



Government Relations Update

February 17, 2015



Pennsylvania Issues

Legislation

- **S.B. 4:** Institutions of Purely Public Charity Act. As previously reported, the Pennsylvania Constitution provides that “institution[s] of a purely public charity” are entitled to exemption from real estate taxes. In 1985, the Pennsylvania Supreme Court adopted a test (referred to as the “HUP Test”) to determine that an institution is one of purely public charity when it: (a) advances a charitable purpose; (b) donates or renders gratuitously a substantial portion of its services; (c) benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (d) relieves the government of some of its burden; and (e) operates entirely free from private profit motive. The “relief of government burden” element of the HUP Test was inconsistently applied by courts and led to confusion and confrontation among traditionally tax exempt entities and political subdivisions. In response, the Pennsylvania General Assembly enacted the Institutions of Purely Public Charity Act (Act 55) in 1997, which clarified part (d) of the HUP Test by defining broadly the requirement to relieve the government of some of its burden.

On April 25, 2012, the Pennsylvania Supreme Court revisited the HUP Test in a tax exemption appeal. The Court found that the state legislature does not have authority to set standards for determining whether an entity is a purely public charity, since courts have the exclusive power to interpret the Pennsylvania Constitution. The Court determined that a party must meet the HUP Test to be eligible for tax exemption, and an applicant’s ability to comply with Act 55 is meaningless. As a result, applicants for tax exemption can no longer rely on the certainty created by Act 55.

In an effort to address the issue, the Pennsylvania General Assembly now seeks to amend the Pennsylvania Constitution to permit the legislature to define further the requirements to be a purely public charity. Amendments to the Pennsylvania Constitution must be passed in two consecutive legislative sessions before being placed on the ballot for approval by Pennsylvania voters. During the most recent legislative session, the House and Senate passed legislation to amend the Pennsylvania Constitution so that the legislature can define the elements to be a purely public charity.

On January 20, 2015, Senator Ryan Aument (R-Lancaster) reintroduced the bill, so that it can be approved by the legislature for a second time. The Senate Finance Committee approved the bill on January 22, 2015, and it is currently under consideration in the Senate. Senators David Argall (R-Berks, Schuylkill), Patrick Browne (R-Lehigh) and Bob Mensch (R-Berks, Bucks, Montgomery) serve as co-sponsors of the bill, which is supported by the Hospital & Healthsystem Association of Pennsylvania, the Pennsylvania Chamber of Business and Industry, the Pennsylvania State Alliance of YMCAs and the United Way of Pennsylvania. The Pennsylvania Municipal League, the Pennsylvania State Association of Township Commissioners and many unions, including the United Food & Commercial Workers International Union (UFCW) and the Service Employees International Union (SEIU), strongly oppose the bill. They argue that the bill will result in flexibility for tax exempt entities and thus greater financial pressure for municipalities. If both the House and the Senate pass the bill by the end of February, the measure could be placed on the May 19th primary election ballot.

Advocacy

- **Certificate of Need:** On February 2, 2015, Representative Florindo Fabrizio (D-Erie) announced his intent to introduce legislation requiring the Joint State Government Commission to study whether to reinstate the Certificate of Need (CON) requirement in Pennsylvania. Representative Fabrizio is concerned that the number of ambulatory surgery centers within Pennsylvania has increased from 44 to 285 since the CON requirement expired in 1987. Pennsylvania is one of 14 states nationwide that does not have a CON requirement. The House Health Committee intends to hold a hearing on the bill in the spring.

New Jersey Issues

Legislation

- **S.1183:** Nurse Staffing Ratios. On January 30, 2014, Senator Joseph Vitale (D-Woodbridge) introduced legislation to establish minimum nurse staffing ratios for New Jersey hospitals and ambulatory surgery facilities. Representatives from various unions, including the Health Professionals and Allied Employees (HPAE) and the Jersey Nurse Economic Security Organization (JNESO), assert that higher staffing levels improve patient care and reduce hospital acquired infections. The New Jersey Hospital Association strongly opposes mandatory nurse ratios, since they would create new administrative burdens on hospitals and reduce the ability of hospitals to adjust to changing staffing needs. On February 9, 2015, the Senate Health, Human Services and Senior Citizens Committee held a hearing on the bill. Several members from HPAE and JNESO testified in favor of the bill, and representatives from New Jersey hospitals voiced their opposition. Gail Newton, Vice President for Patient Care Services at St. Luke's Hospital – Warren Campus, supplied written testimony against the legislation. A similar bill has been introduced in the State Assembly.

Federal Issues

Advocacy

- **Sustainable Growth Rate (SGR):** As previously reported, the SGR formula was devised to control healthcare spending by tying Medicare costs to the growth in the economy. As medical costs increased more quickly than inflation, the SGR formula would have caused physician payment reductions every year since 2002. In response, Congress has passed several bills to delay implementation of the payment reductions. The current Medicare physician fee schedule will expire on March 31, 2015. Unless Congress acts, physician payments through Medicare will be reduced by 24%. Although the American Hospital Association, AARP, the Society of Thoracic Surgeons and the American Medical Society are advocating for a permanent solution to this problem which would not reduce Medicare or Medicaid payments to hospitals, it is doubtful that lawmakers will act before the March 31st deadline. As a result, another short term bill will likely be implemented to delay the payment reduction.

Miscellaneous

- **Value-Based Care:** On January 26, 2015, the Department of Health and Human Services (HHS) announced plans to tie 30% of traditional, or fee-for-service, Medicare payments to quality or value through alternative payment models, such as Accountable Care Organizations (ACOs) or bundled payment arrangements, by the end of 2016, and to tie 50% of payments to these models by the end of 2018. HHS also set a goal of tying 85% of all traditional Medicare payments to quality or value by 2016 and 90% by 2018 through programs such as the Hospital Value Based Purchasing and the Hospital Readmissions Reduction Programs. HHS will begin meeting with private payers, employers, consumers, providers, states and state Medicaid programs in March to discuss the proposed transition.
- **Resignation:** On January 16, 2015, Marilyn Tavenner, Administrator for the Centers for Medicare and Medicaid Services (CMS), announced that she will resign at the end of February. Ms. Tavenner has served as the Administrator since May 2013, when she replaced then acting Administrator Donald Berwick. CMS Principal Deputy Administrator Andy Slavitt will become the Acting Administrator until a permanent successor is confirmed. Prior to joining CMS in June 2014, Mr. Slavitt spent more than 20 years in the private sector focusing on the delivery of clinical, technology and operational solutions for health care clients and consumers. He is a graduate of The Wharton School and The College of Arts & Sciences at the University of Pennsylvania, and he received his Master of Business Administration degree from the Harvard Business School.