the catholic health association

*growth*

# IRS Form 990, Schedule H

*Issues and Answers*

CHA
THE CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES

## Opening Reflection

*Adapted from Walt Whitman*

Love the earth and sun and the animals.

Stand up for the less fortunate and the injured.

Devote your income and labor to others.

Have patience with other people. Allow them to be patient with you.

Every season of every year of your life, re-examine all you have been told and taught.

Dismiss whatever insults your own soul. Write poems. Reflect on the poetry written by others.

Observe the night sky. Wonder about it. Be with it.

God of all seasons, teach us to live our daily lives with grace and courtesy toward all the earth. Nourish us in the personal work that we undertake in this time of year. Amen.

## Instructions

- Submit questions in the chat box
- Focus of today's program is the Schedule H
- We will not be responding to accounting or what counts as community benefit questions
- Submit questions about what counts to our What Counts Email Hotline – www.chausa.org/whatcounts




# IRS FORM 990 SCHEDULE H OVERVIEW

*Geoffrey Campbell*
*Tax Law Specialist*
*Internal Revenue Service*

Material provided in this presentation is for educational use only and is not intended to establish IRS position or practice and may not be relied on or cited as precedent. For more detailed information, please refer to the "Charities and Nonprofits" section of www.IRS.gov

## Poll Question #1

- Have you (or your organization) filled out the Form 990, Schedule H at least as a dry run?
  - Yes
  - No
  - No, but plan to as soon as this program is over




## Poll Question #2

- Does the organization you work for (or with) plan to file the complete Form 990, Schedule H this year?
  - Yes
  - No
  - Undecided

## Schedule H - *Hospitals*

- Who files? Organizations that own or operate a "hospital"
  - "Hospital": facility that is, or is required to be, licensed, registered, or similarly recognized by a state as a hospital
  - "Facility": facility that, at any time during tax year, was required to be licensed, registered, or similarly recognized as a health care facility under state law
  - Report name, address, and type of each facility




## Schedule H (Hospitals)

- Information to be reported on Schedule H:
  - Certain quantifiable community benefit (Part I)
  - Community building (Part II)
  - Bad debt (Part III(A))
  - Medicare (Part III(B)
  - Collection practices (Part III(C))
  - Joint ventures providing medical care (Part IV)
  - Facilities (Part V)
  - Other community benefit and narrative responses (Part VI)

## Schedule H (Hospitals)

- Source of information to report on Schedule H:
  - Hospitals operated by filing organization
  - Hospitals operated by disregarded entities
  - Other facilities or programs of the organization that provide medical or health care services
  - Hospitals operated by joint ventures
  - Group returns: hospitals operated by members of a group exemption that are included in the group return
- Do not report foreign hospitals or facilities or information therefrom, other than in Part IV (joint ventures); may describe in Part VI




## Schedule H -- Hospitals

- Community benefit table (Part I, Question 7):
  - Charity care at cost
    - "Charity care": free or discounted health services to persons who meet organization's criteria for financial assistance
    - Report charity care criteria (e.g., FPG, medical indigency)
    - Report denial of charity care because of budget limitations
    - Do not report bad debt as charity care
  - Unreimbursed Medicaid (and other means-tested public programs)
  - Community health improvement services
  - Community benefit operations
  - Health professions education (includes costs of all programs open to public)

## Sch. H Community Benefit Table

- Subsidized health services
  - Clinical services provided to meet an identified community need, despite financial loss to the organization
  - May include physician clinics and skilled nursing facilities, if they meet criteria for subsidized health services
  - Report the cost of physician clinics in Part VI
- Research
  - Cost of research funded by organization or tax-exempt entity
  - Describe any research funded by for-profits in Part VI
- Cash & in-kind contributions to community groups, if
  - Restricted for community benefit
  - Not funded by a related organization




## Schedule H -- Hospitals

- Total v. net community benefit expense (columns (c) and (e) in Community Benefit Table)
  - Net out "direct offsetting revenue" (column (d))
    - Patient payments for services
    - Third party payment/reimbursement for services
  - Do not include restricted or unrestricted grants as direct offsetting revenue
  - "Total expenses" for column (f): Part IX, line 25
    - If any bad debt is included in Part IX, line 25, exclude it in calculating column (f) numbers, explain in Part VI
    - Column (f) reflects % of expenses attributable to community benefit

## Schedule H Worksheets

- Worksheets for Community Benefit Table
  - Not required to be completed or submitted
  - However, the methodology in the Worksheets for calculating community benefit must be followed
- Describe in Part VI:
  - costing methodology used to calculate amounts in Community Benefit Table
  - Whether the organization used a cost accounting system, cost-to-charge ratio, or other methodology




## Schedule H -- Hospitals

- Community Building (Part II)
  - "Community building": activities to protect or improve the community's health or safety
  - Report cost of:
    - organization's community building activities
    - grants to others for community building activities
  - Report only costs not reportable in Parts I or III
  - Describe in Part VI how these community building activities promote the health of the community

## Schedule H -- Hospitals

- Bad Debt (Part III(B))
  - Report bad debt at cost, using most accurate system and methodology available
    - Describe this methodology in Part VI
    - Describe how organization accounts for discounts and payments on patient accounts in determining bad debt
  - Report in Part VI how much bad debt expense could be attributable to persons who likely would qualify for financial assistance under charity care policy
  - Provide in Part VI the text of any bad debt footnote in the organization's financial statements
    - Or, if the financial statements account for bad debt, explain how they do so




## Schedule H -- Hospitals

- Medicare—Report *allowable* costs in Part III(B)
  - Report costs and net patient service revenue associated with *allowable* costs, as reported in Medicare Cost Report
  - Org. may report costs not included on its Medicare Cost Report in Part VI
  - Describe in Part VI the extent to which any portion of Medicare shortfall should constitute community benefit
  - Describe in Part VI the costing methodology used to determine Medicare allowable costs reported on line 6

## Schedule H -- Hospitals

- Part IV—Joint Ventures: list any JVs or management companies:
  - Of which the organization was a partner or shareholder at any time during the tax year;
  - That provided management services or medical care; and
  - Of which any or all of the following owned, in the aggregate, more than 10% of stock or share of profits:
    - officers, directors, trustees, key employees; and
    - physician employees or medical staff members




# IRS FORM 990 SCHEDULE H OVERVIEW - *END*

*Geoffrey Campbell*
*Tax Law Specialist*
*Internal Revenue Service*

# HOW DO I BENEFIT THEE? LET ME COUNT THE WAYS

*Douglas Anning*

*Co-Chair, Nonprofit Organizations Group*
*Polsinelli Shughart PC*




**Douglas K. Anning**
**Co-Chair, Nonprofit Organizations Group**
**Polsinelli Shughart PC**

**700 W. 47th Street, Suite 1000**
**Kansas City, MO 64108**

**danning@polsinelli.com**
**(816) 360-4188**

**With Offices Located In**
**Chicago, Denver, Kansas City, New York City, Phoenix, St. Louis, Washington D.C., and Wilmington DE**

## Overview

- More Polling Questions
- Financial Assistance Policies
- Community Needs Assessments
- Documenting Your File
- The Impact of the Baucus Plan




## Poll Question #3

- Has your board been involved with the Form 990?
  - Never
  - This year for the first time
  - Has been part of their review for years

## Poll Question #4

- Our financial assistance policies are (select all that apply):
  - Posted in the emergency room
  - Posted in admission areas
  - On our website
  - Included with bills we send out to patients
  - Translated into at least one other language




## Financial Assistance Policies

- Policy needs to address:
  - who qualifies
  - what services qualify
  - what level of discounts are offered
  - how is policy communicated
  - collection activities
  - legal issues (CMS, OIG, IRS)

## Financial Assistance Policies – Who Qualifies

- Insurance Status
  - Uninsured/Underinsured/Insured
    - What if uninsured have sufficient income and/or assets to pay bill?
- Geographic Restrictions
  - Residents and/or taxpayers of particular cities, counties, or states.
  - Special issues with nonresident organ transplant patients.




## Financial Assistance Policies – What Services Qualify

- Specify types of services covered: medically necessary, nonelective, emergency, urgent, inpatient, outpatient.
- Special issues with organ transplants patients.
- Generally a policy will clarify that only hospital charges are discounted (not the charges of private practice physicians), although the hospital may want to encourage other providers to discount as well.

## Financial Assistance Policies – Discount Offered

- Uninsured Discount
- Financially Indigent Discount
- Medically Indigent Discount




## Financial Assistance Policies – Discount Offered

| Income Level as a Percentage of Federal Poverty Level | | Medical Liabilities as a Percent of Gross Income | Discount off Gross Charges |
|---|---|---|---|
| 0-200% | Or | 100% or greater | 100% |
| 201%-300% | Or | 80%-99% | 50% |
| 301%-400% | Or | 50%-79% | 25% |
| Greater than 400% | And | 50% | 15% |

## Financial Assistance Policies – Discount Offered

| **Charges → Income level↓** | $0 to $10,000 | $10,001 to $25,000 | $25,001 to $50,000 | Over $50,000 |
|---|---|---|---|---|
| 0-100% of FPL | 100% | 100% | 100% | 100% |
| 101-200% FPL | 100% | 100% | 100% | 100% |
| 201-300% FPL | 25% | 50% | 75% | 100% |
| 301-400% FPL | 0% | 25% | 50% | 75% |




## Financial Assistance Policies – Discount Offered

- Asset Means Testing
  - Required for Medicare bad debt reimbursement
- Prompt-Pay Discounts
- Payment Plans
- Caps on Annual Payments
- Exceptions
- Documentation Required
- Compliance with Third-Party Payer Contracts
- Charge Master Rates
- Financial Viability Impact Analysis

## Financial Assistance Policies – Communication of Policy

- Signs in admitting and waiting areas
- Educate all staff members with patient contact (admitting and billing clerks, nursing and medical staffs, social workers, chaplains, patient advocates)
- Billing agents and communications distributed with bills
- Website?
  - Some concern that this could pose anti-kickback problems as a prohibited inducement to Medicare patients.
- Take into account language barriers




## Financial Assistance Policies – Collection Activities

- Aggressive collection activities coming under increased scrutiny
- Policy should specify under what circumstances (if any) will the hospital utilize collection agencies, lawsuits, garnishments of wages, seizure of bank accounts or other assets, liens, foreclosures, and reporting to credit agencies.

## Financial Assistance Policies – Collection Activities

- Policy should expressly prohibited abusive collection techniques (e.g., calling the patient's house at unreasonable hours or harassing the patient at work).
- Consider compliance with portions of the Fair Debt Collection Practices Act which sets forth a number of prohibited abusive conduct
- Finally, it is important to treat Medicare and non-Medicare patients alike in this respect. In order to seek Medicare bad debt reimbursement, Medicare patients must be subject to the same collection efforts as non-Medicare patients.




## Poll Question #5

- When was the last time your organization conducted a community needs assessment (assessment may have been conducted with community partners):
  - Within the last three years
  - Within the last five years
  - More than five years ago
  - Don't know when last community assessment was conducted

## Community Needs Assessment

- Schedule H, Part VI, Line 2: "Describe how the organization assesses the needs of the communities it serves."
- Instructions: "Describe whether, and, if so, how, the organization assesses the health care needs of the community or communities it serves."
- But, see the Baucus Plan below




## Documenting the File

- Must you use the worksheets?
- Should you use the worksheets?
- Documenting community benefit.
  - Use checklists based on instructions and CHA guidelines to document community benefit.

## The Baucus Plan

- Community Needs Assessment. Every (c)(3) hospital would have to conduct a community needs assessment every three years. This can be done in conjunction with other entities (a United Way organization or public health organization) and must adopt an implementation strategy on how to meet the needs identified in the assessment. The assessment would have to be publicly available. Failure to conduct the assessment every three years would result in a $50,000 fine. The hospital will have to disclose on its 990 the needs identified, how it is meeting those needs, and the reason why any needs are going unmet (e.g., lack of finances or lack of human resources). Failure to disclose these matters on the 990 would subject the hospital to the daily fines for filing an incomplete 990.




## The Baucus Plan

- Financial Assistance Policies. Every (c)(3) hospital would have to adopt a financial assistance policy that includes: provision of emergency medical treatment to all individuals, eligibility criteria for free and discounted services, the basis for determining what patients will be charged, how patients are to apply for financial assistance, and the hospital's commitment not to engage in abusive collection practices.
- Limitation on Charges. For patients who qualify for financial assistance, charges to the patient cannot be based on chargemaster rates but must be based on either (1) Medicare rates or (2) the average rate charged to an insured patient (defined as either the best negotiated commercial rate or the average of the three best negotiated rates).

## The Baucus Plan

- Regular IRS Review and Audit. The IRS would be required to review the schedule H for every (c)(3) hospital at least every three years. This will in effect be a form of a mandatory community benefit audit for every (c)(3) hospital every three years. As part of the schedule H review, the hospital would have to make its audited financials available to the IRS. This might pose a problem for hospitals that are part of consolidated audits and it's not clear yet whether such hospitals would have to have separate audits for each hospital (very expensive) or could continue to have consolidated audits.
- Reports from HHS Secretary. The HHS Secretary must report annually to Congress the amount of charity care, bad debt, and the unreimbursed costs of Medicare/Medicaid provided by (c)(3), for-profit and government hospitals.




## The Grassley Response

- Amendment F7: Amend IRC code section 6033(a)(1) to mandate that IRS ask governance questions on Form 990.
- Amendment F8: Citing abuse of the rebuttable presumption by hospitals, among others, and high amounts of executive compensation by hospitals, among others, F8 amends IRC code section 4958 to
  - Mandate the due diligence process of the rebuttable presumption
  - Remove the protection of the rebuttable presumption
  - Require disclosure of comparable data on 990
  - The amendment is expected to raise revenue.

## The Grassley Response

- Public Statements
  - Minimum charity care and community benefit requirements require more study.
  - Agrees with CHA that a 5% requirement would become a ceiling and not a floor.
  - "A formula is needed to maximize expenditures for charitable purposes."
  - Will require IRS and CMS to collect data so that he can insure that hospitals are providing CB "commensurate with their financial resources."




# QUESTION AND ANSWER PERIOD