

## THE REDESIGNED FORM 990: WHAT HOSPITALS NEED TO KNOW

By Scott J. Mariani, JD

The Form 990 is the tax return filed annually by an organization recognized by the IRS as a tax-exempt organization. These organizations typically include charities, hospitals, foundations, nursing homes, colleges and universities. The official name of the Form 990 is "Return of Organization Exempt From Income Tax".

The last time the IRS significantly revised the Form 990 was in 1979; 29 years ago. The IRS felt that the prior Form 990 failed to keep pace with changes in the laws, rules and regulations of the tax-exempt industry and the increasing size, diversity and complexity of the tax-exempt industry. As a result, the Form 990 in its format prior to this major revision failed to meet the IRS' tax compliance interests or the transparency and accountability needs of the state taxing authorities and the general public.

Organizations are required to use the redesigned Form 990 for the year ending December 31, 2008, to be filed in 2009. Organizations will file the old format Form 990 for the year ending December 31, 2007.

### Schedule changes affecting hospital filings

The redesigned Form 990 consists of an 11-page main part, or "core form," as the IRS refers to it, containing 10 different parts. In addition, the IRS also created supplemental schedules which may also have to be completed as part of the Form 990 annually. These schedules begin with the letter A and continue through the letter R (except no Schedule P). Part IV of the main part of the redesigned Form 990 is called Checklist of Required Schedules and is comprised of 37 questions. These 37 questions will determine which Schedules A through R an organization must also complete annually. It is important to note that hospitals will be required to complete many of these supplemental schedules.

In recent years the IRS has implemented various compliance and enforce-

ment initiatives with respect to the tax-exempt sector, particularly with hospitals. Several of these initiatives and the results and findings are incorporated into the redesigned Form 990.

Both Part VII of the main part of the redesigned Form 990 and Schedule J, Compensation Information, relate to compensation of officers, directors, trustees, key employees, highest compensated employees and independent contractors and ask for more detailed information than the prior Form 990. For example, Schedule J requires compensation of certain individuals to be disclosed by specific elements such as base compensation, bonus/incentive compensation, other compensation, deferred compensation and nontaxable benefits. These schedules reflect certain results and findings of the May 2006 IRS Form 13790, Compliance Check Questionnaire for Tax Exempt Hospitals and the 2004 IRS executive compensation and benefits initiative.

In addition, Schedule H, Hospitals, is applicable specifically to hospitals and asks for information relating to community benefit provided by the hospital. This schedule also reflects certain results and findings of the May 2006 IRS Form 13790, Compliance Check Questionnaire for Tax Exempt Hospitals.

Schedule K, Supplemental Information on Tax-Exempt Bonds, also incorporates certain portions of the recent IRS tax-exempt bond initiative and related IRS Form 13907, Tax-Exempt Bond Financings Compliance Check Questionnaire.

However, there is some good news with respect to both Schedules H and K. The IRS granted some transitional relief for organizations in order to allow them to prepare and implement the procedures to accurately accumulate and report the requested information. For the 2008 redesigned Form 990, certain sections of both schedules are optional. Of course, organizations may still fully complete both Schedules H and K with their 2008 Form 990 (filed in 2009) if they desire. Both Schedules H and K must be fully completed with the 2009 Form 990 (filed in 2010).

With respect to Schedule H and tax-ex-

empt hospitals, the determination of what constitutes community benefit and how it is quantified has been highly publicized; the final version of the Schedule H does help clarify the issue.

The draft version of the redesigned Form 990 reflected the Catholic Health Association interpretation of community benefit which does not recognize Medicare shortfalls and bad debt as part of its quantification of community benefit costs. The final version of the redesigned Form 990, Schedule H now includes a separate section which allows a hospital to show its Medicare shortfalls and bad debt costs which is a position supported by the American Hospital Association and many tax-exempt hospitals. Although not included in the section relating to charity care and community benefit costs on Schedule H, at least Schedule H now allows a hospital to fully disclose costs associated with Medicare shortfalls and bad debt.

In addition to the sections mentioned above, a hospital must review in depth Part VI of the main part of the redesigned Form 990 entitled Governance, Management and Disclosure. Part VI is very important and relates to the organization's governance practices. It is important to note that certain questions in this part of the redesigned Form 990 require written explanations and not just yes/no responses.

It is recommended that a hospital closely examine the following supplemental schedules to ensure adequate preparation and full and proper disclosure:

- Schedule C Political Campaign and Lobbying Activities
- Schedule D Supplemental Financial Statements
- Schedule L Transactions with Interested Persons ("Conflicts")
- Schedule R Related Organizations and Unrelated Partnerships

It is also recommended that an organization start planning for the redesigned

Form 990 immediately. An organization should form an internal working group to review the redesigned Form 990 and assign duties and responsibilities as appropriate. The working group should include finance personnel; in-house counsel; patient account personnel; corporate compliance and human resources. An organization's CEO and COO should also be involved on high level issues. An organization may also want to present the redesigned Form 990 to its Board of Trustees for review and their consideration. An organization should also seek assistance externally from its advisors, including its attorneys and accountants. Starting the process now allows an organization to implement certain changes due to the redesigned Form 990 and the new disclosures.

The redesigned Form 990 and supplemental schedules constitutes the largest and most significant revision to anything we've seen in the last 20 years in the tax-exempt sector from a tax perspective. The redesigned Form 990 and supplemental schedules are exhaustive and will

require a significant amount of additional time and effort not previously associated with the old format Form 990.

#### **Future affects on qualification for tax-exemption**

It is conceivable that the IRS will likely attempt to change the basis for tax-exemption for hospitals. The current community benefit standard as the basis for tax-exemption was outlined in IRS Revenue Ruling 69-545; almost 40 years ago. Under this Ruling the criteria for tax-exemption includes a requirement to provide health care services to all individual's regardless of ability to pay, including charity care, self-pay, Medicare and Medicaid patients; operating an active emergency room for all persons; which is open 24 hours a day, 7 days a week, 365 days per year; maintaining an open medical staff, with privileges available to all qualified physicians; and ensuring control rests with its Board of Directors; which is comprised of independent civic leaders and other prominent members of the community.

Many, including the IRS, feel the criteria in this Ruling is outdated like the prior Form 990 and needs to be updated to reflect the changes in the laws, rules and regulations of the tax-exempt industry. To that end, I believe that sometime in the near future the IRS will attempt to enact some criteria whereby a hospital will need to meet a certain minimum dollar amount of community benefit costs annually in order to maintain classification as an Internal Revenue Code Section 501(c)(3) tax-exempt organization. The redesigned Form 990 is a significant first step in this direction as the IRS will be receiving community benefit costs information annually on each hospital's Schedule H.

#### **About the Author**

Scott J. Mariani, JD, is a tax partner at WithumSmith+Brown, Certified Public Accountants and Consultants. Based in the firm's Morristown, NJ, office, he can be reached at 973-898-9494 or smariani@withum.com