

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 9504
OFFERED BY MR. SMITH OF MISSOURI**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Tax Exempt Hospital
3 Transparency Act”.

**4 SEC. 2. INFORMATION REPORTING BY HOSPITAL ORGANI-
5 ZATIONS.**

6 (a) IN GENERAL.—Subpart A of part III of sub-
7 chapter A of chapter 61 of the Internal Revenue Code of
8 1986 is amended by inserting after section 6033 the fol-
9 lowing new section:

**10 “SEC. 6033A. REPORTING BY TAX EXEMPT HOSPITAL ORGA-
11 NIZATIONS.**

12 “(a) REPORTING BY TAX EXEMPT HOSPITAL ORGA-
13 NIZATIONS.—

14 “(1) IN GENERAL.—Every tax exempt hospital
15 organization shall include on the return filed under
16 section 6033(a) for the taxable year—

17 “(A) a description of how the organization
18 is addressing the needs identified in the most

1 recent community health needs assessment con-
2 ducted under section 501(r)(3) and a descrip-
3 tion of any such needs that are not being ad-
4 dressed together with the reasons why such
5 needs are not being addressed,

6 “(B) the audited financial statements of
7 such organization (or, in the case of an organi-
8 zation the financial statements of which are in-
9 cluded in a consolidated financial statement
10 with other organizations, such consolidated fi-
11 nancial statement),

12 “(C) the Centers for Medicare & Medicaid
13 Services certification number of the organiza-
14 tion (or such other identifying information as
15 the Secretary may require),

16 “(D) the value, at cost, of the financial as-
17 sistance provided during such taxable year pur-
18 suant to the organization’s financial assistance
19 policy (as described in section 501(r)(4)), and

20 “(E) the numbers of completed financial
21 assistance applications received, granted, and
22 denied during the taxable year pursuant to the
23 organization’s financial assistance policy (as de-
24 scribed in section 501(r)(4)).

1 “(2) SEPARATE REPORTING WITH RESPECT TO
2 EACH FACILITY.—Except as otherwise provided by
3 the Secretary, in the case of any large tax exempt
4 hospital organization or any high revenue tax ex-
5 empt hospital organization, the information de-
6 scribed in subparagraphs (A), (C), (D), and (E) of
7 paragraph (1) shall be provided with respect to the
8 organization and separately stated with respect to
9 each hospital facility operated by such organization.

10 “(b) ADDITIONAL REPORTING BY LARGE TAX EX-
11 EMPT HOSPITAL ORGANIZATIONS.—

12 “(1) IN GENERAL.—Every large tax exempt
13 hospital organization shall include on the return
14 filed under section 6033(a) for the taxable year—

15 “(A) the 3 highest priority health needs
16 identified in the most recent community health
17 needs assessment conducted under section
18 501(r)(3), the amount of spending during the
19 taxable year on programs designed to address
20 each such need, and a description of actions
21 taken during the taxable year to meet each such
22 need and the impact of such actions on commu-
23 nity health, and

24 “(B) the amount of spending by the orga-
25 nization during the taxable year on—

1 “(i) quality improvement,
2 “(ii) nonclinical programming, and
3 “(iii) such other community benefits
4 as the Secretary may prescribe.

5 “(2) QUALITY IMPROVEMENT.—For purposes of
6 this subsection, the term ‘quality improvement’
7 means any program, initiative, or department, with
8 the primary purpose of improving health outcomes
9 for patients of the organization, which may in-
10 clude—

11 “(A) education,

12 “(B) training,

13 “(C) compliance with quality improvement
14 programs (such as quality improvement pro-
15 grams under the Medicare program under title
16 XVIII of the Social Security Act), and

17 “(D) technical assistance.

18 “(3) NONCLINICAL PROGRAMMING.—For pur-
19 poses of this subsection, the term ‘nonclinical pro-
20 gramming’ means any program, initiative, or depart-
21 ment, with a purpose other than the purpose of im-
22 proving health outcomes for patients of the organi-
23 zation and which is related to—

24 “(A) administrative support and manage-
25 ment,

1 “(B) information technology, hospital ad-
2 ministration, human resources, medical billing
3 and coding, public affairs and communications,
4 government affairs and lobbying, regulatory
5 compliance, or financial planning and budg-
6 eting,

7 “(C) operations and facilities management,

8 “(D) programming related to patient expe-
9 rience, patient education, family support, or fi-
10 nancial counseling, or

11 “(E) discharge planning and appointment
12 scheduling.

13 “(4) SEPARATE REPORTING WITH RESPECT TO
14 EACH FACILITY.—Except as otherwise provided by
15 the Secretary, the information described in para-
16 graph (1) shall be provided with respect to the orga-
17 nization and separately stated with respect to each
18 hospital facility operated by such organization.

19 “(c) ADDITIONAL REPORTING BY HIGH REVENUE
20 TAX EXEMPT HOSPITAL ORGANIZATIONS.—

21 “(1) IN GENERAL.—Every high revenue tax ex-
22 empt hospital organization shall include on the re-
23 turn filed under section 6033(a) for the taxable
24 year—

25 “(A) the specified advertising information,

1 “(B) the specified health service line infor-
2 mation, and

3 “(C) in the case of an organization which
4 is a covered entity described in section
5 340B(a)(4) of the Public Health Service Act,
6 the specified Federal 340B drug discount pro-
7 gram information.

8 “(2) SPECIFIED ADVERTISING INFORMATION.—
9 For purposes of this subsection, the term ‘specified
10 advertising information’ means—

11 “(A) the allowable advertising costs as re-
12 ported to the Centers for Medicare & Medicaid
13 Services for purposes of cost reimbursement,
14 and

15 “(B) the unallowable advertising costs (as
16 so reported).

17 “(3) SPECIFIED HEALTH SERVICE LINE INFOR-
18 MATION.—

19 “(A) IN GENERAL.—For purposes of this
20 subsection, the term ‘specified health service
21 line information’ means—

22 “(i) a description of each health serv-
23 ice line of the organization,

24 “(ii) the amount of gross receipts gen-
25 erated by each such health service line, and

1 “(iii) the costs of each such health
2 service line (and in the case of costs that
3 are shared by 1 or more health service
4 lines, an explanation of how such costs are
5 allocated).

6 “(B) HEALTH SERVICE LINE.—

7 “(i) IN GENERAL.—For purposes of
8 this paragraph, the term ‘health service
9 line’ means a discrete clinical program, de-
10 partment, or care category operated by the
11 organization that—

12 “(I) serves a defined patient pop-
13 ulation grouped by disease category,
14 organ system, care setting, or clinical
15 specialty,

16 “(II) delivers a distinct set of
17 medical or health services through
18 dedicated or allocated staff, facilities,
19 or equipment, and

20 “(III) is separately tracked or
21 identifiable in the organization’s inter-
22 nal cost accounting, service line man-
23 agement, or operational reporting sys-
24 tems.

1 For purposes of this paragraph, any cost
2 center separately identified on the organi-
3 zation's most recently filed cost report
4 under section 1815 of the Social Security
5 Act shall be presumptively treated as a
6 health service line. If the organization as-
7 serts that such a cost center does not con-
8 stitute a health service line, the organiza-
9 tion shall bear the burden of dem-
10 onstrating that such cost center does not
11 satisfy the requirements of subclauses (I)
12 and (II).

13 “(ii) STANDARDIZED HEALTH SERV-
14 ICE LINE TAXONOMY.—For purposes of
15 this paragraph—

16 “(I) IN GENERAL.—Not later
17 than the date that is 2 years after the
18 date of the enactment of this section,
19 the Secretary of Health and Human
20 Services, in consultation with the Sec-
21 retary, shall publish and maintain a
22 standardized health service line tax-
23 onomy to which high revenue tax ex-
24 empt hospital organizations shall map
25 their internally defined health service

1 lines on their returns under section
2 6033.

3 “(II) UPDATES.—The Secretary
4 of Health and Human Services, in
5 consultation with the Secretary, shall
6 update the taxonomy described in sub-
7 clause (I) no less frequently than
8 every 5 years to reflect changes in
9 clinical care delivery, hospital organi-
10 zation, and cost accounting practices.

11 “(III) COMPLIANCE OBLIGA-
12 TION.—A high revenue tax exempt
13 hospital organization’s compliance
14 with the reporting requirements of
15 this subsection with respect to a
16 health service line enumerated in the
17 taxonomy published, maintained, and
18 updated under this clause shall not be
19 conditioned on whether the organiza-
20 tion separately tracks such service line
21 under clause (i)(III). A high revenue
22 tax exempt hospital organization that
23 does not separately track such an enu-
24 merated health service line shall dis-
25 close that fact and provide an expla-

1 nation on their return under section
2 6033. The Secretary of Health and
3 Human Services, in consultation with
4 the Secretary, may, by regulation,
5 designate categories of clinical activity
6 that shall be treated as a single health
7 service line for reporting purposes
8 notwithstanding any difference in how
9 a high revenue tax exempt hospital or-
10 ganization tracks such activity in its
11 internal systems.

12 “(4) SPECIFIED FEDERAL 340B DRUG DISCOUNT
13 PROGRAM INFORMATION.—

14 “(A) IN GENERAL.—For purposes of this
15 subsection, the term ‘specified Federal 340B
16 drug discount program information’ means—

17 “(i) the total number of individuals,
18 by their type of insurance coverage, who
19 were dispensed or administered covered
20 outpatient drugs during the taxable year
21 that were subject to an agreement under
22 section 340B of the Public Health Service
23 Act,

24 “(ii) the aggregate net 340B payment
25 amount with respect to such drugs subject

1 to such an agreement dispensed or admin-
2 istered by the organization during such
3 taxable year, and

4 “(iii) the aggregate costs incurred by
5 the organization during such taxable year
6 that were necessary for such organization
7 to participate in the program under such
8 section and to comply with such program’s
9 requirements (including program-related
10 compliance, legal, educational, and admin-
11 istrative costs, and compensation paid to
12 independent contractors to carry out pro-
13 gram-related functions).

14 “(B) COVERED OUTPATIENT DRUG.—For
15 purposes of this paragraph, the term ‘covered
16 outpatient drug’ has the meaning given such
17 term in section 340B(b) of the Public Health
18 Service Act.

19 “(C) AGGREGATE NET 340B PAYMENT
20 AMOUNT.—For purposes of this paragraph, the
21 term ‘aggregate net 340B payment amount’
22 means, with respect to a covered outpatient
23 drug purchased by an organization under an
24 agreement under section 340B of the Public
25 Health Service Act and dispensed or adminis-

1 tered to an individual by such organization, the
2 excess (if any) of—

3 “(i) the total amount of payments re-
4 ceived from any payor by the organization
5 for such drug, over

6 “(ii) the ceiling price (as described in
7 subsection (a)(1) of such section) for such
8 drug (or, if less, the price at which such
9 organization acquired such drug).

10 “(5) SEPARATE REPORTING WITH RESPECT TO
11 EACH FACILITY.—Except as otherwise provided by
12 the Secretary, the information described in para-
13 graph (1) shall be provided with respect to the orga-
14 nization and separately stated with respect to each
15 hospital facility operated by such organization.

16 “(6) AGENCY COORDINATION.—The Secretary
17 shall coordinate with—

18 “(A) the Administrator of the Centers for
19 Medicare & Medicaid Services to carry out the
20 purposes of paragraphs (2) and (3), and

21 “(B) the Administrator of the Health Re-
22 sources and Services Administration to carry
23 out the purposes of paragraph (4).

24 “(d) DEFINITIONS.—For purposes of this section—

1 “(1) TAX EXEMPT HOSPITAL ORGANIZATION.—

2 The term ‘tax exempt hospital organization’ means,

3 with respect to any taxable year, any organization—

4 “(A) to which the requirements of section
5 501(r) apply for such taxable year, and

6 “(B) which is required to file a return
7 under section 6033(a) for such taxable year.

8 “(2) LARGE TAX EXEMPT HOSPITAL ORGANIZA-
9 TION.—The term ‘large tax exempt hospital organi-
10 zation’ means, with respect to any taxable year, any
11 organization which—

12 “(A) is a tax exempt hospital organization
13 for such taxable year,

14 “(B) is not a critical access hospital (as
15 defined in section 1861(mm)(1) of the Social
16 Security Act) for such taxable year,

17 “(C) is not a rural emergency hospital (as
18 defined in section 1861(kkk)(2) of the Social
19 Security Act) for such taxable year, and

20 “(D) has more than 100 staffed inpatient
21 beds (as reported in any cost report under sec-
22 tion 1815 of the Social Security Act with re-
23 spect to any portion of such taxable year or any
24 portion of any of the 3 preceding taxable
25 years).

1 “(3) HIGH REVENUE TAX EXEMPT HOSPITAL
2 ORGANIZATION.—

3 “(A) IN GENERAL.—The term ‘high rev-
4 enue tax exempt hospital organization’ means,
5 with respect to any taxable year, any organiza-
6 tion which—

7 “(i) is a tax exempt hospital organiza-
8 tion for such taxable year,

9 “(ii) is not a critical access hospital
10 (as defined in section 1861(mm)(1) of the
11 Social Security Act) for such taxable year,

12 “(iii) is not a rural emergency hos-
13 pital (as defined in section 1861(kkk)(2) of
14 the Social Security Act) for such taxable
15 year, and

16 “(iv) has net patient revenue (deter-
17 mined in such manner as the Secretary
18 may provide) for such taxable year of more
19 than \$100,000,000.

20 “(B) INFLATION ADJUSTMENT.—

21 “(i) IN GENERAL.—In the case of any
22 taxable year beginning in a calendar year
23 after 2028, the \$100,000,000 amount in
24 subparagraph (A)(iv) shall be increased by
25 an amount equal to—

1 “(I) such dollar amount, multi-
2 plied by

3 “(II) the cost-of-living adjust-
4 ment determined under section 1(f)(3)
5 for the calendar year in which the tax-
6 able year begins, determined by sub-
7 stituting ‘calendar year 2027’ for ‘cal-
8 endar year 2016’ in subparagraph
9 (A)(ii) thereof.

10 “(ii) ROUNDING.—Any increase deter-
11 mined under clause (i) shall be rounded to
12 the nearest multiple of \$100,000.

13 “(e) TREATMENT AS PART OF ANNUAL RETURN.—
14 For purposes of this title, the information required to fur-
15 nished under this section shall be treated as information
16 required to be furnished under section 6033.

17 “(f) REGULATIONS.—The Secretary may issue such
18 regulations or other guidance as may be necessary or ap-
19 propriate to carry out the purposes of this section, includ-
20 ing regulations or other guidance providing a methodology
21 for allocating costs between the categories described in
22 subsections (a)(1)(A), (a)(1)(D), (b)(1)(A), (b)(1)(B)(i),
23 (b)(1)(B)(ii), and (b)(1)(B)(iii).”.

24 (b) CONFORMING AMENDMENTS.—

25 (1) Section 6033(b) of such Code is amended—

1 (A) by adding “and” at the end of para-
2 graph (14),

3 (B) by striking paragraph (15), and

4 (C) by redesignating paragraph (16) as
5 paragraph (15).

6 (2) The table of sections for subpart A of part
7 III of subchapter A of chapter 61 of such Code is
8 amended by inserting after the item relating to sec-
9 tion 6033 the following new item:

“Sec. 6033A. Reporting by tax exempt hospital organizations.”.

10 (c) EFFECTIVE DATE.—

11 (1) IN GENERAL.—The amendments made by
12 this section shall apply to taxable years beginning
13 after the date that is 1 year after the date of the
14 publication of the first standardized health service
15 line taxonomy under section 6033A(c)(3)(B)(ii)(I) of
16 the Internal Revenue Code of 1986 (as added by
17 this section).

18 (2) EXCEPTION.—In the case of any tax exempt
19 hospital organization which is neither a large tax ex-
20 empt hospital organization nor a high revenue tax
21 exempt hospital organization, subparagraphs (D)
22 and (E) of section 6033A(a)(1) of the Internal Rev-
23 enue Code of 1986 (as added by this section) shall
24 (notwithstanding paragraph (1)) apply to taxable
25 years beginning after the date that is 3 years after

1 the date of the enactment of this Act. Terms used
2 in this paragraph which are also used in section
3 6033A of such Code (as so added) shall have the
4 same meaning as when used in such section.

5 (d) NO INFERENCE.—Nothing in this Act or the
6 amendments made by this Act shall be construed to create
7 any inference with respect to the proper application of sec-
8 tion 340B of the Public Health Service Act, of section
9 501(c)(3) or 501(r) of the Internal Revenue Code of 1986,
10 or of any operational test or the private benefit doctrine.

11 **SEC. 3. GAO REPORT.**

12 During the 1-year period beginning 3 years after the
13 date of the enactment of this Act, the Comptroller General
14 of the United States shall initiate a study and subse-
15 quently report to the Committee on Ways and Means of
16 the House of Representatives and the Committee on Fi-
17 nance of the Senate on the following:

18 (1) An estimate of the additional labor and re-
19 source costs of the Department of the Treasury to
20 administer, and of the additional costs of tax exempt
21 hospital organizations (as defined in section
22 6033A(d)(1) of the Internal Revenue Code of 1986,
23 as added by this Act) to comply with, the reporting
24 requirements added by the amendments made by
25 this Act.

1 (2) With respect to the 25 tax exempt hospital
2 organizations (as so defined) which have the highest
3 amount of gross revenue, the estimated amount of
4 tax which would be imposed under chapter 1 of such
5 Code with respect to each such organization if such
6 organization were not exempt from such tax.

