



Community Benefit Webinar

IRS: Form 990, Schedule H: A Review of 2014 – 2015 Form and Instructions

Feb. 23, 2016
1 – 2 p.m. ET

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Reflection



“Learn to do good.
Make justice your aim: redress the wronged,
hear the orphan’s plea, defend the widow.”

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2

Your Speaker for Today's Program



Stephen Clarke

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Stephen Clarke 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 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. He 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.

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3

IRS Form 990, Schedule H - review of 2014–2015 form and instructions changes

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Outline

- ▶ Schedule H overview
- ▶ Community building or community benefit?
- ▶ Restricted grant reporting
- ▶ Non-501(r)-related 2015 Schedule H instruction changes
- ▶ Section 501(r) requirements
- ▶ 501(r)-related 2014 Schedule H changes
- ▶ 501(r)-related 2015 Schedule H changes
- ▶ Disclosure of 501(r) errors or omissions
- ▶ Other Schedule H implications of final 501(r) regulations
- ▶ IRS community benefit reviews
- ▶ Community benefit report to Congress
- ▶ Questions

Page 7

IRS Form 990, Schedule H

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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 (Section 501(r))
- ▶ Schedule H audience (Form 990 is publicly disclosable)
 - ▶ Regulators (IRS, states, Congress)
 - ▶ Press/watchdog groups
 - ▶ Community and constituents

Page 8

IRS Form 990, Schedule H

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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

Form 990, Schedule H – community building or community benefit?

- ▶ Community building: These are 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 and 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 – 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

Form 990, Schedule H – community building or community benefit?

- ▶ If an activity meets the definition of community benefit, expenses attributable to that activity can be reported in Part I as community benefit.
 - ▶ Even if it also clearly fits into a Part II community building category
 - ▶ An expense can only reported in Part I or Part II, not in both parts
- ▶ 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 for the purposes of meeting the community benefit standard.”

Form 990, Schedule H – restricted grant reporting

- ▶ Part I, line 7 instructions were revised for tax year 2013 to 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 were revised for tax year 2013 to 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)

Page 13

IRS Form 990, Schedule H

EY

Non 501(r)-related 2015 Form 990, Schedule H instruction changes

- ▶ New instruction that negative numbers and percentages should not be reported in the Part I, line 7 community benefit table
- ▶ Clarification that for group return filers, the “total expense” denominator for the community benefit percentage in Part I, line 7, column (f), is the total expense amount reported on Part IX, line 25, column (a) of the group return
- ▶ Removal of restriction on reporting of community building expenses funded in whole or in part by a restricted grant from a related organization
 - ▶ Reflects similar tax year 2013 instruction change for reporting cash and in-kind contributions for community benefit
- ▶ Other Schedule H instructions changes relate to Section 501(r) of the Internal Revenue Code (IRC)

Page 14

IRS Form 990, Schedule H

EY

Section 501(r) requirements and Form 990, Schedule H

- ▶ The Patient Protection and Affordable Care Act (ACA), enacted March 23, 2010, created IRC Section 501(r) to establish new requirements for tax-exempt hospitals.
- ▶ The IRS added a new Part V, Section B to Schedule H for tax year 2010 to gather information on hospital facilities' compliance with 501(r) and related policies and practices.
 - ▶ Other Schedule H questions relate to organization as a whole.
- ▶ 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.
- ▶ 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 12/29/15

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.
- ▶ 2014 Schedule H includes extensive changes to Part V, Section B in anticipation of the 501(r) regulations being finalized.
- ▶ 2015 Schedule H includes extensive changes to Part V, Section B **instructions** to reflect final 501(r) regulations.
- ▶ The IRS likely will revise Part V, Section B for tax year 2016 to more closely reflect the final 501(r) regulations.

2014 Form 990 Schedule H Part V, Section B (hospital facilities)

- ▶ No significant changes to Parts I, II, III and IV
- ▶ Part V, Section A
 - ▶ Group return filers must list the name and employer identification number (EIN) of each subordinate hospital that operates a hospital facility reported in Part V
- ▶ Part V, Section B
 - ▶ Changes reflect some of proposed Section 501(r) regulations
 - ▶ New questions 1 and 2 ask about timing of becoming a hospital facility, for purpose of determining whether and when community health needs assessment (CHNA) is required
 - ▶ New question 6b: did facility conduct its CHNA with one or more organizations other than hospitals?

2014 Form 990 Schedule H Part V, Section B

- ▶ Question 7c – revised to ask if **paper** copy of CHNA was made available **at** facility **without charge**
- ▶ Questions 8-11 replace 2013 Form 990 questions 6 and 7
 - ▶ More information about implementation strategy is requested
 - ▶ Question 10: must attach implementation strategy to return or list website URL on which implementation strategy may be found
 - ▶ Question 11: all filers must describe how facility is addressing significant needs in its most recently conducted CHNA (no longer a yes/no question)
- ▶ Question 13 replaces 2013 Form 990 questions 10-12
 - ▶ Removed “state regulation” and “Medicaid/Medicare” as listed criteria for establishing financial assistance eligibility
 - ▶ “Underinsurance status” replaced “uninsured discount”

2014 Form 990 Schedule H Part V, Section B

- ▶ Question 15 (formerly question 13) – how financial assistance policy (FAP) explains method for applying for financial assistance (includes new checkboxes):
 - ▶ Whether the FAP or FAP application form described required information and documentation for a FAP application
 - ▶ Whether the FAP or FAP application form provided contact information for the FAP and FAP application process
- ▶ Question 16 (formerly question 14 – measures to publicize FAP) (includes revised checkboxes):
 - ▶ Must list URL for the FAP, FAP application and plain language summary
 - ▶ Were the FAP, FAP application and plain language summary of FAP provided upon request, without charge?
 - ▶ Did the hospital facility conspicuously post notice of the availability of the FAP throughout the facility?
 - ▶ Did the hospital facility notify the members of the community most likely to need financial assistance about the availability of the FAP?

Page 19

IRS Form 990, Schedule H

EY

2014 Form 990 Schedule H Part V, Section B

- ▶ Questions 18 and 19 (list of collection actions permitted and taken before the hospital facility made reasonable efforts to determine eligibility for financial assistance)
 - ▶ Collapsed three boxes for lawsuits, liens and body attachments into a single box: “Actions that require a legal or judicial process”
 - ▶ Added “Selling an individual’s debt to another party”
 - ▶ Added “None of these actions or other similar actions were permitted”
- ▶ Question 20 (efforts made before taking collection actions listed in questions 18 and 19)
 - ▶ Added “None of these efforts were made”

Page 20

IRS Form 990, Schedule H

EY

2015 Form 990 Schedule H instruction changes for Part V, Section B

- ▶ Line 5: clarification that the hospital facility can answer “yes” to line 5 only if it took into account input from the following in its CHNA process:
 - ▶ At least one state, local, tribal or regional public health department (or equivalent department) or a State Office of Rural Health
 - ▶ Members of medically underserved, low-income and minority populations in the community served by the facility, or representatives of those groups
 - ▶ Written comments received on facility’s most recently conducted CHNA and its most recently adopted implementation strategy
- ▶ Section C narrative for line 5 response must include:
 - ▶ How and over what time period input from public was provided
 - ▶ Description of medically underserved, low-income and minority populations represented by those who provided input

2015 Form 990 Schedule H instruction changes for Part V, Section B

- ▶ Lines 13c-13g: clarified that each item should be checked if it is a factor in determining eligibility for financial assistance (not in calculating amounts charged to patients)
- ▶ Deleted instruction for line 13h that “other” may include the amount budgeted for financial assistance
- ▶ Line 17: describes information that may be included in a billing and collection policy or FAP, which information the final 501(r) regulations require to be included:
 - ▶ Extraordinary collection actions (ECAs) that a hospital facility may take to obtain payment of a bill for medical care
 - ▶ Process and time frames the facility (or other authorized party) uses in taking those actions
 - ▶ The body with the authority to determine that the facility made reasonable efforts to determine an individual’s FAP eligibility before engaging in ECAs against that individual

2015 Form 990 Schedule H instruction changes for Part V, Section B

- ▶ Lines 18a-d and 19a-d: new instructions regarding certain ECAs permitted or taken before making reasonable efforts to determine FAP eligibility:
 - ▶ Reporting adverse information about individual to consumer credit reporting agencies or credit bureaus
 - ▶ Selling individual's debt to another party (unless sale meets certain conditions to ensure purchaser of debt complies with 501(r))
 - ▶ Actions requiring a legal or judicial process
 - ▶ Lien on real property (unless certain exceptions are met)
 - ▶ Attaching or seizing bank account or other personal property
 - ▶ Commencing civil action
 - ▶ Causing arrest or writ of body attachment
 - ▶ Garnishing wages
 - ▶ Deferring or denying, or requiring payment before providing, medically necessary care because of non-payment for prior care covered under FAP

2015 Form 990 Schedule H, Part VI instruction changes

- ▶ Disclose in Part VI any 501(r) failures for which Schedule H disclosure is required under Revenue Procedure 2015-21 to avoid certain penalties.
 - ▶ If properly corrected and disclosed, those failures will be excused and not jeopardize section IRC 501(c)(3) tax exemption or subject hospital to non-compliant facility excise tax.

Failure to meet Section 501(r) requirements

Taxation of non-compliant hospital facilities

- ▶ Final 501(r) regulations provide that failure to comply with Section 501(r) could result in:
 - ▶ Revocation of tax-exempt status
 - ▶ Non-compliant 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

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.
- ▶ Where the minor error exception does not apply, 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

Failure to meet Section 501(r) requirements

Disclosure on Schedule H (Revenue Procedure 2015-21)

- ▶ 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

Page 27

IRS Form 990, Schedule H

EY

Other 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
 - ▶ 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 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).
 - ▶ But if a discount is not included in its FAP, the hospital may not be able to report that discount as financial assistance in Schedule H, Part I.

Page 28

IRS Form 990, Schedule H

EY

Other 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).
 - ▶ Therefore, 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 involved fits the definition of "community building."
- ▶ 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 exempt from new Sec. 6033 regulations.

Page 29

IRS Form 990, Schedule H

EY

Mandatory review of tax exemption for hospitals

- ▶ 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 completed reviews of over 3,000 charitable hospitals during fiscal years 2011, 2012 and 2013.
 - ▶ The IRS completed approximately 1,000 reviews per year.
 - ▶ The IRS is now on its second three-year review cycle.
- ▶ 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 asked follow-up questions.

Page 30

IRS Form 990, Schedule H

EY

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 non-compliance issues included unrelated business income tax, employment tax and tax-exempt purpose.
- ▶ 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

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

IRS report to Congress on community benefit

- ▶ January 28, 2015, IRS report to Congress under Section 9007(e)(1) of the ACA – based on 2011 data
- ▶ Charity care provided, based on Centers for Medicare and Medicaid (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

