

Trustee Insights

TRANSFORMING GOVERNANCE



The Ever-important Role of Hospital Community Boards

Forward-thinking governance can lead to a renewed focus on nonprofit hospitals' mission

BY KARA WITALIS

Community governance is more critical today than ever before considering recent, often fast-moving trends and changes in the U.S. health care market. Today's health care system is being reshaped by the mega forces of consolidation, payment reform, the impacts of social

determinants of health, and public scrutiny, perception and expectation, to name just a few. Nonprofit hospitals and health systems that double down on strong community governance not only have increased likelihood of staying true to their mission, but also have distinct strategic advantages over those that do not.

The Origin of the Community Board

Nonprofit hospitals — those that meet Section 501(c)3 requirements of the Internal Revenue Service

code — are exempt from federal, state or local taxes and receive other preferential treatment and benefits. The idea is that any profits (or savings derived by not having to pay taxes, for example) will be reinvested into the community to further the charitable purpose.

In 1969, with the passage of Rev. Rul. 69-545, 1969-2 C.B. 117, the IRS provided greater clarity for tax-exempt status qualification for hospitals. It is with this ruling that the role and importance of the community board was made clear and became law.

First, the ruling clarifies the charitable purpose of hospitals as “the promotion of health for a class of persons sufficiently large enough to constitute benefit for the community as a whole.” Additionally, the ruling outlines six factors of community benefit that hospitals can provide to obtain and maintain a tax exemption.

1. Operate an emergency room open to all, regardless of the patient's ability to pay.

2. Maintain a board of directors drawn from the community. A hospital board of directors comprised of independent civic leaders helps to ensure that the hospital serves public, rather than private, interests and, therefore, operates for the benefit of the community.

3. Maintain an open medical staff policy (i.e., not restrict medical staff privileges to a limited group of physicians).

4. Provide hospital care to all patients able to pay, including those who do so through Medicare and Medicaid.

5. Use surplus funds to improve facilities, equipment and patient care.

6. Use surplus funds to advance medical training, education and research.

The role of the community board is, therefore, to ensure that the tax-exempt health care organization operates in a manner consistent with its charitable purpose and benefits the community as a whole rather than private interests.

Community Benefit Standard

Enacted in 2010, the Patient Protection and Affordable Care Act adds four additional requirements that tax-exempt hospitals must meet to maintain their tax-exempt status.

1. Conduct a community health needs assessment every three years and develop an implementation plan for how it will address those needs.

2. Develop, maintain and broadly publicize charity care and financial assistance policies.

3. Set a limit on charges. A tax-exempt hospital cannot charge individuals eligible for financial assistance more for medical services than they do patients with insurance.

4. Set billing and collection limits. A tax-exempt hospital may not take extraordinary collection actions against an individual, such as filing a lawsuit, before the hospital determines whether that individual is eligible for financial assistance.

Together with the six factors in the 1969 ruling, these are commonly referred to as the commu-

Strategic Advantages of Strong Community Governance

Now more than ever, the community board's approach to improving community health is a mission and strategic imperative. In addition to ensuring that providing health care services to the community is fulfilled, effective and forward thinking, community health governance leads to:

- Increased organizational integrity, image and public trust.
- Protection from public scrutiny and potential regulatory intrusion.
- An enhanced voice in local community health issues.
- Better use of precious resources with targeted investments to address local community needs.
- A greater willingness by the public to donate funds and services.

nity benefit standard.

To collect information about tax-exempt hospitals and enforce their compliance with the requirements, the IRS requires (as of 2008) that tax-exempt hospitals report on community benefit activities by content category in the IRS tax form 990 and Schedule H.

Greater Need for Community Governance

These tax-filing requirements (IRS tax form 990 and Schedule H) have led to greater transparency into the provision of community benefit. Using the all-in IRS definition of community benefit, the American Hospital Association reports that, on average, system-affiliated hospitals provide 10-14% of their total annual expenditures on community benefit activities, nearly half of which goes for financial assistance for patients and absorbing losses from Medicaid and other means-tested government program underpayments. Using data from filings with the IRS, the AHA showed that tax-exempt hospitals provided more than \$110 billion in total benefits to

their communities in filings for fiscal year 2019. This is roughly four times the \$28 billion estimated value that the nation's tax-exempt hospitals collectively receive in tax-exemption, as reported in an updated analysis conducted by the Kaiser Family Foundation.

But greater transparency has also led to heightened public and regulatory scrutiny. Fierce and ongoing debate persists about whether the IRS' definition of community benefit (set out in the tax form 990 and Schedule H) is the right definition, and whether or to what extent tax-exempt hospitals are adequately meeting the letter and the spirit of the tax-exemption laws. Policy advocacy groups, news journalists and others continue to raise the question of whether tax-exempt hospitals are doing right by the laws and by their communities. The debate is arguable on both sides, but in today's world, perception is reality.

This scrutiny is coming at a time of other significant changes in the market. For example, today more than 50% of all tax-exempt community hospitals are part of a consoli-

dated system. Within system governance, the community board is often far removed from the health system's strategic decision-making table, forcing a delta between local community need and strategic decisions — all the more reason for strong, effective local community governance to ensure that local needs are not lost in the size and scale of consolidated systems.

What's more, the Affordable Care Act's promotion of population health, primarily through new payment mechanisms, shifts the financial incentive away from a volume-based, fee-for-service payment system to a system based on value. This fundamental change in how hospitals are paid for services creates a strategic imperative to expand the notion of community benefit beyond the IRS standard to include population health more broadly. Indeed, the 1969 IRS ruling requires hospitals to do just that: "the promotion of health for a class of persons sufficiently large enough to constitute benefit for the community as a whole." Payment reform makes this explicit.

The movement toward population health, coupled with the inequities in the nation's health care delivery system unmasked through the COVID-19 pandemic, has raised awareness of the impact of social determinants of health on patient, population and community health. Social determinants of health are the non-medical factors that influence health outcomes.

To address health care disparities in hospital inpatient care and beyond, the Centers for Medicare & Medicaid Services is adopting health equity-focused measures in the

Key Roles of the Hospital Community Board

- **Adhere to the mission.** The mission is the reason that the organization exists. Everything done by the organization should tie back to the organization's purpose and mission.
- **Advocate for your community's health needs.** Community board members are the voice of the community in the boardroom. They represent and prioritize the needs of the community. To do this well, board members are encouraged to solicit and incorporate diverse perspectives from the community as a whole, particularly historically marginalized communities.
- **Understand how your organization provides community benefit and addresses your community's health care needs.** Regarding the IRS regulations, there are three notable issues. First, there is no federal minimum amount of spending on community benefit activities that is required by tax-exempt hospitals. In other words, these organizations are required to report spending, but the dollar value may be zero. Second, the reported spending on community benefit activities does not have to be tied to priority health issues identified in the community health needs assessment. Third, not all states' laws pertaining to community benefit provision and reporting are equal. That said, policy hawks are advocating for regulators to require certain spending levels in community health improvements and for those investments to be directly tied to community health needs. Forward thinking leaders of tax-exempt hospitals are tracking community benefit spending (through IRS form 990 and Schedule H) year-over-year, establishing investment targets above baseline and connecting community benefit activities to the needs identified in the CHNA and plans.
- **Be a spokesperson for the organization.** Health care organizations and executives are tasked with making difficult decisions to balance the needs of the community with financial sustainability. Community board members can support the organization by being a spokesperson for the organization when needed.
- **Build constructive relationships in the community.** Hospitals are frequently regarded as the primary health care service provider in their community. Still, it is helpful to engage with other organizations that may be better suited to address certain needs. There is a myriad of organizations with which hospitals can partner to drive better community health — public health agencies, schools, churches, local markets, public parks and recreation departments, law enforcement, social services agencies, civic associations, food banks, housing services and shelters.
- **Hold management and the board accountable.** Conducting routine board self-evaluation helps foster continuous improvement in performance and drives change when necessary. Through this process board members gain a better understanding of their roles and responsibilities, tend to be more engaged in the work and often have a more collaborative relationship with both their management and each other.

Inpatient Quality Reporting Program. These measures include capturing specific hospital activities to address health inequity in strategic planning, data collection and analysis, quality improvement and leadership engagement. Additionally, hospitals are now required to screen inpatients for health-related social needs like food insecurity, housing instability, transportation needs, utility difficulties and interpersonal safety. CMS states, “By screening for and identifying such unmet needs, hospitals will be in a better position to serve patients holistically by addressing and monitoring what are often key contributors to poor physical and mental health outcomes.”

With such significant change — and the renewed emphasis on community health — strong and effective local community governance can serve as the center of gravity in health care.

Re-valuing Community Governance

The community board has never been more important than it is today. In the new era of health care, strong community governance should strive to meet the letter of

Questions for Discussion

Use these questions to prompt discussion at your next board meeting.

- What are the health challenges of the citizens of our community, particularly the poor and most vulnerable? Do our reports provide overall health data, or do we receive stratified data that provides insight on individuals or groups that may be “left behind”?
- In what ways are we actively using the community health needs assessment to drive our actions and investments to improve community health?
- What partners can help address our needs? How does the organization identify and evaluate community organizations that could serve as potential partners?
- What is our annual spending on community benefit activities (i.e., IRS form 990 and Schedule H tax filings)? How does our spending compare to the national average? What more can be done?
- What is needed to increase the health system’s capacity to change toward value-based models?

the laws and justify tax-exempt status. At the same time, community governance should also strive to meet the spirit of the laws in which health care programs, services and investments collectively raise the level of health for everyone in the community, particularly the poor and vulnerable.

The time is now to take a more contemporary approach to community governance that reflects today’s realities. Community boards need to view community health

and benefits more broadly and to think more boldly about how health care fulfills the mission and addresses the underlying causes of health problems in our local communities.

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