A TAX-EXEMPT UPDATE:
GAINING THE COMPETITIVE EDGE

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June 19, 2014
AGENDA

Schedule H, community benefit and benchmarking.

Foreign Reporting.

Form 1023-EZ and reinstatement.
IRS UPDATE

SCHEDULE H, COMMUNITY BENEFIT AND BENCHMARKING

PART ONE
### Why Is Community Benefit Important?

<table>
<thead>
<tr>
<th></th>
<th>Federal</th>
<th>State</th>
<th>Local</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Exempt from corporate income tax.</td>
<td>• Exempt from corporate income tax.</td>
<td>• Exempt from property (real estate) taxes.</td>
</tr>
<tr>
<td></td>
<td>• Issue tax-exempt debt.</td>
<td>• Exempt from sales and use tax.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Receive charitable contributions &amp; government grants.</td>
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</tr>
</tbody>
</table>
1. Public perception.
2. State grants.
3. Donors.
4. IRS-Treasury excise “toll” tax.

- Affordable Care Act mandatory review of Schedule H every 3 years and report to Congress. Reviews have begun.
WS+B APPROACH

Form 990 four part methodology:

1. Schedule H, Part I.
2. Schedule H, Part V including narratives).
3. Schedule H, Part VI.
4. Schedule O, Community Benefit Statement ("CBS").

❖ The WS+B philosophy incorporates that your organization’s Form 990 is not just the numbers; it is your organization’s chance to “tell your story”.
Community Benefit

- AHA versus CHA model (excludes bad debt and Medicare shortfall).
- Costs not charges.
- Senate Finance Committee – 5% Test.
COMMUNITY BENEFIT

Catholic Health Association guidelines for identifying community benefits:

- Program must respond to an identified community need and meet at least one of the following...

  ✓ Improve access to healthcare services within the community.
  ✓ Improve health of the community.
  ✓ Advance medical or health education within the community.
  ✓ Relieve/reduce the burden of government or other community efforts.
<table>
<thead>
<tr>
<th>Categories of Community Benefit</th>
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</thead>
<tbody>
<tr>
<td>Financial Assistance at Cost</td>
<td>Medicaid Shortfall</td>
<td>Other Means-Tested Government Programs</td>
</tr>
<tr>
<td>Community Health Improvement Services and Community Benefit Operations</td>
<td>Health Professions Education</td>
<td>Subsidized Health Services</td>
</tr>
<tr>
<td>Research</td>
<td>Cash and In-Kind Contributions</td>
<td>Total</td>
</tr>
</tbody>
</table>
Schedule H must be completed by a hospital organization that operated at any time during the tax year.

The organization may treat multiple buildings operated under a single state license as one hospital facility.
2013 SCHEDULE H, PART I
CHANGES

- Self-pay and prompt pay discounts do not constitute financial assistance.

- Direct offsetting revenue now has to include restricted grants and contributions used to provide community benefit. Prior to the 2013 Sch. H, such amounts were explicitly excluded.
Cash and in-kind contributions for community benefit

- Line 7i, should only include contributions that the organization restricts, in writing, to one or more of the community benefit activities listed in lines 7a –h.

| Financial Assistance and Certain Other Community Benefits at Cost |  
| --- | --- | --- | --- | --- | --- |
| Financial Assistance and Means-Tested Government Programs | (a) Number of activities or programs (optional) | (b) Persons served (optional) | (c) Total community benefit expense | (d) Direct offsetting revenue | (e) Non community benefit expense | (f) Percent of total expense |
| a Financial Assistance at cost (from Worksheet 1) | | | | | | |
| b Medicaid (from Worksheet 3, column a) | | | | | | |
| c Costs of other means-tested government programs (from Worksheet 3, column b) | | | | | | |
| d Total Financial Assistance and Means-Tested Government Programs | | | | | | |
| Other Benefits | | | | | | |
| e Community health improvement services and community benefit operations (from Worksheet 4) | | | | | | |
| f Health professions education (from Worksheet 5) | | | | | | |
| g Subsidized health services (from Worksheet 6) | | | | | | |
| h Research (from Worksheet 7) | | | | | | |
| i Cash and in-kind contributions for community benefit (from Worksheet 8) | | | | | | |
| j Total, Other Benefits | | | | | | |
| k Total, Add lines 7d and 7j | | | | | | |
Section A. Bad Debt Expense

- Permitted to provide the page number of AFS footnote that describes the organization’s bad debt expense, rather than the text.
Section B. Medicare

• The instructions now clarify the following:
  • Community benefit costs reported in Part I, Line 7 are not to be included in this section;
  • Medicare-related expenses or revenue reported in Part I, Line 7f or 7g are not to be included in this section; and
  • Research reported in Part I, Line 7h is not includable in Part III, Section B, Line 5.
Section B. Facility Policies and Practices

- Clarifies that if reporting for a single hospital facility, its line number from Section A should be listed.
- Lines 1 – 8c, the instructions clarify that the CHNA addresses the “significant health needs of the community”.
- Line 5a requests that if the CHNA was made available on the organization’s website that the URL address be listed on this line rather than included in the supplemental information.
Section B. Facility Policies and Practices (cont.)

- Line 5b requests that if the CHNA is available on a third-party website that the URL be listed on this line (instead of Line 5a).

- Line 12h, this is a new question for those organizations that considered residency as a factor in calculating amounts charged to patients during the tax year.
Section B. Facility Policies and Practices (cont.)

• Line 19 specifies that organizations may answer this question yes if they have a written policy that:
  • requires compliance with Subchapter G of Chapter IV of Title 42 of the Code of Federal Regulations, Emergency Medical Treatment and Active Labor Act; and
  • prohibits debt collection activities from occurring in such venues where such activities could interfere with the treatment of emergency medical conditions without discrimination.
2013 SCHEDULE H, PART V
CHANGES

Part V, Section C

Supplemental information related to Part V, Section B.

<table>
<thead>
<tr>
<th>Facility Information (continued)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section C. Supplemental Information for Part V, Section B. Provide descriptions required for Part V, Section B, lines 1j, 3, 4, 5d, 6i, 7, 10, 11, 12i, 14g, 16e, 17e, 18e, 19c, 19d, 20d, 21, and 22. If applicable, provide separate descriptions for each facility in a facility reporting group, designated by “Facility A,” “Facility B,” etc.</td>
</tr>
</tbody>
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</tbody>
</table>
List of all non-hospital facilities and mobile clinics but does not include long-term acute care facilities.

<table>
<thead>
<tr>
<th>Name and address</th>
<th>Type of Facility (describe)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>
Financial Assistance at Cost

“...free or discounted health services provided to persons who meet the organization’s criteria for financial assistance and are unable to pay for all or a portion of the services.”
Unreimbursed Medicaid

“...the United States health program for individuals and families with low incomes and resources.”
Unreimbursed Costs–Other Means-Tested Gov’t Programs

“...a government health program for which eligibility depends on the recipient’s income or asset level.”
Community Health Improvement Services and Community Benefit Operations

“...activities or programs, subsidized by the healthcare organization, carried out or supported for the express purpose of improving community health. Such services do not generate inpatient or outpatient revenue, although there may be a nominal patient fee or sliding scale fee for these services.”
Community Health Improvement Services and Community Benefit Operations

Community Benefit Operations are...

“...activities associated with community health needs assessments, community benefit program administration and activities associated with fundraising or grant-writing for community benefit programs.”
Health Professions Education

“...Educational programs that result in a degree, certificate, or training necessary to be licensed to practice as a health professional, as required by state law, or continuing education necessary to retain state license or certification by a board in the individual’s health profession specialty.”
Subsidized Health Services

“...clinical services provided despite a financial loss to the organization. The financial loss is measured after removing bad debt, financial assistance, Medicaid and other means-tested government programs.”

- Additionally to qualify the organization must provide the service because it meets an identified community need.
Research

“...any study or investigation, the goal of which is to generate generalizable knowledge made available to the public.”
Cash and In-Kind Contributions for Community Benefit

“...contributions made by the organization to healthcare organizations and other community groups restricted, in writing, to one or more of the community benefit activities previously described in the table in Part I, Line 7.”

- Do not double count if the grant is made to a Joint Venture included in the Schedule H calculations.
SCHEDULE H, PARTS II AND III

**Form 990, Schedule H, Part II**

- Community Building Activities.

**Form 990, Schedule H, Part III**

- Bad debt.
- Estimated amount of bad debt attributable to patients eligible under the organization’s financial assistance policy.
- Medicare Shortfall (disclosure and narrative).
Sections A and D:
Required disclosure of hospital and other non-licensed healthcare facilities

Section B:

IRC § 501(r)(3) – Community Health Needs Assessment
  • Questions 1-8; effective for tax years beginning after 3/23/12.

IRC § 501(r)(4) – Financial Assistance Policy
  • Questions 9-14.
Section B (continued):

IRC § 501(r)(5) – Limitation on Charges

- Questions 20-22.

IRC § 501(r)(6) – Billing and Collections


- Failure to complete the mandatory sections may result in an IRS notice for incomplete Form 990 filing.
Supplemental Information:

1. Required descriptions.
3. Patient education of eligibility for assistance.
5. Promotion of community health.
6. Affiliated healthcare system.
7. State filing of community benefit report.

✓ WS+B Recommendation: Include a reference to Schedule O, CBS.
2010 hospital community benefit percentage average

- **CT**: 8.7%
- **NJ**: 7.7%
- **RI**: 9.5%

2009 hospital community benefit percentage average

- **CT**: 8.9%
- **NJ**: 7.6%
- **RI**: 8.8%
AHA SCHEDULE H PROJECT

Two separate reports; based upon 1\textsuperscript{st} year and 2\textsuperscript{nd} year filings of Form 990, Schedule H (2009 and 2010).

AHA released the reports in February of 2012 and April of 2013; \url{www.aha.org}.

AHA Schedule H project.

- Community benefit – IRS definition.
- Total benefits to the community.
## AHA SCHEDULE H PROJECT

### SIZE – BASED ON TOTAL HOSPITAL EXPENSE

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMALL</td>
<td>Less than $100M</td>
</tr>
<tr>
<td>MEDIUM</td>
<td>$100M to $299M</td>
</tr>
<tr>
<td>LARGE</td>
<td>$300M or more</td>
</tr>
<tr>
<td>SYSTEM</td>
<td>&gt;1 hospital facility listed on the Form 990, Schedule H, Part V, Section A</td>
</tr>
</tbody>
</table>

### LOCATION – BASED ON HOSPITAL ZIP CODE

- Urban/Suburban
- Rural
# NATIONALLY RECOGNIZED FACILITIES

<table>
<thead>
<tr>
<th>Facility</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baylor University Medical Center at Dallas</td>
<td>$115,780</td>
<td>$ 83,055</td>
<td>$ 56,339</td>
</tr>
<tr>
<td>New York-Presbyterian Hospital</td>
<td>$492,122</td>
<td>$433,520</td>
<td>$454,880</td>
</tr>
<tr>
<td>Yale-New Haven Hospital</td>
<td>$242,827</td>
<td>$217,591</td>
<td>$192,570</td>
</tr>
<tr>
<td>Mayo Clinic</td>
<td>$896,020</td>
<td>$826,453</td>
<td>$761,339</td>
</tr>
<tr>
<td>Pennsylvania Hospital of the University of Pennsylvania Health System</td>
<td>$35,998</td>
<td>$ 38,708</td>
<td>$ 39,459</td>
</tr>
<tr>
<td>Duke University Health System, Inc.</td>
<td>$170,104</td>
<td>$210,205</td>
<td>$184,287</td>
</tr>
<tr>
<td>Beth Israel Deaconess Medical Center</td>
<td>$371,806</td>
<td>$381,127</td>
<td>$334,182</td>
</tr>
<tr>
<td>Children’s Hospital (Washington DC)</td>
<td>$102,278</td>
<td>$ 91,948</td>
<td>$105,261</td>
</tr>
</tbody>
</table>
# NATIONALLY RECOGNIZED FACILITIES

<table>
<thead>
<tr>
<th>Facility</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baylor University Medical Center at Dallas</td>
<td>12.44%</td>
<td>8.95%</td>
<td>6.26%</td>
</tr>
<tr>
<td>New York-Presbyterian Hospital</td>
<td>14.23%</td>
<td>13.14%</td>
<td>14.67%</td>
</tr>
<tr>
<td>Yale-New Haven Hospital</td>
<td>14.75%</td>
<td>15.37%</td>
<td>15.15%</td>
</tr>
<tr>
<td>Mayo Clinic</td>
<td>26.43%</td>
<td>28.11%</td>
<td>29.23%</td>
</tr>
<tr>
<td>Pennsylvania Hospital of the University of Pennsylvania</td>
<td>7.56%</td>
<td>8.30%</td>
<td>9.09%</td>
</tr>
<tr>
<td>Pennsylvania Health System</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duke University Health System, Inc.</td>
<td>7.93%</td>
<td>10.37%</td>
<td>9.61%</td>
</tr>
<tr>
<td>Beth Israel Deaconess Medical Center</td>
<td>28.25%</td>
<td>29.21%</td>
<td>26.83%</td>
</tr>
<tr>
<td>Children’s Hospital (Washington DC)</td>
<td>12.11%</td>
<td>11.73%</td>
<td>14.58%</td>
</tr>
</tbody>
</table>
COMMUNITY BENEFIT WORKPLAN DEVELOPMENT

- Identify key stakeholders.
  - Decision Support
  - Finance
  - Marketing
- Identify a timeline.
- Identify and gather reports.
  - Internal reports
  - External reports
  - Audited financial statements
- Develop a methodology within working group.
- Dissemination of information.
BEST PRACTICES & RECOMMENDATIONS

- Review the policies and procedures for gathering the needed information.
- Refine the hospital’s existing reporting on community health issues.
- Address any gaps in the organization’s community benefit reporting.
- Consistent message throughout the organization.
BEST PRACTICES & RECOMMENDATIONS

- Take advantage of the opportunity to improve operational performance.
- Update your CBS annually.
- Work with individuals within your organization responsible for community benefit to ensure all pertinent information is captured in CBS and narratives.
WS+B APPROACH

Community Benefit Statement Inclusions:

1. Internal Revenue Ruling 69-545.
3. History.
4. Awards and Affiliations.
5. Clinical Centers of Excellence.

❖ Include in both parent and hospital Forms 990.
“IF YOU THINK COMPLIANCE IS EXPENSIVE – TRY NON-COMPLIANCE.”

- Former U.S. Deputy Attorney General Paul McNulty
FOREIGN REPORTING

PART TWO
The IRS means business!

- August of 2011; San Francisco man pleads guilty to hiding $13 million at UBS AG in Switzerland and agrees to pay $6.8 million FBAR penalty.
- Financial Crimes Enforcement Network.
- FinCEN Report 114 supersedes the Form 90-22.1.
- Individuals who file FinCEN Report 114 must also disclose on their Form 1040, Schedule B, Part III.
WHO MUST FILE AND DUE DATE

- A U.S. person must file a FinCEN Report 114 if that person has a financial interest in, signature authority or other authority over any financial account in a foreign country and the aggregate value of these account(s) exceeds $10,000 at any time during the calendar year.

- Filed with U.S. Treasury on or before June 30th. FBAR records should be maintained 5 years from June 30th.

FINANCIAL INTEREST DEFINED

- Accounts for which the U.S. person is the owner of record or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons.

- Accounts where the owner of record or holder of legal title is a person acting as an agent, nominee, or in some other capacity on behalf of a U.S. person.

- A corporation in which a U.S. person directly or indirectly owns more than 50 percent of the total value of the shares of stock.
SIGNATURE AUTHORITY DEFINED

- A U.S. person has account authority over an account if that person can control the disposition of money or other property in the account by delivery of a document containing his/her signature to the bank or other person with whom the account is maintained.
FOREIGN BANK ACCOUNT

- Certain entities/owners of a foreign captive (i.e. hospital).
- Certain officer of the owner (i.e. hospital CEO and CFO) with signature authority.
- The owner of the captive may have other filing requirements (Forms 5471, 926 and 1120-F).
- Form 990, Schedule F, Statement of Activities Outside the U.S.
FOREIGN ACCOUNT TAX COMPLIANCE ACT ("FATCA")

The provisions commonly known as FATCA became law in March 2010.

FATCA Targets tax non-compliance by U.S. taxpayers with foreign accounts.

FATCA focuses on reporting:
- by U.S. taxpayers about certain foreign financial accounts & offshore assets; and
- by foreign financial institutions about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold a substantial ownership interest.
FOREIGN ACCOUNT TAX COMPLIANCE ACT ("FATCA")

- Deadline is July 1, 2014; 30% withholding tax.
- Foreign captive insurance companies.
- Determination of a foreign financial institution ("FFI") or a non-financial foreign entity ("NFFE").
- Most hospital foreign captive insurance companies will be NFFE.
- Form W-8BEN-E, Certificate of Status of Beneficial Owner for U.S. Tax Withholding and Reporting (Entities).
As of now only individuals are required to report foreign financial assets. In the future some U.S. domestic entities may also have to report these assets on Form 8938, Statement of Specified Foreign Financial Assets.
RECOMMENDATIONS

- Review your captive insurance company as part of your healthcare system.
- Review your captive insurance company bank accounts for signature authority.
- Confirm that your captive is a NFFE and complete Form W-8BEN-E.
- Does your organization have any other foreign investments or foreign bank accounts?
- Consider voluntary disclosure options if issues are identified.
FORM 1023-EZ AND REINSTATEMENT

PART THREE

IRS Notices 2011-43 and 44 reinstatement process only valid through December 31, 2012.

Revenue Procedure 2014-11 provides more guidance on the tax-exempt reinstatement process.
STREAMLINED REINSTATEMENT

- Eligible if failure to file Form 990-N or 990-EZ for three consecutive years and first time offender.

- Complete Form 1023 or 1023-EZ and remit applicable user fee within 15 months of IRS revocation letter or post date to IRS revocation list (whichever is later).

- Write “Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement” at top of application.

- If approved, reinstatement back to original date of revocation.
USER FEE

- Dependent upon the applying organization’s average annual gross receipts (four year period):
  - Have exceeded/will exceed $100,000 = $850
  - Have not exceeded/will not exceed $100,000 = $400
RETROACTIVE REINSTATEMENT

- Application filed no later than 15 months of IRS revocation letter or post date to IRS revocation list (whichever is later).

- Include reasonable cause statement with application.

- Include a statement confirming the annual returns have been filed in application.

- File the tax return for each of the three years (write “Retroactive Reinstatement” on top of returns).
REASONABLE CAUSE

- Establish that the organization exercised ordinary business care and prudence in attempting to comply with reporting requirements.

- Include applicable factors that were the cause for non-compliance.

- Provide specific facts and circumstances to support the organization’s position.

- Include a declaration that is signed under penalties of perjury by an authorized officer of the organization.
IRS CHALLENGES

Tea Party/Patriot Scandal
- Substantial delays for over 13 months.

Backlog of Form 1023 Processing
- Limited resources working on processing.
- Many over one year pending determination.

- IRS will apply the new rules of Revenue Procedure 2014-11 to all pending applications for reinstatement.
- If application approved but would have been eligible for retroactive reinstatement, may reapply.
FORM 1023-EZ

Draft form and instructions released April 23, 2014.

• Streamlined 2 page form.
• Estimated by the IRS to save taxpayers 80 hours of prep time.

Designed for smaller organizations:

• < $200K 3 year projected annual gross receipts.
• < $200K annual gross receipts past 2 years.
• ≤ $500K total assets.
FORM 1023-EZ ELIGIBILITY

- Utilize the Form 1023-EZ Eligibility Worksheet

Ineligible Organizations:
- Church, school, college or university.
- IRC §509(a)(3) supporting organization.
- Foreign organization or LLC.
- Previously revoked organization.
- Provides credit counseling activities.
- Invests > 5% of assets in hedge funds.
- Participates in JVs.
IMPROVEMENTS TO IRS PROCESSES

IRS Tax Exempt/Government Entities Commissioner Sunita Lough:

- Goal is to process all of the pending applications sitting for more than 9 months by the end of 2014.
- 1023-EZ less paperwork so IRS can focus on compliance (predetermination checks).

IRS hired 25 examiners and trained 40 examiners from the Wage & Investment Division to handle backlog.
QUESTIONS

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THANK YOU!