



HEALTH POLICY BULLETIN

FOCUS: NONPROFIT
HOSPITALS' TAX
EXEMPTION

The tax exempt status of nonprofit entities, including hospitals, is again under scrutiny. On March 31, the U.S. House Ways and Means Oversight Subcommittee released "preliminary discussion options" recommending that more activities be subject to the "unrelated business income tax." The UBIT is levied on tax exempt organizations' income from business not substantially related to their tax exempt purpose. The subcommittee suggests that the UBIT be "imposed on specific activities whose nature and scope are inherently commercial, rather than charitable." Specifically, among other options, the subcommittee is entertaining expanding the UBIT to (1) all income that nonprofits receive from sale or rental of medical equipment, laboratory testing services, and dispensing pharmaceutical drugs, with exceptions for income from their inpatients and continuous-care and emergency-care outpatients, and (2) nonprofits' income from certain health, fitness, and exercise activities. The subcommittee also is urging the IRS to expand reporting requirements on activities that nonprofit organizations claim are exempt and to study nonprofit hospitals' use of for-profit subsidiaries.

The tax exempt status of nonprofit organizations may be at stake. One option calls for "aggregating" (adding together) the income and activities of a nonprofit's for-profit subsidiaries to determine if the parent organization's primary purpose is tax exempt. As it stands now, the wording of the option leaves considerable latitude on how such a determination would be made. Gary McRay, a Lansing attorney who helps hospitals set up for-profit subsidiaries, is taking a wait-and-see attitude about any possible legislation, but he is "concerned that Congress may overreact and do something rash in light of recent complaints by small businesses." The subcommittee will hold hearings on the options in late April.

Much of the impetus for this challenge to nonprofit hospitals' tax exempt status has come from small businesses, who must compete with hospitals in areas such as the sale or rental of durable medical equipment to patients. They argue that tax exemption gives hospitals an unfair advantage. "Even if a hospital's for-profit subsidiary will be taxed, it can still rely on the nonprofit parent for capital to start the business. Independent small businesses have a much more difficult time raising start-up money. Moreover, these hospitals, with their captive markets, threaten some local businesses' survival," says Juanita Pierman, state director of the National Federation of Independent Business, which includes 20,000 small businesses in Michigan. Gary McRay offers a different perspective: "Through Medicare and other programs, the government cut payments to hospitals. Then some legislators are surprised that hospitals are branching out into activities other than inpatient care to make ends meet."

FOCUS:
SWING BEDS

Eight years ago, federal law granted most states the right to allow small rural hospitals to set up *swing-bed* programs (also called a "short-term nursing care program"). The concept is on the verge of becoming reality in Michigan, although not without considerable discussion and compromise. There is little disagreement about the need for some swing beds, especially in sparsely populated areas of the state such as the Upper Peninsula, where patients discharged from hospital acute-care beds sometimes cannot find openings in nearby nursing homes. (A 1986 MDPH survey reported a 98.9 percent occupancy rate

in U.P. nursing homes.) In situations in which a patient needs something between acute care and skilled nursing care, hospital swing beds also would fill a gap in the delivery of health care.

There is disagreement about how many and under what conditions swing beds should be permitted. Senate Bill 724, introduced by Senator John Schwarz (R-Battle Creek), would require the MDPH to grant a certificate of need for a short-term nursing care program involving up to ten beds to hospitals that have (1) fewer than one hundred beds and (2) comply with federal swing-bed provisions. Hospitals would not be permitted to keep a patient in a swing bed for more than twenty days. These programs would not have to meet CON requirements in the public health code. The Senate Health Policy Committee is expected to take up a revised version of SB 724 on April 19.

The Michigan Hospital Association (MHA) supports the bill. According to Charles Ellstein, the MHA vice president for health delivery and finance, "swing beds would often be a way to keep patients near their homes and families until nursing home beds open up nearby." Also, Medicare reimburses hospitals for swing beds, a measure of relief for small hospitals pinched by Medicare DRGs. "When nursing home beds are not available, hospitals routinely keep patients in acute-care beds for longer than is necessary. Medicare will not pay for those additional days except under a swing-bed program," Ellstein says. Occupancy rates for the 80-85 hospitals that would qualify for swing beds stood at 47 percent in 1986 and are expected to decline below 40 percent this year.

The MDPH announced in February its support for swing beds, but the department wants to restrict a hospital's swing beds to five and to require all eligible hospitals to transfer swing-bed patients within five days if there are unoccupied nursing home beds within fifty miles of patients' homes. The Health Care Association of Michigan, which represents 257 long-term care facilities, "feels the department's position is a good starting point," explains Charles Harmon, executive vice president for the association. "We recognize that some areas, especially in the Upper Peninsula, need some swing beds. But a 96 percent nursing home occupancy rate statewide, given that the average nursing home has 110 beds, means that four or five beds are unoccupied at a typical nursing home at any given time." Furthermore, Harmon hopes that hospital swing beds will be required to meet the same minimum staffing and quality of care standards that nursing home beds must meet.

OF INTEREST

In the next thirty days, look for the Senate Health Policy Committee to take up SBs 740-742, which would expand youth smoking law restrictions (SB 740), extend limits on smoking in public places (SB 741), and prohibit smoking in most health facilities and licensed private practice offices (SB 742); the House Public Health Committee is expected to report out HBs 4566-4568, which would require third-party payers to provide custodial care for Alzheimer's disease victims.

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