

# United States Senate

WASHINGTON, DC 20510

August 7, 2023

The Honorable Daniel Werfel  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

The Honorable Edward T. Killen  
Commissioner  
Tax Exempt and Government  
Entities Division  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Commissioner Werfel and Commissioner Killen:

We write today regarding our concern over the growing amount of medical debt,<sup>1</sup> and the role your agencies can play in providing greater transparency and oversight into nonprofit hospitals, which hold a portion of this debt.<sup>2</sup>

More than half of the approximately 5,000 community hospitals in the United States operate as private, nonprofit organizations.<sup>3</sup> Under IRS rules, nonprofit hospitals that provide “benefits to a class of persons that is broad enough to benefit the community” may qualify for tax exemptions.<sup>4</sup> One study estimated that these exemptions were worth over \$28 billion in 2020.<sup>5</sup>

We are alarmed by reports that despite their tax-exempt status, certain nonprofit hospitals may be taking advantage of this overly broad definition of “community benefit” and engaging in practices that are not in the best interest of the patient.<sup>6</sup> These practices – along with lax federal oversight<sup>7</sup> – have allowed some nonprofit hospitals to avoid providing essential care in the community for those who need it most.”<sup>8</sup>

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<sup>1</sup> NPR, “Sick and struggling to pay, 100 million people in the U.S. live with medical debt,” Noam Levey, June 16, 2022, <https://www.npr.org/sections/health-shots/2022/06/16/1104679219/medical-bills-debt-investigation>

<sup>2</sup> Internal Revenue Service, “Report to Congress on Private Tax-Exempt, Taxable and Government-Owned Hospitals,” report, March 2020, <https://www.grassley.senate.gov/imo/media/doc/3-24-20%20CY%202016%20Hospital%20Report%202020.pdf>

<sup>3</sup> American Hospital Association, “Fast Facts on U.S. Hospitals, 2022,” <https://www.aha.org/statistics/fast-facts-us-hospitals>

<sup>4</sup> Internal Revenue Service, “Charitable Hospitals - General Requirements for Tax-Exemption Under Section 501(c)(3),” <https://www.irs.gov/charities-non-profits/charitable-hospitals-general-requirements-for-tax-exemption-under-section-501c3>

<sup>5</sup> Kaiser Family Foundation, “The Estimated Value of Tax Exemption for Nonprofit Hospitals was About \$28 Billion in 2020,” Jamie Goodwin, Zachary Levinson, and Scott Hulver, March 14, 2023, <https://www.kff.org/fe8b295/>

<sup>6</sup> Fierce Healthcare, “The top 10 nonprofit health systems by 2021 operating revenue,” Dave Muoio, June 7, 2022, <https://www.fiercehealthcare.com/special-reports/top-10-nonprofit-health-systems-2021-operating-revenue>

<sup>7</sup> Government Accountability Office, “Tax Administration: Opportunities Exist to Improve Oversight of Hospitals' Tax-Exempt Status,” September 17, 2020, p. 2, <https://www.gao.gov/assets/gao-20-679.pdf>

<sup>8</sup> Health Affairs, “Analysis Suggests Government And Nonprofit Hospitals' Charity Care Is Not Aligned With Their Favorable Tax Treatment,” Ge Bai, Hossein Zare, Matthew D. Eisenberg, Daniel Polsky, and Gerard F.

For example, the Community Service Society published a report revealing 56 nonprofit hospitals in New York filed liens on nearly 5,000 patients' homes in 2017 and 2018.<sup>9</sup> The liens were placed predominantly on homes in poor and rural areas, with nearly 80 percent of the liens occurring in counties with median incomes below 300 percent of the poverty line.<sup>10</sup> In another example, based on an investigation by Senator Grassley, many uninsured patients of the nonprofit hospital, Mosaic Life Care of St. Joseph, were charged full price for health care services that they should have received for free or a discounted rate.<sup>11</sup> In Tennessee, Methodist Le Bonheur Healthcare brought over 8,300 lawsuits against patients and employees for unpaid medical bills, leading to attempted wage garnishments for thousands of those patients.<sup>12</sup> The University of Virginia Health System filed 36,000 lawsuits for more than \$106 million over a six year period that involved relentless debt-collection efforts.<sup>13</sup> Last fall, the *New York Times* reported that Providence Health pursued a strategy to “wring money” out of patients and “pressure them to pay” for services when those patients were eligible for free care.<sup>14</sup> And most recently, the *New York Times* reported that Allina Health System, a nonprofit health system in the Midwest that is estimated to receive \$209 million more in tax exemptions than was spent on providing charity care based on 2020 IRS

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Anderson, April 2021, <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.01627>

<sup>9</sup> Community Service Society, “Discharged into Debt: Nonprofit Hospitals File Liens on Patients’ Homes,” Elisabeth Benjamin and Amanda Dunker, November 2021, p.1, <https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Liens.pdf>

<sup>10</sup> Community Service Society, “Discharged into Debt: Nonprofit Hospitals File Liens on Patients’ Homes,” Elisabeth Benjamin and Amanda Dunker, November 2021, p.1, <https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Liens.pdf>

<sup>11</sup> Letter from U.S. Senator Charles E. Grassley to Mosaic Life Care, January 16, 2015, <https://www.grassley.senate.gov/news/news-releases/grassley-seeks-answers-non-profit-hospital-over-billing-lawsuits>; Press Release from the Office of U.S. Senator Charles E. Grassley, “Grassley Releases Results Of Inquiry Into Missouri Tax-Exempt Hospital; Confirms Debt Forgiveness Of \$16.9 Million For 5,070 Patients,” May 24, 2016, <https://www.grassley.senate.gov/news/news-releases/grassley-releases-results-inquiry-missouri-tax-exempt-hospital-confirms-debt>

<sup>12</sup> Letter from U.S. Senator Charles E. Grassley to Members of the Senate Finance and Judiciary Committees, December 2, 2020, [https://www.finance.senate.gov/imo/media/doc/2020-12-02%20CEG%20to%20Colleagues%20letter%20only%20\(Non-profit%20Hospitals\).pdf](https://www.finance.senate.gov/imo/media/doc/2020-12-02%20CEG%20to%20Colleagues%20letter%20only%20(Non-profit%20Hospitals).pdf)

<sup>13</sup> KFF Health News, “System Sues Thousands Of Patients, Seizing Paychecks And Claiming Homes,” Jay Hancock and Elizabeth Lucas, September 10, 2019, <https://kffhealthnews.org/news/uva-health-system-sues-patients-virginia-courts-garnishment-liens-bankruptcy/>; Letter from U.S. Senator Charles E. Grassley to the University of Virginia (UVA) Health System, October 17, 2019, <https://www.grassley.senate.gov/news/news-releases/grassley-presses-uva-medical-center-tax-exempt-obligations>

<sup>14</sup> Letter from U.S. Senator Elizabeth Warren to McKinsey & Company, February 20, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.02.20%20Letter%20to%20McKinsey%20re%20Nonprofit%20Hospitals.pdf>; The New York Times, “They Were Entitled to Free Care. Hospitals Hounded Them to Pay,” Jessica Silver Greenberg and Katie Thomas, December 15, 2022, <https://www.nytimes.com/2022/09/24/business/nonprofithospitals-poor-patients.html>

data,<sup>15</sup> has a policy of denying care from patients who have unpaid medical bills.<sup>16</sup> This practice of withholding care leaves patients with few options, especially those living in rural areas where Allina is the dominant health system. These examples raise serious concerns that nonprofit hospitals may not be fulfilling their required obligation to provide reduced or free care to their most vulnerable patients.

The Tax Exempt and Government Entities (TE/GE) Division within IRS oversees nonprofit hospitals,<sup>17</sup> and uses two primary methods to collect information to inform compliance with the law: (1) annual tax forms and (2) regular reviews of nonprofit hospitals' community benefit activities.<sup>18</sup> Tax-exempt nonprofit organizations are required to annually file the IRS Form 990, which requires organizations to report information on compensation, revenue and expenses, assets and liabilities, and tax compliance.<sup>19</sup> Nonprofit hospitals are also required to file a Schedule H form with the Form 990 that reports information on community benefits, community building activities, collection practices, management structure, and facilities.<sup>20</sup>

The community benefit standard, first enacted in 1969,<sup>21</sup> represents “what non-profit hospitals contribute to their communities in lieu of paying federal taxes.”<sup>22</sup> However, the standard itself, which relies on “10 holistically analyzed metrics,” is arguably insufficient in its current form to guarantee protection and services to the communities hosting these hospitals.<sup>23</sup> One study of over 1,700 nonprofit hospitals found that 77 percent spent less on charity care and community investment than the estimated value of their tax breaks.<sup>24</sup> The study's authors estimated that the total deficit of charity care for nonprofit hospitals was

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<sup>15</sup> Lown Institute, “This Hospital System Denied Care to Patients with Medical Debt. But They’re Not the Only Ones,” Judith Garber, June 2, 2023, <https://lowninstitute.org/this-hospital-system-denied-care-to-patients-with-medical-debt-but-theyre-not-the-only-ones/#:~:text=That%20year%2C%20Allina%20spent%20%2457,calls%20a%20fair%20share%20deficit>

<sup>16</sup> The New York Times, “This Nonprofit Health System Cuts off Patients with Medical Debt,” Sarah Kilff and Jessica Silver-Greenberg, June 1, 2023, <https://www.nytimes.com/2023/06/01/business/allina-health-hospital-debt.html>

<sup>17</sup> Government Accountability Office, “Tax Administration: Opportunities Exist to Improve Oversight of Hospitals' Tax-Exempt Status,” September 17, 2020, p. 7, <https://www.gao.gov/products/gao-20-679>

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<sup>19</sup> *Id.*

<sup>20</sup> Government Accountability Office, “Tax Administration: Opportunities Exist to Improve Oversight of Hospitals' Tax-Exempt Status,” September 17, 2020, <https://www.gao.gov/products/gao-20-679>

<sup>21</sup> U.S. National Institutes of Health's National Library of Medicine, “Evaluating Hospitals' Provision of Community Benefit: An Argument for an Outcome-Based Approach to Nonprofit Hospital Tax Exemption,” Daniel B. Rubin, Simone Rauscher Singh, and Peter D. Jacobson, April 2013, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3673262/#:~:text=In%20its%201969%20Revenue%20Ruling,the%20benefit%20of%20the%20community>

<sup>22</sup> Health Affairs, “Nonprofit Hospitals' Community Benefit Requirements,” Julia James, February 26, 2016, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7061524/](https://www.healthaffairs.org/doi/10.1377/hpb20160225.954803/#:~:text=Prior%20to%201969%2C%20to%20qualify,to%20engage%20in%20activities%20that; Frontiers Public Health, “The Evolution of Community Benefit: Perspective on Progress Toward Purpose,” Connie J. Evashwick and Penrose Jackson, March 2, 2020, <a href=)

<sup>23</sup> Health Affairs, “Revise The IRS's Nonprofit Hospital Community Benefit Reporting Standard,” Sunjay Letchuman, Leonard L. Berry, Michael K. Hole, and Ge Bai, April 15, 2022, <https://www.healthaffairs.org/doi/10.1377/forefront.20220413.829370/>

nearly \$14.2 billion in 2020.<sup>25</sup> In Massachusetts, Minnesota, Rhode Island, and Washington D.C., the states' deficits exceeded the amount of medical debt on credit reports in each state.<sup>26</sup> According to the Government Accountability Office (GAO), the "open-ended reporting structure can affect the comprehensiveness and consistency with which a tax-exempt hospital presents its community benefits."<sup>27</sup>

While the IRS is required to review hospitals' community benefit activities at least once every three years,<sup>28</sup> a 2020 report by the GAO found that the "lack of clarity" around what constitutes community benefits makes IRS' oversight of nonprofit hospitals "challenging."<sup>29</sup> In response, GAO made specific recommendations to the IRS to further increase transparency and ensure nonprofit hospitals are meeting their community obligations.<sup>30</sup> Since the report's publication in September 2020, the IRS has implemented several of GAO's recommendations: creating a "well-documented process to identify hospitals at risk for noncompliance with the community benefit standard," adjusting the Form 990 Schedule H instructions to ensure more relevant responses, and establishing specific audit codes to better identify potentially noncompliant institutions.<sup>31</sup>

However, more is required to ensure nonprofit hospitals' community benefit information is standardized, consistent and easily identifiable. In particular, the IRS has not acted upon GAO's top recommendation of updating Form 990, including Schedule H to "ensure the information demonstrating the community benefits a hospital is providing is clear and can be easily identified."<sup>32</sup> According testimony delivered by Jessica Lucas-Judy, GAO's Director of Strategic Issues, before the House Committee on Way and Means Subcommittee on Oversight in April 2023, recent changes made to Form 990 Schedule H allow nonprofit hospitals to describe the scope of the community benefits they provide in an open-ended, narrative format.<sup>33</sup> This qualitative reporting fails to specify the funds used to improve facilities, equipment, and patient care, resulting in "incomplete information on how hospitals are providing community benefits."<sup>34</sup>

The Treasury Department's Office of Tax Policy and the IRS issue priority guidance plans to inform future agency action on regulations, rulings, procedures, notices, and other administrative guidance. Priority guidance plans issued in 2010 through 2015 included work

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<sup>24</sup> Lown Institute, "2023 Results Fair Share Spending: How Much are Hospitals Giving Back to their Communities?" April 11, 2023, <https://lownhospitalsindex.org/2023-fair-share-spending/>

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Letter to Senator Grassley from Jessica Lucas-Judy Director, Strategic Issues, GAO, January 9, 2023 (on file with the Office of U.S. Senator Charles Grassley).

<sup>28</sup> Government Accountability Office, "Tax Administration: Opportunities Exist to Improve Oversight of Hospitals' Tax-Exempt Status," September 17, 2020, <https://www.gao.gov/products/gao-20-679>

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Government Accountability Office, "IRS Oversight of Hospitals' Tax-Exempt Status" April 26, 2023, <https://www.gao.gov/assets/gao-23-106777.pdf>

<sup>34</sup> *Id.*

on additional requirements for charitable hospitals.<sup>35</sup> We urge that a review of Form 990 Schedule H be included as part of IRS' 2023 Priority Guidance Plan. To better understand the IRS and the Department of Treasury's (Treasury) existing oversight of nonprofit hospitals, we also request answers to the following questions and related information no later than 60 days after receiving this letter:

1. Provide a list of the most commonly reported community benefit activities that qualified a nonprofit hospital for tax exemptions in FY2021 and FY2022. Please categorize by charity care, unreimbursed costs of Medicaid, community health improvement activities, professional development, other.
2. Describe the updates the IRS has made since September 2020 to the instructions to Form 990 Schedule H to modify how community benefit information is identified and provided.
  - a. Describe the rationale for these updates to Form 990 Schedule H.
  - b. Describe how these updates to Form 990 Schedule H have improved clarity in reviewing community benefit information
  - c. What additional updates did IRS consider in its review of Form 990?
3. How many hospitals did IRS identify as "at risk" for noncompliance with the community benefit standard since Spring 2021 when IRS implemented several of GAO's recommendations related to establishing a well-documented process to identify hospitals "at risk" for noncompliance?
  - a. Describe how these changes impacted the effectiveness of reviewing hospitals' community benefit activities.
4. Provide a list of the nonprofit hospitals that the IRS referred to its audit division for potential Patient Protection and Affordable Care Act (ACA) violations from FY2019 to FY2022.
  - a. How many of these hospitals were referred because of noncompliance issues related to the community benefit standard?
  - b. How many nonprofit hospitals reported no spending on community benefits in 2022?
5. Provide a list of nonprofit hospitals that lost their tax-exemption due to noncompliance with the community benefit standard since the full implementation of the ACA on January 1, 2014.
6. Provide a list of nonprofit hospitals that had their IRS Form 990 rejected for failing to meet requirements related to community benefit reporting.

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<sup>35</sup> Internal Revenue Service, "Priority Guidance Plan" December 2010 through July 2015, <https://www.irs.gov/privacy-disclosure/priority-guidance-plan>

7. Provide a list of nonprofit hospitals that failed to file an annual Form 990 with the IRS between FY2019 to FY2022.
  - a. How many of these nonprofit hospitals were issued penalties for this failure?
  - b. How many of these nonprofit hospitals had their tax-exempt status revoked?
8. What other challenges does IRS faces in its ability to oversee tax-exempt hospitals?

Sincerely,



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Elizabeth Warren  
United States Senator



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Raphael Warnock  
United States Senator



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Bill Cassidy, M.D.  
United States Senator



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Charles E. Grassley  
United States Senator

# United States Senate

WASHINGTON, DC 20510

August 7, 2023

The Honorable J. Russell George  
Treasury Inspector General for Tax  
Administration  
901 D Street, SW Suite 600  
Washington, DC 20024

Dear Inspector General George:

We write today regarding our concern over the growing amount of medical debt,<sup>1</sup> and the role your agencies can play in providing greater transparency and oversight into nonprofit hospitals, which hold a portion of this debt.<sup>2</sup>

More than half of the approximately 5,000 community hospitals in the United States operate as private, nonprofit organizations.<sup>3</sup> Under Internal Revenue Service (IRS) rules, nonprofit hospitals that provide “benefits to a class of persons that is broad enough to benefit the community” may qualify for tax exemptions.<sup>4</sup> One study estimated that these exemptions were worth over \$28 billion in 2020.<sup>5</sup>

We are alarmed by reports that despite their tax-exempt status, certain nonprofit hospitals may be taking advantage of this overly broad definition of “community benefit” and engaging in practices that are not in the best interest of the patient.<sup>6</sup> These practices – along with lax federal oversight<sup>7</sup> – have allowed some nonprofit hospitals to avoid providing essential care in the community for those who need it most.<sup>8</sup>

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<sup>1</sup> NPR, “Sick and struggling to pay, 100 million people in the U.S. live with medical debt,” Noam Levey, June 16, 2022, <https://www.npr.org/sections/health-shots/2022/06/16/1104679219/medical-bills-debt-investigation>.

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For example, the Community Service Society published a report revealing 56 nonprofit hospitals in New York filed liens on nearly 5,000 patients' homes in 2017 and 2018.<sup>9</sup> The liens were placed predominantly on homes in poor and rural areas, with nearly 80 percent of the liens occurring in counties with median incomes below 300 percent of the poverty line.<sup>10</sup> In another example, based on an investigation by Senator Grassley, many uninsured patients of the nonprofit hospital, Mosaic Life Care of St. Joseph, were charged full price for health care services that they should have received for free or a discounted rate.<sup>11</sup> In Tennessee, Methodist Le Bonheur Healthcare brought over 8,300 lawsuits against patients and employees for unpaid medical bills, leading to attempted wage garnishments for thousands of those patients.<sup>12</sup> Last fall, the *New York Times* reported that Providence Health pursued a strategy to “wring money” out of patients and “pressure them to pay” for services when those patients were eligible for free care.<sup>13</sup> The University of Virginia Health System filed 36,000 lawsuits for more than \$106 million over a six year period that involved relentless debt-collection efforts.<sup>14</sup> And most recently, the *New York Times* reported that Allina Health System, a nonprofit health system in the Midwest that is estimated to receive \$209 million more in tax exemptions than was spent on providing charity care based on 2020 IRS data,<sup>15</sup> has a policy of denying care from patients who have unpaid medical bills.<sup>16</sup> This practice of withholding care leaves patients with few options, especially those living in rural areas. These examples raise serious concerns that nonprofit hospitals may

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<sup>26</sup> *Id.*

<sup>27</sup> Letter to Senator Grassley from Jessica Lucas-Judy Director, Strategic Issues, GAO, January 9, 2023 (on file with the Office of U.S. Senator Charles Grassley).

While the IRS is required to review hospitals' community benefit activities at least once every three years,<sup>28</sup> a 2020 report by the GAO found that the "lack of clarity" around what constitutes community benefits makes IRS' oversight of nonprofit hospitals "challenging."<sup>29</sup> In response, GAO made specific recommendations to the IRS to further increase transparency and ensure nonprofit hospitals are meeting their community obligations.<sup>30</sup> Since the report's publication in September 2020, the IRS has implemented several of GAO's recommendations: creating a "well-documented process to identify hospitals at risk for noncompliance with the community benefit standard," adjusting the Form 990 Schedule H instructions to ensure more relevant responses, and establishing specific audit codes to better identify potentially noncompliant institutions.<sup>31</sup>

However, more is required to ensure nonprofit hospitals' community benefit information is standardized, consistent and easily identifiable. In particular, the IRS has not acted upon GAO's top recommendation of updating Form 990, including Schedule H to "ensure the information demonstrating the community benefits a hospital is providing is clear and can be easily identified."<sup>32</sup> According to testimony delivered by Jessica Lucas-Judy, GAO's Director of Strategic Issues, before the House Committee on Way and Means Subcommittee on Oversight in April 2023, recent changes made to Form 990 Schedule H allow nonprofit hospitals to describe the scope of the community benefits they provide in an open-ended, narrative format.<sup>33</sup> This qualitative reporting fails to specify the funds used to improve facilities, equipment, and patient care, resulting in "incomplete information on how hospitals are providing community benefits."<sup>34</sup>

Each year, the Office of the Treasury Inspector General for Tax Administration (TIGTA) develops an audit plan based on strategic risk assessment of the challenges facing IRS.<sup>35</sup> We urge TIGTA to evaluate compliance with the tax-exempt requirements in its 2024 audit plan. To address the concerns surrounding oversight of nonprofit hospitals, we ask that the 2024 audit plan undertake the following action items:

1. Determine whether the IRS is effectively ensuring that nonprofit hospitals comply with tax-exempt requirements and are providing sufficient community benefit;
2. Evaluate the IRS' process for identifying hospitals "at risk" for noncompliance with the community benefit standard and its resolution process to ensure future compliance;
3. Assess the effectiveness of the IRS' controls to detect and prevent hospitals underinvestment in improving community health;

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<sup>28</sup> Government Accountability Office, "Tax Administration: Opportunities Exist to Improve Oversight of Hospitals' Tax-Exempt Status," September 17, 2020, <https://www.gao.gov/products/gao-20-679>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Government Accountability Office, "IRS Oversight of Hospitals' Tax-Exempt Status" April 26, 2023, <https://www.gao.gov/assets/gao-23-106777.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> U.S. Treasury Inspector General for Tax Administration, "Plans", <https://www.tigta.gov/reports/plans>.

4. Review and assess the effectiveness of the community benefit standard, as outlined in Rev. Rul. 69-545, in its ability to determine whether a hospital is organized and operated for the charitable purpose of promoting health;
5. Evaluate the adjustments the IRS made to Form 990 Schedule H instructions for transparency, consistency, and comprehensiveness in reporting;
6. Evaluate the existing standards for financial assistance policies and practices that reduce unnecessary medical debt from patients who qualify for free or discounted care;
7. Review the effectiveness of IRS' efforts to ensure hospitals make "reasonable efforts" to determine whether individuals are eligible for financial assistance before initiating extraordinary collection actions;
8. Identify the pervasiveness of nonprofit hospitals billing patients with "gross charges"; and
9. Identify the challenges IRS faces in its ability to oversee tax-exempt hospitals.

We also request that TIGTA, no later than 60 days after receiving this letter, provide a briefing to our office on the opportunities to improve oversight of hospitals' tax-exempt status.

We thank you for your attention to this matter.

Sincerely,



Elizabeth Warren  
United States Senator



Raphael Warnock  
United States Senator



Bill Cassidy, M.D.  
United States Senator



Charles E. Grassley  
United States Senator