Franciscan Benediction

May God bless you with discomfort at easy answers, half truths, and superficial relationships, so that you may live deep within your heart.

May God bless you with anger at injustice, oppression, and exploitation of people, so that you may work for justice, freedom and peace.

May God bless you with tears to shed for those who suffer from pain, rejection, starvation, and war, so that you may reach out your hand to comfort them and to turn their pain into joy.

And may God bless you with enough foolishness to believe that you can make a difference in this world, so that you can do what others claim cannot be done.
Introduction

2011 Form 990 Schedule H (and related items)

Stephen Clarke
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Internal Revenue Service

Catholic Health Association Webinar
February 15, 2012

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Affordable Care Act Requirements and Form 990, Schedule H

- Section 9007 of the Patient Protection and Affordable Care Act (Affordable Care Act), enacted March 23, 2010, created a new Section 501(r) of the Internal Revenue Code (Code) that established additional requirements for tax-exempt hospital organizations and included certain review and reporting requirements for the IRS.

- To gather information on hospital organizations’ compliance with these requirements and on related policies and practices, IRS revised Form 990, Schedule H for tax year 2010 to add a new Part V, Section B.

- To give the hospital community more time to familiarize itself with the information required to be furnished on Part V, Section B, the IRS made Section B optional for TY 2010.
  - See Announcement 2011-37

2010 Schedule H, Part V, Section B—Facility Policies and Practices

- Many of the questions in Section B track the statutory language of section 501(r) of the ACA.

- Other questions in Section B (and throughout Schedule H and Form 990) ask about policies and practices related to section 501(r) requirements.
2010 Schedule H, Part V, Section B

- Section B is not intended to provide guidance on how to interpret any part of Section 501(r)
  - Section B may be revised after guidance is issued on these provisions
- Answering a question in Section B a certain way will not automatically result in an audit
- The IRS considered public input in making revisions to Section B and its instructions
- The IRS welcomes further input
  - See Ann. 2011-37 and Notice 2012-4

CHNA Requirements (Notice 2010-39)

- IRS Notice 2010-39 described the new section 501(r) exemption and reporting requirements for tax-exempt hospital organizations, and solicited public comments
- In response to Notice 2010-39, the IRS received over 100 comments
- Numerous commenters requested guidance on the community health needs assessment (CHNA) requirements
Notice 2011-52

In July 2011, the IRS issued Notice 2011-52 ("Notice and Request for Comments Regarding the Community Health Needs Assessment Requirements for Tax-exempt Hospitals")

Notice 2011-52 addresses:
- CHNA requirements described in section 501(r)(3) of the Internal Revenue Code ("Code"); and
- Related excise tax and reporting obligations applicable to hospital organizations that are (or seek to be) recognized as tax-exempt organizations described in section 501(c)(3) of the Code

Notice 2011-52:
- States that we intend to propose regulations;
- Describes provisions that we anticipate including in proposed regulations; and
- Invites comments. The official comment period closed on September 23, 2011; however, we welcome further input

Notice 2011-52 addresses several topics including:
- Definition of “hospital organization”;
- Government hospitals;
- Information a CHNA includes and how and when it is conducted;
- Definition of “implementation strategy” and how and when it is adopted; and
- Making a CHNA widely available
Notice 2011-52

- The Notice provides that we will not exercise our authority to expand the definition of hospital organization pursuant to section 501(r)(2)(A)(ii) prior to an opportunity for notice and public comment.
- The Notice also provides that we intend to apply section 501(r) to government hospitals that are (or seek to be) recognized as section 501(c)(3) organizations but also requested comments regarding alternative methods government hospitals may use to satisfy the CHNA requirements.
- But, if a government hospital is excused from filing under Rev. Proc. 95-48 or a successor revenue procedure (and isn’t described in section 509(a)(3)) it does not have to file Form 990.
- The IRS is working with Treasury on further guidance regarding section 501(r).

Mandatory Review of Tax Exemption for Hospitals

- The Affordable Care Act requires the IRS to review, at least once every three years, the community benefit activities of each hospital organization to which section 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.
Mandatory Review of Tax Exemption for Hospitals

- This review process is not an examination
  - We will not be contacting hospital organizations as part of the review program
- Organizations will not receive notice 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

- 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
Notice 2012-4
Suspended electronic filing season

- IRS Modernized eFile (MeF) system is not available from January 1, 2012 through February 29, 2012 for electronic filing of Form 990 (including Schedule H), 990-EZ, 990-PF, or 1120-POL
  - Purpose: to facilitate systems and programming changes
- IRS granted an automatic extension of time to file (to March 30, 2012) and late-filing penalty relief for filers with due dates (or first 3-month extended due date) between January 1, 2012 and February 29, 2012
  - Affected organizations normally required to e-file have the option of filing on paper during the suspension period, or filing electronically between March 1st and 30th, 2012
  - Affected organizations that file on paper during this period, and that receive an IRS system-generated request for an explanation of why they did not e-file, should respond, “Paper Filing Pursuant to Notice 2012-4”
  - Affected organizations may, but do not need to, file Form 8868 if they file their returns by March 30, 2012
  - Affected organizations may still request an extension beyond March 30, 2012 by filing Form 8868 (by paper or electronically) by their original due date; however, total extensions of time to file, generally, may not exceed 6 months

Notice 2012-4
Suspended electronic filing season

- Late filing penalty relief for filers previously granted two 3-month extensions
  - The extension of time to file provided by this notice is not available to affected organizations that have already obtained two 3-month extensions. However, the IRS will provide relief from any late filing penalty to affected organizations that were previously granted two three-month extensions of time to file that expire during the suspension period, provided their returns are filed by March 30, 2012
  - Affected organizations that file by March 30, 2012 should attach a reasonable cause statement for late filing to avoid a system-generated penalty notice
  - Affected organizations that erroneously receive a penalty notice for late filing should call the telephone number on the notice to request abatement of the penalty per Notice 2012-4
Notice 2012-4
2011 Schedule H Changes

- Beginning in TY2011, Part V, Section B is no longer optional (except for lines 1-7 re: CHNA)
- IRS has considered public input on Part V, Section B, and has made revisions to this section for tax year 2011
- The IRS anticipates making further revisions to Part V, Section B for future years and welcomes further public input
  - Form990Revision@irs.gov

2010 Sch. H, Part V, Section B, lines 1-7 (Community Health Needs Assessment)

- Optional for TYs 2010 and 2011
- First community health needs assessment under 501(r) must be completed by the last day of the organization’s first tax year beginning after March 23, 2012
- Answer questions in reference to the most recent health needs assessment conducted by the hospital facility
- See Notice 2011-52
2011 Schedule H, Part V—significant Form changes

- Section A will continue to require listing of hospital facilities in order of size, but filers may use a measure other than total revenue per facility to determine size.
- Section C will continue to require listing of non-hospital health care facilities in order of size, but filers may use a measure other than total revenue per facility to determine size.
- On lines 9 and 10 of Section B, filers are given the option to explain in Part VI if they use criteria other than Federal Poverty Guidelines (FPG) to determine eligibility for free or discounted care.

2011 Schedule H, Part V—significant Form changes

- Section B, line 19 (re: how a hospital facility determined the amounts generally billed to uninsured individuals for emergency or medically necessary care) is revised to apply only to individuals eligible for assistance under the facility’s financial assistance policy (FAP).
- Section B, line 21 (re: whether a hospital facility charged any of its patients an amount equal to the gross charge for any service) is revised to apply only to patients eligible for assistance under the facility’s FAP.
2011 Schedule H, Part V—significant changes to instructions

- New description of how the filer should describe its community health needs assessment process in Part VI
- Clarification of when the filer may check the box for Section B, line 6a to report that it adopted an implementation strategy to address the health needs of its hospital facility’s community
- Clarification that no inference should be made regarding whether actions listed in lines 15a-15d, 16a-16d, or described in Part VI as “other similar actions,” are “extraordinary collection actions” under section 9007 of the Affordable Care Act

2011 Schedule H—significant changes to instructions

- Clarification that a box in Part V, Section B, lines 15a-15d and 16a-16d should only be checked if the hospital organization took the action (or was authorized to take the action) described in that box before making reasonable efforts to determine a patient’s eligibility for financial assistance
- Clarification that the filer may check “Yes” to line 18 regarding a hospital facility’s emergency medical care policy if it had a written policy that required compliance with 42 U.S.C. 1395dd (Emergency Medical Treatment and Active Labor Act, or EMTALA)
- Clarification that community building activities that meet the definition of community benefit may be reported in Part I, rather than in Part II
Audited Financial Statements

- Hospital organizations must attach a copy of their most recent audited financial statements to their 2011 Form 990
  - Whether filed electronically or by paper
  - Whether stand-alone or consolidated
  - See 2011 Form 990, Part IV, line 20b and instructions

Resources and Comments

  - 2010 and 2011 Form 990, Schedule H & instructions
  - Notices 2012-4, 2011-52
- Comments on 501(r) guidance needed?
  - notice.comments@irs.counsel.treas.gov
  - Garrett.B.Gluth@irs.gov
- Comments on Schedule H and/or other parts of Form 990?
  - Form990Revision@irs.gov
  - Stephen.M.Clarke@irs.gov

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IRS Form 990, Schedule H, 2008 to 2011

Keith Hearle
President
Verité Healthcare Consulting, LLC

February 15, 2012

Outline

- Brief History and Context
- **Highlights** of Changes to Schedule H
  - 2008 ➔ 2009
  - 2009 ➔ 2010
  - 2010 ➔ 2011
- Future Issues
Brief History and Context

- Concerns about tax-exempt hospitals
- Redesigned form 990 and Schedule H
- PPACA: new “501(r)” requirements
- 501 (r) Implementing regulations

2008 ➔ 2009

- Clarifications regarding questions for the “organization” versus about “facility/ies”
- Offsetting Health Professions Education revenue
  - Children’s Hospital GME
  - Medicaid GME received as a “lump-sum”
- All qualifying contributions made to community groups to be reported in Part I, Line 7i (rather than Lines 7a-7h)
- Clarification that “indirect costs” do not include the estimated cost of “indirect medical education”
Questions restated from present tense to past tense

“Charity Care” now “Financial Assistance”

Clarification that “Medicaid” includes activities “from all states, not just the from the organization’s home state”

Inclusion of UPL (Upper Payment Limit) funding in direct offsetting revenue (equivalent to DSH)

Part V reorganized into three sections:

• Section A: List all hospitals largest to smallest, by revenue
• Section B: 21 questions regarding CHNA, FAP, Billing and Collections, Charges for Medical Care
• Section C: List all non-hospital facilities

All 21 questions for Part V, Section B optional for Tax Year 2010 (Announcement 2011-37).
2010 ➔ 2011

- “Unreimbursed Medicaid” now “Medicaid”; similar change to “other means-tested government programs”
- Bad debt expense no longer reported “at cost”
- Research offsetting revenue now includes “license fees and royalties”
- Cash and in-kind contributions “to community groups” now “for community benefit”

2010 ➔ 2011, continued

- Change to Community Building instructions:
  - 2010: “Report in this part … activities … to protect health or safety, and that are not reportable in Part I or III …”
  - 2011: “Some community building activities may also meet the definition of community benefit. Do not report in Part II community building costs that are reported on Part I, line 7 … as … a community health improvement service reportable on Part I, Line 7e”
2010 ➔ 2011, continued

- Part V, Section A hospital list now sorted “largest to smallest … by a reasonable method”
- Clarification that Part V, Section B is “for reporting of information on policies and practices addressed in section 501(r)"
- Modifications to 10 of 21 questions in Part V, Section B.

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2010 ➔ 2011, continued

<table>
<thead>
<tr>
<th>2010 (Part V, Section B, Line 15)</th>
<th>2011 (Part V, Section B, Line 15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Check all of the following collection actions against a patient that were permitted under the hospital facility’s policies at any time during the tax year:</td>
<td>Check all of the following actions against an individual that were permitted under the hospital facility’s policies during the tax year before making reasonable efforts to determine the patient’s eligibility under the facility’s FAP:</td>
</tr>
<tr>
<td>2010 ➔ 2011, continued</td>
<td></td>
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<tr>
<td><strong>2010 (Part V, Section B, Line 16)</strong></td>
<td></td>
</tr>
<tr>
<td>Did the hospital facility engage in or authorize a third party to perform any of the following collection actions during the tax year?</td>
<td></td>
</tr>
</tbody>
</table>

| **2011 (Part V, Section B, Line 16)** |
| Did the hospital facility or an authorized third party perform any of the following actions during the tax year before making reasonable efforts to determine the patient's eligibility under the facility's FAP? |

<table>
<thead>
<tr>
<th>2010 ➔ 2011, continued</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2010 (Part V, Section B, Line 21)</strong></td>
</tr>
<tr>
<td>Did the hospital facility charge any of its patients an amount equal to the gross charge for any service provided to that patient? If “Yes,” explain in Part VI.</td>
</tr>
</tbody>
</table>

| **2011 (Part V, Section B, Line 21)** |
| Did the hospital facility charge any of its FAP-eligible patients an amount equal to the gross charge for any service provided to that patient? If “Yes,” explain in Part VI. |
Future Issues

- Opportunities to streamline Schedule H:
  - Questions regarding FAP (across Part I and Part V, Section B)
  - Questions regarding Implementation Strategy (given that it will be attached to the 990)
  - Question regarding Bad Debt expense footnote (given that Audited Financial Statements will be attached to the 990)
  - Simplified Part V, Section B questions regarding:
    - Whether CHNA complies with 2011-52
    - Whether FAP and collections policies/practices comply with upcoming regulations
  - Need for Part V, Section C details

Future Issues, continued

- Definitions in instructions and refinements to Part V, Section B questions once regulations are issued
  - “reasonable efforts”
  - “extraordinary collections actions”
- Inconsistent treatment of Medicare and Medicaid
- Definition of reportable research
- Treatment of restricted grants that fund community benefit activities (including research)
- Streamlined approach to “regranting of restricted grants”
Implications for Hospitals

Questions & Discussion
Thank you for your participation.

Please remember to submit your evaluation.