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GAO Offers Recommendations on Exempt Hospital Oversight.

To ensure that nonprofit hospitals provide sufficient benefits to their communities to justify their tax-exempt status, Congress should clarify what requirements must be met and the IRS should improve its oversight, according to the Government Accountability Office.

In a [report](#) released October 19, the GAO noted that it's difficult for the IRS to verify community benefits because the Affordable Care Act, which established requirements under [section 501\(r\)](#) to help ensure nonprofit hospitals help their communities, is vague about the types of activities that qualify. Further, the IRS lacks the authority to specify such activities, the report says.

The unclear standards and the IRS's implementation of them provide exempt hospitals "with broad latitude to determine the nature and amount of community benefits they provide," the report says.

"The lack of clarity makes it difficult for IRS to ensure that hospitals receiving a tax exemption undertake services and activities that provide benefits to the communities in which they operate," the GAO said. "Additional clarity in the [tax code] about specific services and activities Congress believes would provide sufficient community benefits could improve IRS's ability to oversee tax-exempt hospitals."

However, T.J. Sullivan of Faegre Drinker Biddle & Reath LLP was skeptical that Congress would act to clarify the meaning of community benefit or give Treasury and the IRS authority to do so. "Experience tells me this idea is headed for Sleepy Hollow," he said.

Improving Oversight

In the meantime, the GAO offered the IRS several suggestions for improving oversight.

For one, the IRS could revise the Form 990 Schedule H, "Hospitals." According to the report, the schedule asks for community benefit information inconsistently, resulting in uncertainty about the benefits hospitals provide. The form directs hospitals to describe how they've addressed three of the factors in the community benefit standard but not the other three, the report notes.

This reporting approach, the GAO said, could lead to incomplete information on how hospitals are providing community benefits, among other consequences.

A revised Schedule H "that enables tax-exempt hospitals to present community benefit information clearly, consistently, and comprehensively could help IRS, Congress, and the broader public better understand the full scope of the community benefits a hospital provides and whether the benefits sufficiently justify a tax exemption," the report says.

The IRS should also consider requiring nonprofit hospitals to report their community benefit expenses by facility rather than at the hospital organization level, the GAO said.

Otherwise, the IRS “may be missing an opportunity to collect information that would more clearly and transparently demonstrate the benefits tax-exempt hospitals provide to the communities in which they operate,” the report says. “This information, in turn, would allow Congress, IRS, and the public to weigh the costs and benefits of the hospital’s tax exemption.”

But Sullivan noted that the IRS pointed out in the report that the information in Form 990 is based on entire organizations, not necessarily facilities or systems of related organizations.

Also, it took years for hospitals and their accounting firms to get comfortable with Schedule H reporting, and changing the whole approach would be challenging, said Sullivan, who was IRS special assistant for healthcare from 1989 to 1996 and a senior GAO evaluator from 1979 to 1984.

“For those of us advising tax-exempt hospitals, this one bears watching,” Sullivan remarked.

Other Recommendations

To further improve IRS oversight of community benefit requirements, the report calls on the agency to establish a well-documented process for identifying hospitals at risk of noncompliance with the community benefit standard that would ensure hospitals’ community benefit activities are being reviewed consistently.

Specific audit codes for identifying potential noncompliance with the community benefit standard should also be established, the GAO said.

The IRS agreed with all the report’s recommendations.

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