

Schedule H of the New Form 990: Hurry Up and (Don't) Wait

On December 20, 2007, the Internal Revenue Service ("IRS") issued a one-year filing delay for portions of the revised Form 990 Schedule H for hospitals. For the 2008 tax year, hospitals will only be required to complete Part V, requiring a list of all hospitals and medical facilities operated by the organization. All other parts of Schedule H will be optional for 2008. The entire Schedule H must be completed for tax years beginning in 2009.

Schedule H is part of an overhaul of the IRS Form 990, a form used by many not-for-profits to report revenue and expenses. The IRS announced the delay in response to numerous requests that organizations need sufficient time to implement or modify information reporting systems required to complete the new schedules. The IRS believes that eliminating the Part II Billing table and numerous other changes made to the Schedule H mitigate against the need to delay implementation beyond one year. As part of Schedule H's reporting require-



BY RICH SANDERS

ments, the IRS is allowing hospitals to include Medicare shortfalls and bad debt as part of the community benefit reporting in Part III of Schedule H. Bad debt and Medicare losses are included on the form, but with a condition: hospitals that wish to claim a share of those expenses as community benefits must disclose the method used to come up with an estimate. At the present time, no such formula is in widespread use, leaving hospitals to use demographic and economic data from their communities to calculate a figure.

The new Schedule H requires hospitals to complete six (6) multipart "yes or no" questions on the subject of policy and budgets for free and discounted care. The table for a cost breakdown of community benefits includes eight expenses: charity care; cash and in-kind contributions to community groups; community health improvement and community benefits; health profession education; research; subsidized health services; unreimbursed Medicaid; and other unreimbursed public, means-tested pro-

grams; as well as an "other benefits" category for additional items.

Although Schedule H will help hospitals demonstrate their community benefit, hospitals are concerned about the current lack of instructions and worksheets for Schedule H. The lack of instructions will make collecting and reporting the information challenging for many hospitals, especially hospitals with complex organizational structures. The IRS plans to release its instructions sometime this year.

The new community benefit reporting will force hospitals to collect data on a more rigorous and timely basis. In addition, where previously hospitals may have collected community benefit statistics once or twice a year, they should now collect this information on a monthly basis.

The Form 990 also requires expanded disclosure of executive compensation and benefits. All tax exempt organizations must now disclose each benefit or "perk" provided to officers, directors and key employees, such as first-class travel, housing allowances, health or social club fees and personal services. For highly compensated employees, a detailed compensation breakdown must be provided. Organizations that had previously hoped to avoid disclosing such information are now required to pro-

vide detail on any unusual benefits for key officers.

Governance procedures will also need to be disclosed including whether the organization makes public its conflict-of-interest policies and financial statements and how its conflict-of-interest policy is monitored. The Form 990 requires the tax exempt entity to indicate if its governing body received a copy of the Form 990 before it was filed with regulators and describe the boards process for review.

The overhauled Form 990 is anticipated to provide tax officials with information on expenses considered controversial in the debate over what counts toward a hospital's community benefits such as bad debt and losses from Medicare patients. The IRS has redesigned the form to boost transparency across the tax exempt sector and target major industries in healthcare and education. Although it has granted this one-year delay on Schedule H, hospitals should use this additional year wisely by developing, and testing, methods for calculating community benefit.

Rich Sanders directs the Health Law Practice Group in the Atlanta office of Balch & Bingham, LLP. He can be reached at (404) 261-6020 and rsanders@balch.com.