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SALARY SHAMING: OREGON CONSIDERS BILL TYING HOSPITAL-BASED PROPERTY TAX EXEMPTIONS TO EMPLOYEE AND EXECUTIVE COMPENSATION

The Oregon State Legislature is considering a bill that bases the determination of tax-exemption for hospital property on the relationship between hospital executives' compensation and the amount of charity care provided by the hospital. While a number of other states have passed legislation that threatens a hospital's property tax-exempt status where a hospital fails to demonstrate sufficient charitability, the Oregon bill goes a step further in incorporating an excessive compensation element into the property tax exemption formula.

If enacted, Oregon House Bill 2161 ("HB 2161") would:

1. Require hospitals applying for a property tax exemption to report the total amount spent on charity care in the prior year;
2. Require hospitals applying for a property tax exemption to report all compensation paid to any individual director, officer, employee or agent that exceeded $1 million in the prior year; and
3. Limit a hospital's property tax exemption to (a) the amount spent on charitable care in the prior year minus (b) the sum of all individual compensation in excess of $1 million in that year.

Notably, HB 2161 defines "compensation" as "wages, salaries, bonuses, commissions, stock options or any other form of remuneration paid to or accrued by an individual in return for personal services rendered to a hospital or health clinic."

THREE KEY TAKEAWAYS FROM OREGON HB 2161

1. Highly paid executives and medical staff can be an easy scapegoat for denying property tax exemption to hospitals.

   The apparent intent of HB 2161 is to require nonprofit hospitals to prove that they are actually operating in a charitable manner. Because the bill proposes that charitable care be offset by compensation above $1 million, it suggests that a hospital does not function charitably when its employees and executives earn seven-figure compensation. This argument has gained traction in other states and at the federal level in the past several years, as, for example, the 2017 Tax Cuts and Jobs Act imposed a 21 percent excise tax on certain nonprofit executive compensation over $1 million.

2. Equitable concerns may drive executive compensation ceilings.

   Although one might expect market data on compensation to drive the analysis of what amount is appropriate and what is excessive, neither HB 2161 nor its legislative history to date, sets out an express justification for the $1 million employee compensation ceiling. Moreover, the bill does not provide any accommodation for the size or location of the health system. Instead, it appears the $1 million benchmark is largely influenced by what the Oregon legislature believes is fair or reasonable compensation for hospital employees with no room for fact-specific considerations.

3. Expect other states to consider tying employee compensation to the amount of charity care provided by nonprofit hospitals.

   Charity care generally includes health services delivered at reduced charge or no charge and bad debt expense. Further, in some states, such as Michigan, charity care includes the shortfall between a provider's cost of providing Medicare-reimbursed services and the reimbursements received for those services (the so-called "Medicare shortfall"). Some heath care analysts report that since the passage of the Affordable Care Act, some elements of charity care (particularly discounted charges and bad debts) have generally decreased, especially in those states with Medicaid expansion, as patients who would have sought reduced-cost treatment from a hospital are now covered under the ACA. Bills like HB 2161 appear to exact a further penalty for such decreases by linking charity care to executive earnings. The more reimbursed care the hospital provides, so the logic goes, the more it can afford to pay its executives. Other state legislatures aware of the Oregon bill may choose to introduce similar conditions tying employee compensation to charitable benefits in the analysis of hospital-based property tax exemption.

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