



JONES DAY COMMENTARY

HEALTH CARE

IRS MAILS COMMUNITY BENEFIT QUESTIONNAIRES

Last month, we prepared a *Jones Day Commentary* noting that the IRS was on the verge of distributing a community benefit questionnaire to 600 hospitals nationally. (To view a copy of the prior *Commentary*, please [click here](#).) Now the IRS has followed through, and the questionnaires have been sent. (To access a copy of the form questionnaire in PDF format, please [click here](#).)

This questionnaire (Form 13790) is framed as a compliance check. It is not an audit, but it can lead to one. Organizations receiving the questionnaire who are not already under audit still have an opportunity to correct potential problems discovered in responding to the questionnaire.

SCOPE OF COMMUNITY BENEFIT QUESTIONNAIRE

The questionnaire is split into three parts. Part I calls for basic identifying information about the organization, Part II (72 questions) asks about various com-

munity benefit activities and governance, and Part III (nine questions) asks about compensation practices. Form 13790 is in significant part a data-gathering device. As such, it covers a broad array of activities related to hospital operations.

Charity care is a key area of inquiry in the questionnaire. Part II of Form 13790, however, also reflects a potentially expansive view of community benefit. The questions seek a variety of basic factual information and address specific areas of community benefit that include the key points of the Revenue Ruling 69-545 community benefit standard. Part II also goes beyond that guidance to ask about other areas of potential community benefit and governance practices.

The community benefit questions in Part II include questions about: (1) patient demographics (numbers with insurance from various sources) and any instances of the hospital denying medical care for patients with each type of coverage or no coverage; (2) emergency room operations; (3) governing board (composition, expertise, and meeting frequency);

(4) medical staff privileges (the open-staff standard); (5) medical research activities (including the source of funding and access to the results); (6) professional medical education and training programs (including amount and sources of funding); (7) "Uncompensated Care" (including number of patients and amount spent on uncompensated care, treatment of bad debt, reporting of uncompensated care expenditures, and the timing of decisions about free care); (8) billing and collection practices (including questions similar to those posed in the charity care class actions and various state reviews); and (9) community outreach programs (e.g., medical screening, immunization, community health education, community needs assessments, newsletters and special outreach to the uninsured, or any other activities that the hospital believes provide a community benefit).

Part III of the questionnaire also includes nine questions on compensation practices. This part represents a more focused version of the questions included in the earlier IRS Executive Compensation Inquiry letters. It also covers a somewhat broader universe in that Part III applies to all disqualified persons. One challenge that organizations will face in responding to this part of the questionnaire is making a determination of who is and is not a "disqualified person." The term includes voting board members and certain officers, but under the facts and circumstances approach of the Section 4958 regulations, it is also potentially much broader.

OVERLAPPING INQUIRIES AND OPPORTUNITIES

Care should be taken in responding to the questionnaire, bearing in mind that other interested parties may be able to obtain copies of the completed Form. For example, it may be sought in discovery by state regulators or class action plaintiffs. The questionnaire, however, also presents an opportunity for hospitals to put their best foot forward and educate the IRS and others on the variety of ways in which nonprofit hospitals benefit their communities, something that the general public may not focus on. In that regard, the IRS included a general catch-all question in the form (Q. 72), asking if the

hospital had "any other programs or activities that promoted health for the benefit of the community?"

Examples of other types of community benefit may include volunteerism by hospital employees (particularly if while "on the clock" for the hospital), maintaining a large work force in a depressed economy, avoiding or removing urban blight in the hospital's neighborhood, and making grants to other public charities that also benefit the community. A thoughtful approach to this last question can pay dividends down the road by improving the common understanding of what constitutes a community benefit in the health care sector.

JONES DAY EXPERIENCE WITH QUANTIFICATION OF COMMUNITY BENEFIT

We are actively involved in helping a number of our clients respond to the IRS community benefit questionnaire. Jones Day attorneys also have assisted a number of clients in the process of cataloging and quantifying community benefit in a number of contexts, from preparation for IRS examinations, to defense of exemption in state tax litigation, and in responding to legislative inquiries on the topic. We would be glad to talk with you regarding how your organization addresses this important matter.

LAWYER CONTACTS

If we can be of assistance, please contact your principal Firm representative or one of the lawyers listed below. General e-mail messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

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