Community Benefit Webinar
IRS Form 990 Schedule H: An Overview

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1-2 p.m. ET
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Before joining Ernst and Young, Mr. Clarke was a tax law specialist, with the Internal Revenue Service Exempt Organizations Division. At the IRS, he served as the project manager for the redesign of Form 990, and served on the team that developed Form 990, Schedule H.

Stephen Clarke earned his Bachelor of Arts degree from Wheaton College in Illinois and his juris doctorate from the College of William and Mary School of Law. He is an active member of the Virginia bar.
Reflection

“Ideally, our society would be organized in such a way that everyone had the same opportunities – safe parks, good education, clean air and water, health insurance – to realize their fullest potential for health. The only differences, then, would arise, aside from genetics and luck, from personal choice. We don’t live in that world. We know that social conditions make it more likely for some groups of people to be healthier than others. Therefore, if we want to improve the community’s overall health, we must pay special attention to those groups whose social conditions make health more difficult to achieve.”

Fr. Michael Rozier, SJ
IRS Form 990, Schedule H – an overview

Catholic Health Association

February 20, 2019
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Outline

► Schedule H overview
► 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
► Schedule H disclosures of 501(r) errors and corrections
► Questions
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 and 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 (CHNAs) and/or community benefit program administration (including grant-writing activities)
    ► 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.”
Part I, line 7 is the 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.

- Contributions must be restricted, in writing, for community benefit to be reported as community benefit in Part I, line 7i
Form 990, Schedule H – community health improvement services

► What counts as community health improvement services?
  ► Including some or all community building?
  ► Taxi vouchers and transportation?
  ► Care and case management (that help patients connect with primary care and other needed services beyond routine discharge planning)?
  ► Services to homeless required by law (e.g., meals, clothing, transportation)?
Form 990, Schedule H – other community benefit reporting issues

- Reporting negative numbers on Schedule H
- Reporting cost of research
  - When the outcome or findings are negative?
  - When a hospital derives a net profit from the research?
  - Research partially funded by a for-profit entity?
  - Program evaluation expenses?
- Health professions education
  - Types of reportable health professions education expenses
  - Capturing direct and indirect graduate medical education expenses
  - Reporting expenses for interns as community benefit?
  - Is it necessary to establish a need for health professions education?
  - Are grants to schools to increase the diversity of health professionals reportable as health professions education expense?
- 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 could trigger amounts generally billed 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.
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 and 2018 Schedule H instructions.

► There are no substantive changes to Schedule H (form) for tax year 2017 or 2018.
Recent Schedule H and instructions changes for Part V, Section B

► 2017: New instruction for Part V, Section B, line 3e: “In Part V, Section C, indicate if the significant health needs are a prioritized description of the significant health needs of the community and identified through the CHNA. If not, explain how the health needs identified will be prioritized.”

► 2017: Part V, Section B, 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”

► 2018: Part I, lines 7a–7k instructions: deletion of “Don’t report bad debt expense on lines 7a through 7k”

► Deleted due to redundancy with earlier instruction
IRS community benefit and 501(r) reviews

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

► IRS looks at public records, Forms 990 Schedule H, and other public and non-public information.

► IRS reviews approximately 1,000 exempt hospitals each year.
  ► These reviews are not examinations.
  ► The IRS generally is not contacting hospitals during the reviews.
  ► A hospital may be referred for an IRS examination or a compliance check.

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

► The IRS has indicated that it will continue to use the information gathered from its reviews:
  ► For research, reporting and compliance purposes
  ► To identify areas where additional guidance, education or Form 990 changes are needed
Exam referrals and results:

- 1,193 reviews completed for FY2017
- 388 hospitals referred for field examination in FY2017
- 475 501(r) exams closed in FY2018 (as of October 2018)
  - 14% (i.e., 65–66) of those exams have resulted in imposition of 4959 excise tax (for CHNA failure)
- 308 501(r) compliance checks closed in IRS fiscal year 2018 (as of October 2018)

Common issues for which 501(r) exam referrals were made include:

- Lack of a community health needs assessment report on a website
- No financial assistance policy on a website
- Noncompliance with billing and collection requirements
IRS 501(r) exam update

IRS has reported assessing approximately 100 $50,000 excise taxes on hospital organizations for CHNA violations.

In the Tax Exempt and Government Entities (TE/GE) 2019 Program Letter and in the TE/GE 2018 Accomplishments Letter, the IRS describes how it is making increased use of compliance checks to promote compliance with 501(r).

- Particularly involving financial assistance policies
- Compliance checks are not exams, as they do not involve examination of books and records
IRS Section 501(r) examination activity

- IRS agents conducting examinations have been asking for:
  - Description of how hospital facility informs and notifies its patients of the availability of financial assistance
  - Translations of the FAP, FAP application, and plain language summary into limited English proficiency languages and the methodology used to determine required translations
  - “Amounts generally billed” workpapers and the basis for calculating amounts charged to FAP-eligible patients
  - Records of charges to FAP-eligible individuals
  - Interviews with persons with relevant knowledge of 501(r)-related policies and processes
  - Verification of information reported on Form 990, Part V, Section B
  - Copies of billing statements
  - Description of “extraordinary collection actions” (ECAs) taken by the hospital facility
  - Copies of notices sent to patients who were subject to ECAs
  - Hospital facility contracts with collection agencies
  - Complaints the hospital facility has received regarding collection actions or failure to comply with the FAP
  - Board minutes adopting CHNA report, implementation strategy, FAP, billing and collection policy, emergency medical care policy
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
  ► Revocation of 501(c)(3) status of dual-status hospitals
    ► LTR 201731014
    ► LTR 201829017
Avoiding and preparing for a 501(r) exam and tax liability

► To avoid and/or prepare for an IRS 501(r) examination:
  ► Confirm 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 the correction, the facility must establish or 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
Questions
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