
- Political bodies
- Enforcement agencies
- State legislative activity

Polling Question #2

What remedies are generally available to State Attorneys General when regulating non-profit hospital boards?

- A. Removing one or more directors
- B. Voiding board actions
- C. Monetary damages levied against one or more board members
- D. Public accounting of the hospital's financial records and related documents
- E. All of the above

Media, Unions, Watchdog Groups, & Other Attention

- Community engagement and investment
- Government relations
- “Hot button” issues
 - Executive compensation
 - Collection activities

Possible Forthcoming Activity and Actions

- Additional hearings and investigations
- Legislation – revised standards – Bright Line Test?
- Revisions to Form 990 and Schedule H
- IRS strict enforcement and review

Polling Question #3

Which of the following is a permissible method for the IRS to verify a hospital's compliance with Section 501(r)?

- A. Reviewing the hospital's Web site
- B. Sending an information document request to the hospital's CEO
- C. Touring the hospital lobby to review signage for financial assistance
- D. Requesting a representative billing statement provided to a patient after discharge
- E. All of the above

What Should Non-Profit Hospital Executives and Boards Be Doing Now?

1. Understand the current intersection of fiscal challenges for hospitals and tax-exemption requirements
2. Be proactive at all levels
3. Review your risks – conduct an audit
4. Consider outside experts
5. Understand your community and its health needs
6. Be prepared to respond to the IRS
7. Use public information to your advantage
8. Establish a working group
9. Identify your allies
10. Get the message out

Questions & Discussion

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