



Everything You Wanted to Know about the IRS Form 990 H but were Afraid to Ask

A Community Benefit Webinar sponsored by CHA and VHA Inc.

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Noon – 1 p.m. ET

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Reflection for Today's Program



Father, Mother, God,
Thank you for your presence
during the hard and mean days.
For then we have you to lean upon.

Thank you for your presence
during the bright and sunny days,
for then we can share what which we have
with those who have less.

For those who have no voice,
we ask you to speak.

For those who live in pain,
we ask you to bathe them
in the river of your healing.

For those who are lonely, we ask
you to keep them company.

Dear Creator, You, the borderless
sea of substance, we ask you to give to all the
world that which we need most – Peace.

- Adapted from Prayer, by Maya Angelou

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Your Speaker for Today's Program

Stephen Clark, JD

Executive Director, Exempt Organization Tax Services
Ernst and Young LLP

Stephen Clarke, JD, is executive director of Exempt Organization Tax Services at Ernst and Young LLP. Before joining Ernst and Young, Mr. Clarke was a tax law specialist, project manager and guidance group manager with the Internal Revenue Service (IRS) Exempt Organizations division. At the IRS, Clarke served as the project manager for the 2008 redesign of Form 990, the information return filed annually by charities and other tax-exempt organizations. Prior to joining the IRS in 2005, Mr. Clarke worked as an attorney with Gammon & Grange, P.C., a law firm in northern Virginia, where he served tax-exempt organizations, radio broadcasters, trust and estate clients and other clients since 1996.

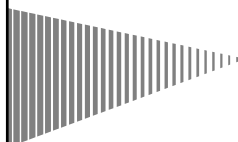
Throughout his career, he has worked with nonprofit organizations, helping them to understand and comply with tax and other regulatory requirements while also helping them to meet their charitable goals. He has served as board chair of Good Samaritan Advocates since 2004.

Mr. Clarke earned a 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.

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**Everything you always wanted to
know about IRS Form 990,
Schedule H but were afraid to ask**



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IRS Form 990, Schedule H



Outline

- ▶ Schedule H overview
- ▶ Community building or community benefit?
- ▶ Affordable Care Act Sec. 501(r) requirements
- ▶ Recent Sec. 501(r) guidance
- ▶ 2012 Schedule H changes
- ▶ 2013 Schedule H changes
- ▶ 2014 Schedule H changes
- ▶ IRS community benefit reviews
- ▶ Community benefit report to Congress
- ▶ Resources and comments
- ▶ Questions

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IRS Form 990, Schedule H



Form 990, Schedule H Overview

- ▶ Schedule H — Part of 2008 Internal Revenue Service (IRS) Form 990 redesign
- ▶ Must be filed by tax-exempt organizations that operated one or more hospital facilities during tax year
 - ▶ Hospital facility: facility licensed or registered by state as a hospital
 - ▶ Must also attach its audited financial statements for tax year
- ▶ Schedule H questions reflect two sets of parallel exemption requirements for tax-exempt hospitals:
 - ▶ Organization-wide community benefit standard (Rev. Proc. 69-545)
 - ▶ Hospital facility-specific standards (Affordable Care Act, Sec. 501(r))
- ▶ Schedule H audience (Form 990 is publicly disclosable)
 - ▶ Regulators (IRS, states, Congress)
 - ▶ Press/watchdog groups
 - ▶ Community constituents

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Form 990, Schedule H Overview

- ▶ Part I: financial assistance and other community benefits
- ▶ Part II: community building
- ▶ Part III: bad debt, Medicare, collection practices
 - ▶ Section A: Bad debt expense
 - ▶ Section B: Medicare
 - ▶ Section C: Collection practices
- ▶ Part IV: management companies and joint ventures
- ▶ Part V: hospital facility information
 - ▶ Section A: Identification of hospital facilities
 - ▶ Section B: Facility policies and practices
 - ▶ Section C: Narrative reporting (for each hospital facility)
 - ▶ Section D: Identification of non-hospital health care facilities
- ▶ Part VI: supplemental information
 - ▶ Narrative reporting for organization as a whole

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Form 990, Schedule H overview — community building or community benefit?

- ▶ Community building: activities intended to protect or improve community health or safety that are not reported in Part I.
 - ▶ Examples of community building are physical improvements and housing, economic development, community support, leadership development, coalition building, workforce development.
- ▶ The IRS separated community benefit (Part I) from community building (Part II) because it wasn't certain that all community building would qualify as community benefit.
 - ▶ Community benefit and community building are not mutually exclusive categories — some activities may meet definitions of both.

Form 990, Schedule H overview — community building or community benefit?

- ▶ Some community building activities may meet the definition of a community benefit category, such as:
 - ▶ *Community health improvement services*: activities carried out or supported for the purpose of improving community health that do not generate inpatient or outpatient revenue
 - ▶ Schedule H instructions do not include specific examples.
 - ▶ *Community benefit operations*: activities associated with community health needs assessments and/or community benefit program administration (including grant writing activities)
 - ▶ They must seek to achieve a community benefit objective and improve health.
 - ▶ Community need for activity or program must be established.
- ▶ If activity meets the definition of community benefit, it can be reported in Part I as community benefit.
 - ▶ Even if it also clearly fits into a Part II community building category.

Affordable Care Act requirements and Form 990, Schedule H

- ▶ Section 9007 of the Patient Protection and Affordable Care Act (ACA), enacted March 23, 2010, created a new Sec. 501(r) that established additional requirements for tax-exempt hospital organizations and included certain review and reporting requirements.
- ▶ To gather information on hospital organizations' compliance with these requirements and related policies and practices, the IRS revised Form 990, Schedule H for tax year 2010 to add a new Part V, Section B.
- ▶ The IRS has made subsequent revisions to Schedule H, Part V, Section B to conform questions more closely to Sec. 501(r) and to obtain information needed for community benefit reviews.

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IRS Form 990, Schedule H



2013 Schedule H, Part V, Section B — facility policies and practices

- ▶ Many of the questions in Part V, Section B track the statutory language of Sec. 501(r) of the ACA.
- ▶ Other questions in Section B (and throughout Schedule H and Form 990) ask about policies and practices related to Sec. 501(r) requirements.
 - ▶ Not all questions have 1-to-1 correspondence with Sec. 501(r) provisions.
- ▶ Answering a question in Section B a certain way will not automatically result in an audit.
- ▶ The IRS does not intend to use Schedule H to provide guidance on how to interpret any part of Sec. 501(r).
 - ▶ Section B will be revised after final regulations are issued on these provisions.
 - ▶ The IRS and Treasury expect to issue final regulations by the end of 2014.

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IRS Form 990, Schedule H



Additional requirements for charitable hospitals under Sec. 501(r)

- ▶ Proposed regulations on various Sec. 501(r) provisions — issued June 22, 2012
- ▶ Definitions of “hospital organization” and “hospital facility”
- ▶ Financial assistance policy
- ▶ Emergency medical care policy
- ▶ Charges to Financial Assistance Plan (FAP)-eligible individuals
- ▶ Billing and collection actions
 - ▶ Extraordinary collection actions
 - ▶ Reasonable efforts
- ▶ Public comment period is ended
 - ▶ However, the IRS might still consider comments
 - ▶ notice.comments@irscounsel.treas.gov

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Community health needs assessments under Sec. 501(r)

- ▶ Proposed regulations on community health needs assessments (CHNAs) — issued April 3, 2013
 - ▶ Also clarifies definitions of “hospital,” “hospital facility,” and “operation of a hospital facility”
- ▶ Public comment period is ended
 - ▶ However, the IRS might still consider comments
 - ▶ notice.comments@irscounsel.treas.gov

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Recent 501(r)-related guidance: Notice 2014-2

- ▶ Notice 2014-2
 - ▶ This notice confirms that hospital organizations can rely on proposed Sec. 501(r) regulations while final regulations are pending.
 - ▶ Example: may treat multiple buildings operated under a single state license as a single hospital facility
 - ▶ Filer may use more lenient standard in proposed regulations for determining whether it “operates” a hospital operated by a partnership in which filer has an interest, for purposes of Schedule H reporting
 - ▶ Even though Schedule H doesn’t reference this standard
 - ▶ But hospital organizations are not required to comply with proposed regulations unless they are published as final or temporary regulations.

Recent 501(r)-related guidance: Notice 2014-3

- ▶ Proposed Sec. 501(r) regulations provide that failure to meet a Sec. 501(r) requirement is neither willful nor egregious, and will be excused (without penalties or loss of exemption), if:
 - ▶ Failure is minor, inadvertent and due to reasonable cause
 - ▶ Facility corrects omission or error as promptly after discovery as reasonable
 - ▶ Organization discloses failure
- ▶ Notice 2014-3 provides correction and disclosure procedures for failures that are neither willful nor egregious.

Recent 501(r)-related guidance: Notice 2014-3

- ▶ Notice 2014-3
 - ▶ Organization must establish (or modify) practices and procedures to comply with Sec. 501(r) requirements, and to prevent recurrence of failure.
 - ▶ Organization must report the failure on Schedule H for the tax year in which the failure is discovered.
 - ▶ Include description of failure, discovery, correction made, and practices and procedures adopted to prevent recurrence of failure

2012 Form 990 changes — Schedule H

- ▶ Primary website address required for each facility listed in Part V, Section A
- ▶ Facility reporting groups: organization with multiple hospital facilities that answer all Part V, Section B checkbox questions the same way may file a single Part V, Section B for those facilities
 - ▶ But must provide separate narrative response for each facility in Part VI
- ▶ Part V, line 6a: check if implementation strategy addresses *each community health need identified through CHNA*
- ▶ New Part V, line 8 to report failure to conduct a CHNA
 - ▶ If yes, did organization file Form 4720 to report Sec. 4959 excise tax?

2012 Form 990 changes — Schedule H instructions

- ▶ Part III, line 4: filer may provide page number(s) on which bad debt footnote appears in attached audited financial statements, rather than providing text of footnote in Part VI
- ▶ Part V: a hospital organization may treat multiple buildings operated under a single state license as a single hospital facility
- ▶ Worksheet 7: report as offsetting revenue the following, if associated with research reported as community benefit:
 - ▶ License fees and royalties
 - ▶ Medicare reimbursements
- ▶ Worksheet 8: do not report quid pro quo payments (e.g., payments made in lieu of taxes) as community benefit

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2013 Form 990 changes — Schedule H

- ▶ Part V, Section A now requires state license number of each hospital facility to be listed.
 - ▶ Rationale: to assist IRS Exempt Organizations Compliance area (EOCA) in conducting community benefit reviews of exempt hospitals
- ▶ Part V, Section B includes a new line 5b for listing a non-hospital facility website on which CHNA is published.
- ▶ Part V, Section B includes a new line 12h to check if the hospital facility considered residency a factor in calculating amounts charged to patients.
- ▶ New Part V, Section C to provide supplemental narrative responses for each hospital facility's Part V, Section B.
 - ▶ Filer should complete a separate Section C for each Section B.

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2013 Form 990 changes — Schedule H

- ▶ Part I, line 7 instructions require grants restricted for community benefit to be reported as offsetting revenue in column (D) of the community benefit table.
 - ▶ Rationale: increase transparency and treat restricted grants equally with other types of offsetting revenue for community benefit activities
- ▶ Part I, line 7i and Worksheet 8 instructions are revised to allow reporting of contributions for community benefit funded in whole or in part by a restricted grant from a related organization.
 - ▶ Rationale: because restricted grant would be reported as offsetting revenue, concern that same grant funds could be reported on multiple Schedules H (e.g., for funds regranted within system) no longer exists

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2013 Form 990 changes — Schedule H

- ▶ Part I instructions clarify that financial assistance does not include self-pay or prompt pay discounts.
- ▶ Worksheet 1 and 2 instructions (for Part I) clarify no double counting of community benefit in Part I.
- ▶ Part III instructions provide reminders/clarifications that Medicare expenses reported as community benefit in Part I should not be reported in Part III.
 - ▶ For instance, as subsidized health services (Part I, line 7g) or health professions education (Part I, line 7f)

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2014 Form 990 changes — Schedule H, Part V

- ▶ The 2014 Schedule H is likely to include extensive changes to Part V, Section B in anticipation of Sec. 501(r) regulations being finalized this year; for instance:
 - ▶ New questions on implementation strategy for CHNA
 - ▶ Attachment of implementation strategy (or reference to website)
 - ▶ Revisions to financial assistance policy section
 - ▶ Basis for calculating amounts charged to patients
 - ▶ How policy explained methods of applying for financial assistance
 - ▶ Measures to publicize policy within community
 - ▶ Revisions to billing and collections section
 - ▶ Types of collections actions taken before making reasonable efforts to determine financial assistance eligibility

Mandatory review of tax exemption for Hospitals

- ▶ Sec. 9007(c) of the ACA requires the IRS to review, at least once every three years, the community benefit activities of each hospital organization to which Sec. 501(r) applies.
- ▶ The IRS looks at public records, Forms 990, other information available to the public and other information that may not be available to the public.
- ▶ The IRS completed reviews of 3,001 charitable hospitals during fiscal years 2011, 2012, and 2013.
 - ▶ They completed approximately 1,000 per year.
 - ▶ The IRS is now on its second three-year community benefit review cycle.

Mandatory review of tax exemption for hospitals

- ▶ This review process is not an examination.
 - ▶ The IRS is not contacting hospital organizations as part of the review program.
 - ▶ Hospital organizations are not receiving notices that a review has begun, is being conducted or has been closed.
- ▶ However, if a review indicates there is cause for concern, an organization may be referred for an examination or asked follow-up questions pursuant to normal IRS processes.

Mandatory review of tax exemption for hospitals

- ▶ Results from the first IRS three-year community benefit review cycle:*
 - ▶ The IRS referred 13 hospital organizations for examination
 - ▶ The IRS referred 14 hospital organizations for compliance checks
 - ▶ Potential noncompliance issues: unrelated business income tax, employment tax, tax-exempt purpose
- ▶ The IRS 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

*Source: April 9, 2014 letter from IRS Commissioner John Koskinen to Sen. Charles Grassley

Community benefit report to Congress

- ▶ ACA Sec. 9007(e) requires the IRS, in consultation with the Department of Health and Human Services (HHS), to submit an annual report to Congress regarding tax-exempt, taxable and government hospitals:
 - ▶ Levels for and costs of charity care and community benefit
 - ▶ Bad debt expenses
 - ▶ Unreimbursed costs for services related to government programs
- ▶ Status: the IRS plans to submit a draft of its first annual report to Congress this summer for calendar year 2011.*
 - ▶ Using Statistics of Income (SOI) data, including data from Form 990 on community benefit
 - ▶ Using Centers for Medicare and Medicaid Services (CMS) cost report data for taxable and government hospitals

*Source: April 9, 2014 letter from IRS Commissioner John Koskinen to Sen. Charles Grassley

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Resources and Comments

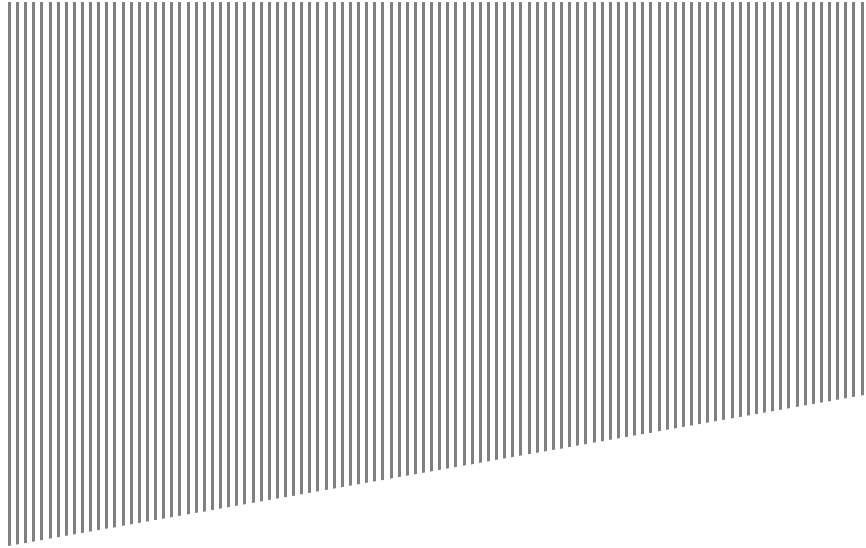
- ▶ <http://www.irs.gov/eo>
 - ▶ 2012 and 2013 Form 990, Schedule H and instructions
 - ▶ Sec. 501(r) proposed regulations, Notices 2014-2, 2014-3
- ▶ Comments on Sec. 501(r) guidance
 - ▶ notice.comments@irs.counsel.treas.gov
- ▶ Comments on Schedule H and/or other parts of Form 990
 - ▶ Form990Revision@irs.gov

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Questions



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Thank you!