



Latest in Health Care



Baucus Health Care Reform Proposal Calls For Significant Tightening In Tax-Exemption Rules

*Senate Finance Set To Begin Markup Sessions **Today** - Repeal of Rebuttable Presumption Rule In Reasonable Compensation Rules, Other Tightening of Requirements Threatened*

With Senate Finance Committee meetings to mark up Chairman Max Baucus' health care reform proposal as outlined in his 220-page "Chairman's Mark of America's Healthy Future Act of 2009" (the "Baucus Proposal") scheduled to begin tomorrow (September 22, 2009), tax-exempt health care and other non-profit organizations should evaluate carefully proposed amendments that could impact their tax-exempt status or related obligations in addition to the widely-discussed proposal to create "Consumer Operated and Oriented Plans (CO-OPs). The proposed amendments have serious implications for non-profits within and beyond the health care industry.

Markup Scheduled To Begin Tuesday

The Senate Committee on Finance plans on Tuesday, September 22, 2009 to hash out how to convert into proposed legislation the health care reform proposal outlined in the "Chairman's Mark America's Healthy Future Act of 2009" introduced by Committee Chairman Max Baucus on September 16, 2009, the text of which may be reviewed [here](#).

Since no text of the proposed legislation itself has been released yet, it is impossible to fully evaluate the specific nature and implications of the Baucus Proposal. While this week's planned Senate Finance Committee mark up will further clarify these matters, a review of the description of changes proposed by Chairman Baucus in the Baucus Proposals nevertheless provides significant insight of what health care organizations can expect to be discussed and, in all likelihood incorporated into the draft legislation ultimately proposed. Accordingly, tax-exempt health care organizations should carefully evaluate and act promptly to share their input with members of the Senate Finance Committee and other members of Congress about a series of proposed amendments that would impact their tax-treatment and other responsibilities.

Proposal To Tighten Tax-Exemption & Reporting Requirements For Tax-Exempt Hospitals

While the Senate Finance Committee as of yet has not released text of the proposed legislation itself, a review of the description of changes proposed by Chairman Baucus in the Baucus Proposals and other subsequently proposed amendments to the Baucus Proposal reveal plans to materially change the tax-exemption qualification, governance and reporting requirements for

tax-exempt hospitals beyond the proposal to create CO-OPs. Among other things, the Baucus Proposal calls for the Internal Revenue Code § 501(c)(3) and its related provisions to be amended to require:

- The hospital to conduct or participate in and share with the public a community-needs analysis with input from a broad cross section of the community at least once every 3 years and thereafter to report on its implementation, including explaining where applicable why identified needs were unaddressed. These additional requirements would supplement rather than replace existing community benefit standards already generally applicable to charitable entities
- The hospital to provide non-discriminatory emergency care
- The hospital to have, implement and widely disseminate a written financial assistance policy defining among other things:
 - The rules for determining who qualifies for financial assistance
 - How the hospital determines amounts to be billed to patients in manner that provides for patient discounts to be based on Medicare rates, "best" commercial rates or other approved statutory measures rather than "chargemaster rates"
 - Require hospital to notify patients of the financial assistance policy on admission, on bills and in telephone calls of its financial assistance policy before initiating various collection actions or reporting the account to a credit rating agency
- The hospital make its audited financial statements (and where applicable, the consolidated financial report of any entity of which it is a part) available widely
- The Internal Revenue Service (IRS) to conduct a SEC-type review of each 501(c)(3) hospital's community benefit activities at least once every three years based on data reported on Schedule H of the Form 990
- The IRS and the Department of Health and Human Services (HHS) to report annually to Congress on community benefit activities of non-governmental tax-exempt hospitals, charity care, bad debt, and unreimbursed costs of government programs (means-tested and non-means-tested) incurred by tax-exempt, taxable, and governmental hospitals.

In addition to the proposed amendments included in the Baucus Proposal as originally introduced, health care organizations also will need a close eye on discussions and proposals to amend the Baucus Proposal to further modify the tax-exemption requirements for tax-exempt hospitals and other health care organizations. For instance, late last week, Ranking Member Senator Chuck Grassley submitted a proposal to amend the Baucus Proposal to further tighten requirements for tax-exempt health care organizations:

- For the stated purpose of avoiding wasteful legal challenges to the management and governance questions on the revised Form 990, to specifically grant statutory authority to the Internal Revenue Service to ask management and governance questions on the Form 990; and
- To make it easier for the Internal Revenue Service to challenge as unreasonable compensation payments made by tax-exempt entities by shifting the burden to the taxpayer of proving the reasonability of compensation and removing the burden currently borne by the Internal Revenue Service of going forward with the evidence on comparability. This would be accomplished by overruling the rebuttable presumption of reasonableness currently set forth in Treasury Regulation § 53.4958-6 of the intermediate sanctions rules and replacing it with a requirement that public charities due diligence demonstrate that their compensation payments meet the 3 current elements of the presumption:
 - Review by an authorized body made of members without a conflict of interest
 - Use of appropriate data as to comparability and

- Adequate and contemporaneous documentation. This amendment is expected to raise revenue, according to the summary.

With these provisions already targeting their tax-exempt status, tax-exempt hospitals and other non-profits and others likely to surface as the legislative discussion proceeds, tax-exempt health care and other organizations should keep a close eye on proposed tax provisions of the Baucus Proposal and other related proposals.

CO-Ops As Health Coverage Alternative

Much more widely discussed is the Chairman's CO-OP proposal. The Baucus Proposal calls for the creation of a new vehicle to provide an alternative source of health care coverage called "CO-Ops." As contemplated by the Baucus Proposal, CO-Ops would be associations controlled by a beneficiary board unrelated to existing organizations providing health insurance as of July 16, 2009. Subject to their meeting non-inurement and other common existing requirements for charitable status as well as other conditions, CO-Ops would be able to apply for tax-exempt status as well as federal funding.

New Taxes and Fees On Insurers & Others

The Baucus Proposal proposes to finance its health care reforms through a variety of mechanisms including, excise taxes and penalties on employers and individuals that fail to purchase the government specified health care package, taxes on premiums paid for health insurance coverage in excess of certain specified annual limits, the imposition of certain premium taxes and "sector fees" on healthcare insurers (with some exceptions possible under certain circumstances for certain 501(c)(3) and (c)(4) HMOs not providing commercial-type insurance within the meaning of Section 501(m)).

Other Baucus Proposal Highlights

In its current summary form, the 220-page Baucus Proposal includes a host of other sweeping reforms, which are certain to be further expanded and refined during this week's scheduled Senate Finance Committee markup session. Many of these other proposed reforms were highlighted in an overview of the Baucus Proposal published [here](#). You can join the discussion of these and other proposed health care forms and exchange updates and other resources about health care reform and related concerns by registering to participate in the [Coalition For Responsible Health Care Policy Group](#) on LinkedIn.

Other Recent Developments

If you found this information of interest, you also may be interested in reviewing some of the following recent Solution Law Press Health Care Updates available online by clicking on the article title below:

- [HIPAA Covered Entities & Business Associates Deadline To Comply With HITECH Act Data Breach Rules Tomorrow](#)
- [Senate Finance To Begin Markup Session on Baucus Health Care Reform Proposal On September 22](#)
- [CMS Proposes New Prospective Payment System For Renal Dialysis Facilities; Hopes To Improve Quality, Efficiency](#)
- [Comment By 11/9 on DEA Proposed Standardization of Code Number For Institutionally Based Practitioners Dispensing Controlled Substances](#)

- [ONC Shares HIT Committee August Meeting Recommendations, Comment On Recommendations At September 15 HIT Committee Meeting](#)
- [Wrongful Access of Health Care Records Prompts HIPAA Criminal Actions, Whether Prompted By Curiosity or Fraudulent Intent](#)
- [Pfizer To Pay \\$2.3 Billion For Fraudulent Marketing In Largest Health Care Fraud Settlement in DOJ History](#)
- [CMS Releases Brochure On ICD-10 Coding System](#)
- [Maximum Penalty For Patient Protection Act Confidentiality Breaches To Rise To \\$11,000](#)
- [HHS Delegates Authority for the HIPAA Security Rule to Office for Civil Rights](#)
- [HHS Hiring to Expand its Health Information Privacy Enforcement Team Again](#)

For More Information

We hope that this information is useful to you. If you need assistance with health care compliance, risk management, reimbursement, staffing, credentialing, transactional, operational or public policy concerns, please contact the author of this update, Curran Tomko Tarski LLP Health Practice Group Chair, Cynthia Marcotte Stamer, at (214) 270-2402, cstamer@cttlegal.com or your other favorite Curran Tomko Tarski LLP Partner. Ms. Stamer has extensive experience advising clients and writes and speaks extensively on these and other health industry and related matters.

You can review other recent health care and internal controls resources and additional information about the health industry and other experience of Ms. Stamer [here](#). If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail – by creating or updating your profile at [here](#), by e-mailing this information to support@cttlegal.com or by participating in the [SLP Health Care Risk Management & Operations Group](#) on LinkedIn.

©2009 Curran Tomko Tarski LLP. All rights reserved.