IRS Form 990, Schedule H — an overview

Catholic Health Association
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Outline

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► Community benefit issues
► Reporting 501(r) compliance on Form 990, Schedule H
► Significant Schedule H changes
► IRS community benefit and 501(r) reviews
► 501(r) exam update
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Form 990, Schedule H overview

- Form 990: information return filed with IRS by tax-exempt organizations
- Schedule H — part of 2008 IRS Form 990 redesign
- Schedule H questions reflect two sets of parallel exemption requirements for tax-exempt hospitals:
  - Organization-wide community benefit standard (Rev. Rul. 69-545)
    - Parts I-IV, VI
  - Hospital facility-specific standards (Section 501(r))
    - Part V
- Schedule H audience (Form 990 is publicly disclosable)
  - Regulators (IRS, states, Congress)
  - Press/watchdog groups
  - Community and constituents
Form 990, Schedule H — community benefit issues: community building

► Community benefit or community building?
   ► Not mutually exclusive — some activities may meet definitions of both and can be reported either on Schedule H, Part I or Part II.

► Some community building activities may meet the definition of a community benefit category, such as:
   ► **Community health improvement services**: activities carried out for the purpose of improving community health that don’t generate inpatient or outpatient revenue
   ► **Community benefit operations**: activities associated with community health needs assessments and/or community benefit program administration (including grant-writing activities)
     ▶ The activity must seek to achieve a community benefit objective and improve health.
     ▶ Community need for activity or program must be established.

► IRS Exempt Organizations Update (December 18, 2015)
   ► “Some housing improvements and other spending on social determinants of health that meet a documented community need may qualify as community benefit.”
Form 990, Schedule H — community benefit issues: restricted grant reporting

► Part I, line 7: community benefit reporting table
► Part I, line 7 instructions require grants received and restricted for community benefit to be reported as offsetting revenue in column (d) of the table.
  ► Rationale: increase transparency, treat restricted grants equally with other types of offsetting revenue for community benefit activities
► Part I, line 7i and Worksheet 8 instructions allow reporting of contributions for community benefit funded in whole or in part by a restricted grant from a related organization.
  ► Rationale: reporting restricted grants as offsetting revenue alleviates concern that the same grant funds could be reported on multiple Schedules H (e.g., for funds re-granted within a system)
  ► Contributions must be restricted, in writing, for community benefit to be reported as community benefit in Part I, line 7i
Form 990, Schedule H — other community benefit issues

- Community health improvement services
  - Including some or all community building
  - Taxi vouchers and transportation?
  - Care/case management?
- Reporting negative numbers on Schedule H
- Reporting impact of services to meet community needs on community health needs assessment (CHNA) reports
- Subsidized health services
- Presumptive charity care vs. bad debt
- Cost of all care provided under the financial assistance policy?
  - Accurate methodology for community benefit cost accounting?
- Group returns: inclusion of all community benefit provided by subordinates, including non-hospitals?
Section 501(r) requirements and Form 990, Schedule H

- The Patient Protection and Affordable Care Act (ACA), enacted March 23, 2010, created Internal Revenue Code (IRC) Section 501(r).
- The IRS and Treasury released final Section 501(r) regulations on December 29, 2014.
  - Effective date: the first day of first tax year beginning after December 29, 2015
- The IRS added a new Part V, Section B to Schedule H for tax year 2010 to gather information on 501(r) compliance.
- The IRS has made subsequent revisions to Part V, Section B and instructions to conform questions more closely to Section 501(r) and the 501(r) regulations, and to obtain information needed for community benefit reviews.
Schedule H implications of final 501(r) regulations

► Regs. Sec. 1.6033-2 requires that hospitals include in Schedule H:
  ► A copy of or link to the website URL of each facility’s most recent implementation strategy
  ► A copy of the hospital’s audited financial statements for that year
  ► A description of actions taken during the year to address significant health needs identified through its most recently conducted CHNA

► The Preamble to final Section 501(r) regulations states that discounts outside the financial assistance policy (FAP) will not be considered community benefit reportable on Schedule H.

► A facility may not want to include certain discounts (e.g., prompt pay, self-pay, out-of-state) in its FAP because this would trigger amounts generally billed (AGB) limitations under Section 501(r).
Schedule H implications of final 501(r) regulations

- The expenses to meet any need described in the hospital’s CHNA may be reported as community health improvement service expense in Schedule H.
  - Section 501(r) regulations expand the definition of health needs to include the need to address social, behavioral and environmental factors that influence community health (e.g., community building).
  - Thus, if a CHNA identifies a community health need, a hospital may report in Schedule H, Part I its expenses incurred to meet that need, even if the activity fits the definition of “community building.”
  - However, a community health improvement service may be reported in Schedule H even if it is not described in the CHNA report.
- The Preamble notes that hospitals are responsible for maintaining records to substantiate any Section 501(r)-related information they report on Schedule H.
- Dual-status (government entity and Section 501(c)(3)) hospitals are subject to 501(r) requirements.
  - LTR 201731014 — Recent revocation of “dual status” hospital
Schedule H, Part V, Section B — hospital facilities

► Many questions in Part V, Section B track the statutory language of Section 501(r).
  ▶ Other questions in Part V, Section B ask about policies and practices related to 501(r) requirements.
  ▶ Not all questions have a one-to-one correspondence with Section 501(r) or the final regulations.

► The IRS significantly revised Part V, Section B for tax year 2016 to more closely reflect the final 501(r) regulations.

► There are minimal changes to 2017 Schedule H instructions.
  ▶ There are no substantive changes to Schedule H (form).
Form 990, Schedule H instructions, Part V, *Facility Information*, lines 3a–3h:

- 2016 Schedule H instructions include specific instructions for lines 3a, 3c, 3d, 3g and 3h.

- Revised form and instructions for line 3i now ask the hospital facility whether it has evaluated the impact of any actions taken to address significant health needs identified in its prior CHNA.
2016 Schedule H and instructions changes for Part V, Section B

Form 990, Schedule H instructions, Part V, *Facility Information*, line 5:

- An organization that checks line 5 yes must now include in its narrative summary:
  - Over what time period the input was provided
  - A description of the medically underserved, low-income or minority populations represented by organizations or individuals that provided input

- If a hospital facility solicited but could not obtain input from a source from which the facility was required to solicit input, the CHNA report must describe the hospital facility’s efforts to solicit input from this source.
2016 Schedule H and instructions changes for Part V, Section B

Form 990, Schedule H instructions, Part V, Facility Information, line 16:

- Revised to reflect the form change for line 16, which now asks whether the FAP was widely publicized within the community rather than whether the FAP included measures to publicize the FAP within the community.

- Added instructions for new line 16g checkbox, which lists specific actions taken to notify individuals about the FAP.

- Added instructions for new line 16i, which reflects the requirement in the final Section 501(r) regulations that an exempt hospital facility must translate its FAP, FAP application form and plain-language summary of the FAP into any language spoken by each LEP (limited English proficiency) language group that constitutes the lesser of (a) 1,000 individuals or (b) 5% of its community served or population it is likely to encounter.
2016 Schedule H and instructions changes for Part V, Section B

► Form 990, Schedule H instructions, Part V, *Facility Information*, line 18c:
► New checkbox “c” describes one of the extraordinary collection actions (ECAs) that was added by the final Section 501(r) regulations:
  ► Deferring, denying or requiring a payment before providing medically necessary care due to nonpayment of a previous bill for care covered under the hospital facility’s FAP
2016 Schedule H and instructions changes for Part V, Section B

Form 990, Schedule H instructions, Part V, *Facility Information*, line 19c:

- New checkbox “c” describes one of the ECAs added by the final Section 501(r) regulations:
  - Deferring, denying or requiring a payment before providing medically necessary care due to nonpayment of a previous bill for care covered under the facility’s FAP

- Line 19 instruction changes consistent with the final regulations:
  - “Actions against an individual” now include actions against any other individual who has accepted or is required to accept responsibility for the individual’s hospital bill for the care.
  - “Actions by the hospital” include actions of any purchaser of the individual’s debt, any debt collection agency or other similar party.
2016 Schedule H and instructions changes for Part V, Section B

- Form 990, Schedule H, Part V, *Facility Information*, lines 20a–d:
  - Updated to more closely reflect the reasonable efforts, as described in the final Section 501(r) regulations, that exempt hospital facilities must take before engaging in ECAs

- Form 990, Schedule H, Part V, *Facility Information*, lines 22a–d:
  - Revised to more closely reflect the permissible methods for determining AGB, as described in the final Section 501(r) regulations
New instruction for line 3e: “Check this box if the CHNA includes a prioritized description of the significant health needs of the community identified through the CHNA”

Lines 13–16 instruction revision: “Answer ‘Yes’ only if the FAP applies to all emergency and other medically necessary care provided by the hospital facility, including all such care provided in the hospital facility by a substantially-related entity”
IRS community benefit and 501(r) reviews

► Section 9007(c) of the ACA requires the IRS to review, at least once every three years, the community benefit activities of each tax-exempt hospital organization.

► The IRS looks at public records, Forms 990 Schedule H, other information available to the public and other information that may not be available to the public.

► The IRS reviews approximately 1,000 exempt hospitals each year.

► These reviews are not examinations.
  ► The IRS generally is not contacting hospitals during the reviews.
  ► If a review indicates a cause for concern, an organization may be referred for examination or a less formal compliance check.

► IRS leverages its mandatory community benefit reviews to conduct discretionary 501(r) compliance reviews.
IRS 501(r) exam update

Exam referrals:
- Over 400 501(r) exams initiated to date
- Over 200 exams closed
- Common exam triggers
  - No CHNA report on website
  - No FAP — or incomplete FAP — on website
  - No provider list — or incomplete list — in FAP or on website
  - As of October 2017, IRS had assessed 33 $50,000 excise taxes on CHNA violations
- IRS continues to ask questions about compliance with final 501(r) regulations for pre-2016 tax years

The IRS has indicated that it will continue to use the information gathered from the reviews:
- For research, reporting and compliance purposes
- To identify areas where additional guidance, education or Form 990 changes are needed
- LTR 201731014 —revocation of “dual status” hospital
IRS 501(r) audit techniques

► IRS 501(r) audit techniques training module: a guide and road map for agents, not a comprehensive audit manual

► Scope may be expanded beyond 501(r) issues by either ACA Review Group or exam agent
  ► The cases referred to exam may have issues other than 501(r) identified, such as unrelated business taxable income (UBTI).
  ► Cases referred to exam are intended to be “worked as single-issue or limited-scope” exams, but the agent has discretion to expand the scope beyond issues being referred.

► If 501(r) violation is detected, determine if error is minor:
  ► If not minor, was it corrected and disclosed properly so as to avoid revocation and noncompliant facility income tax?
  ► If not disclosed and corrected, the IRS can impose tax and/or revoke exemption.
Sample Information Document Requests (IDRs) — general themes

► For documents and policies required to be “adopted,” the IRS is asking for evidence of adoption (e.g., copies of board meeting minutes or resolutions).
  ► For example: CHNA report, implementation strategy, FAP, billing and collection policy, emergency medical care policy.
  ► Final 501(r) regulations allow committees and individuals authorized by the hospital organization’s governing body to adopt these policies and reports, if permissible under state law.

► The IRS is asking for copies of complaints alleging 501(r)-related noncompliance in the year of audit and prior two years.

► The IRS is asking for interviews with persons with relevant knowledge of 501(r)-related policies and processes.
Penalties for failure to meet Section 501(r) requirements

Taxation of noncompliant hospital facilities

► Final 501(r) regulations provide that failure to comply with Section 501(r) could result in:
  ► Revocation of tax-exempt status
  ► Noncompliant facility income tax at corporate tax rates
    ► Report on Form 990-T
  ► $50,000 excise tax for failing to conduct a CHNA or adopt an implementation strategy
    ► Report on Form 4720
Avoiding and preparing for a 501(r) exam and tax liability

► To avoid and/or prepare for an IRS 501(r) examination
  ► Ensure all 501(r)-related documents, and particularly those that are publicly available (Schedule H, FAP, CHNA report) demonstrate compliance with final 501(r) regulations.
  ► Conduct an internal check for operational compliance with final 501(r) regulations.
► Consider disclosing 501(r)-related failures and corrections on Schedule H to minimize potential tax liability.
Failure to meet Section 501(r) requirements
Disclosure on Schedule H

► An omission or error will not be considered a 501(r) “failure” if:
  ► The omission or error was minor and either inadvertent or due to reasonable cause.
  ► The hospital facility promptly corrects the omission or error.
    ► As part of correction, the facility must establish/review practices or procedures reasonably designed to facilitate 501(r) compliance and prevent recurrence of omission or error.

► If the error is more than “minor,” a failure that is neither willful nor egregious will be “excused” if the organization:
  ► Corrects the failure
  ► Makes proper disclosure on Form 990, Schedule H
  ► Exception: CHNA failures (errors or omissions that do not meet the minor error exception) are still subject to the $50,000 excise tax
A failure is properly disclosed if the hospital reports on Schedule H for the tax year in which it is discovered:

- A detailed description of the failure, including:
  - The type of failure
  - The cause of the failure
  - The hospital facility or facilities where the failure occurred
  - The date(s) of the failure and its discovery
  - The number of occurrences
  - Estimate of number of individuals affected and dollar amounts involved

- A description of the correction made, including:
  - The method of correction
  - The date of correction
  - How persons affected by failure were restored to their prior position

- A description of any practices and procedures that the hospital established or revised to detect and avert recurrence of failure
First IRS report to Congress on community benefit (2015)

- Based on 2011 data
- Charity care provided, based on Centers for Medicare and Medicaid Services (CMS) data:
  - Taxable hospitals: 1.31% of total expenses
  - Tax-exempt hospitals: 2.13% of total expenses
  - Government hospitals: 6.56% of total expenses
- Unreimbursed costs for services provided by means-tested programs, based on CMS data:
  - Taxable hospitals: 1.77% of total expenses
  - Tax-exempt hospitals: 1.94% of total expenses
  - Government hospitals: 4.01% of total expenses
- Total community benefit expenses provided by tax-exempt hospitals: 9.67% of total expenses
Questions
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