

PUBLICATION

New Reporting Obligations for Hospitals: IRS Releases Revised Schedule H to Form 990

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On February 23, 2011, the Internal Revenue Service (IRS) released a revised 2010 Schedule H to the Form 990 with instructions. The IRS also announced that hospitals should not file their 2010 Form 990 before July 1, 2011 and granted an automatic three-month extension to all hospitals whose Form 990 would otherwise be due on or before August 15, 2011. This announcement does not affect the ultimate due date for returns but simply means that the three-month automatic extension will be granted without filing a request.

The IRS revised Schedule H to incorporate disclosures of new requirements for hospitals as a result of the Affordable Care Act (ACA). A tax exempt hospital must now:

1. implement financial assistance and emergency care policies and programs and notify patients of the same;
2. restrict charges of uninsured and indigent patients to the amounts charged to insured patients;
3. restrict extraordinary collection actions until the hospital has made reasonable efforts to determine whether the individual is eligible for financial assistance; and
4. conduct a community health needs assessment (CHNA) at least once every three years.

These new requirements are embodied in Section 501(r) of the Internal Revenue Code and only apply to organizations that operate a facility required to be licensed, registered, or similarly recognized as a hospital, and to any other organization that the Treasury Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its tax exemption. Section 501(r) applies separately to each hospital facility operated by an entity.

In order to preserve its status as a 501(c)(3) tax exempt organization, a hospital should promptly adopt and implement the required policies and procedures relating to financial assistance, emergency care, limitations on charges and collection processes. Compliance is essential as the penalties for noncompliance can be severe, including revocation of exempt status and imposition of excise tax penalties.

The New Requirements

Financial Assistance Policy. Tax exempt hospitals must adopt a financial assistance policy. The financial assistance policy must include: (1) eligibility criteria for financial assistance and whether the assistance includes free or discounted care; (2) the basis for calculating amounts charged to patients and the method/process a patient would use to apply for financial assistance; (3) in the case of an organization that does not have a separate billing and collection policy, the actions the organization may take in the event of nonpayment including collections action and reporting to credit agencies; and (4) measures to widely publicize the policy within the community to be served by the organization. Revised Schedule H, Part V, Lines 8 through 13, asks whether a hospital has adopted a financial assistance policy, details of that policy (i.e., determination of eligibility for free and discounted care), and the procedures by which the policy is implemented, such as explaining the policy to patients and publication of the policy.

Emergency Care Policy. A tax exempt hospital must also have a written policy requiring the hospital to provide care for emergency medical conditions to individuals without discrimination and regardless of their ability to pay. Most hospitals already have these policies as required by the Emergency Medical Treatment and Active Labor Act; however, hospitals should review their policies to ensure that the above elements are incorporated. Revised Schedule H, Part V, Line 18, asks whether a hospital has adopted an emergency care policy and, if not, to explain the reason why the hospital has not adopted such a policy.

Limitation on Charges. Tax exempt hospitals must now limit the amount charged to patients eligible for assistance under the hospital policy to not more than the amount generally billed to insured patients. A hospital may not use gross charges when billing individuals who qualify for financial assistance (i.e., no chargemaster rates). Hospitals generally have methods to charge less than chargemaster rates for patients receiving partial financial assistance, but they should review their methods to ensure compliance with Section 501(r) requirements. Revised Schedule H, Part V, Lines 19 through 21, asks how a hospital determines the amounts billed to individuals who do not have insurance covering emergency or medically necessary care and whether any patient was charged an amount equal to the gross charge for services provided.

Billing and Collections. ACA also requires that a hospital forego extraordinary collection actions against an individual, even if otherwise permitted by law, without first making reasonable efforts to determine whether the individual is eligible for assistance under its financial assistance policy. Revised Schedule H, Part V, Lines 14 through 17, asks whether a hospital has a billing and collection policy and the specific types of collection actions a hospital takes against patients to collect. The questions ask about a hospital's steps prior to initiating a collection action, including notifying patients of the hospital's financial assistance policy and the hospital's documentation of its determination of whether a patient qualifies for financial assistance.

Community Health Needs Assessment. A tax exempt hospital must conduct a community health needs assessment every three years and adopt an implementation strategy to meet the needs identified through the assessment. The CHNA must take into account input from persons who represent the broad interests of the community served by the hospital facility and must be made widely available to the public. If a tax exempt hospital does not conduct the CHNA, Section 4959 imposes an excise tax penalty of \$50,000.

Revised Schedule H, Part V, Lines 1 through 7, requires hospitals to report whether a CHNA was performed in the tax year or any prior tax year, details of the CHNA, whether the CHNA was made widely available to the public (i.e., posted on its website or available upon request from the hospital), and how the hospital addressed the needs identified in the CHNA.

While the ACA did not radically change the requirements for tax exempt hospitals to maintain or obtain federal income tax exemption, hospitals should promptly adopt and implement the required policies and procedures relating to financial assistance, emergency care, limitations on charges and collection processes. Hospitals should also begin preparations for a CHNA to be conducted no later than their 2011 tax reporting year. While IRS has not yet issued official guidance on the new hospital requirements, the revised Schedule H and instructions shed some light on their interpretations.

If you wish to discuss compliance with the new requirements for hospitals under the ACA and Revised Schedule H to Form 990, please contact your Baker Donelson attorney.