

# Complying with the New IRS Requirements

**NRHA**

**Critical Access Hospital Conference**

**October 16, 2008**

**Maureen Mudron**

**AHA Deputy General Counsel**



# *The New Landscape*

**Beginning in tax year 2008, tax-exempt organizations will be required to file forms with the Internal Revenue Service that will provide the public with an unprecedented amount of information**



# *IRS at the Starting Gate*

- **December 2007 -- Final Form 990 and 16 new schedules, including H for Hospitals**
  - Reporting begins for tax year 2008, except for H\* and K (bonds)
    - 2-year phase in – **USE IT!**
- **August 2008 -- Final instructions for Form 990**

\*facilities reporting required



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# Challenges

- Form 990
  - Focus on governance
- Schedule H
  - The limits of #s and %s
- Schedule J Compensation
  - Transparency plus





January 2, 2008

## IRS RELEASES FINAL ... AND MOSTLY IMPROVED ... SCHEDULE H

### AT A GLANCE

#### **The Issue:**

The Internal Revenue Service (IRS) on December 20 released a final revised version of Form 990 and 16 related schedules, including Schedule H, designated solely for tax-exempt hospitals. Schedule H was revised substantially from a June draft, with the majority of changes reflecting improvements requested by the AHA and the hospitals and others that filed comments. However, some problems remain with the schedule. This advisory will focus solely on Schedule H. A second advisory on Form 990 and other schedules relevant to hospitals will follow later this week.

#### **Our Take:**

The revised Schedule H reflects many of the recommended improvements by the AHA and the hospital community. Among them: a section in the draft labeled "Billing Information" was eliminated from the schedule; "community building," Medicare underpayments, and patient bad debt were added to the schedule, albeit under Parts II and III respectively; and a one-year transition was granted, making the form applicable for tax year 2009 instead of 2008. The IRS did not, however, release with the revised Schedule H either the instructions or worksheets that hospitals will need to complete it. The AHA will continue to work with IRS on these instructions and worksheets. We also will monitor hospitals' progress in collecting and reporting the required information and advocate for more time if IRS delays encumber hospitals' ability to respond with complete and accurate information.

#### **What You Can Do:**

Hospitals should carefully review Schedule H to determine what information will be required and what systems are already in place, or will be needed, to capture that information. A copy of Schedule H is attached and also can be found at <http://www.irs.gov/charities/article0,,id=176837,00.html>. IRS also released a paper with highlights of the changes from the draft that can be retrieved under the same link.

#### **Further Questions:**

Please contact Mindy Hatton, the AHA's General Counsel, at [mhatton@aha.org](mailto:mhatton@aha.org) or (202) 626-2336; or Maureen Mudron, the AHA's Washington Counsel, at [mmudron@aha.org](mailto:mmudron@aha.org) or (202) 626-2301.

AHA's Legal Advisories are produced whenever there are significant legal developments that affect the job you do in your community. A five-page, in-depth examination of this issue follows.

# Schedule H Six Sections

1. **Charity care & certain other community benefits**
2. **Community building**
3. **Bad debt, Medicare, collection practices**
4. **Management companies and joint ventures**
5. **Facility information**
6. **Supplemental information**

## **V. Facility Info *Required* '08**

- **List the name and address of each facility that was required to be licensed, registered or similarly recognized as a health care facility under state law**



# Front Page News

**SCHEDULE H (Form 990)** **Hospitals** **CMB No. 1545-0047**  
**2008**  
**Open to Public Inspection**

Department of the Treasury Internal Revenue Service  
 To be completed by organizations that answer "Yes" to Form 990, Part IV, line 20.  
 Name of the organization \_\_\_\_\_ Employer identification number \_\_\_\_\_

**Part I Charity Care and Certain Other Community Benefits at Cost (Optional for 2008)**

1a Does the organization have a charity care policy? If "No," skip to question 6a. Yes No  
 1a  Yes  No

b If "Yes," is it a written policy? Yes No  
 1b  Yes  No

2 If the organization has multiple hospitals, indicate which of the following best describes application of the charity care policy to the various hospitals.  
 applied uniformly to all hospitals  applied uniformly to most hospitals  
 generally tailored to individual hospitals

3 Answer the following based on the charity care eligibility criteria that applies to the largest number of the organization's patients.  
 a Does the organization use Federal Poverty Guidelines (FPG) to determine eligibility for providing free care to low income individuals? If "Yes," indicate which of the following is the family income limit for eligibility for free care:  
 100%  150%  200%  Other \_\_\_\_\_ % Yes No  
 3a  Yes  No

b Does the organization use Federal Poverty Guidelines (FPG) to determine eligibility for providing discounted care to low income individuals? If "Yes," indicate which of the following is the family income limit for eligibility for discounted care:  
 200%  250%  300%  350%  400%  Other \_\_\_\_\_ % Yes No  
 3b  Yes  No

c If the organization does not use FPG to determine eligibility, describe in Part VI the income based criteria for determining eligibility for free or discounted care. Include in the description whether the organization uses an asset test or other threshold, regardless of income, to determine eligibility for free or discounted care. Yes No  
 4  Yes  No

5a Does the organization budget amounts for free or discounted care provided under its charity care policy? Yes No  
 5a  Yes  No

b If "Yes," did the organization's charity care expenses exceed the budgeted amount? Yes No  
 5b  Yes  No

c If "Yes" to 5b, as a result of budget considerations, was the organization unable to provide free or discounted care to a patient who was eligible for free or discounted care? Yes No  
 5c  Yes  No

6a Does the organization prepare an annual community benefit report? Yes No  
 6a  Yes  No

b If "Yes," does the organization make it available to the public? Yes No  
 6b  Yes  No

Complete the following table using the worksheets provided in the Schedule H instructions. Do not submit these worksheets with the Schedule H.

**7 Charity Care and Certain Other Community Benefits at Cost**


Charity Care and Means-Tested Programs	(a) Number of activities or programs (optional)	(b) Persons served (optional)	(c) Total community benefit expense	(d) Direct offsetting revenue	(e) Net community benefit expense	(f) Percent of total expense
a Charity care at cost (from worksheets 1 and 2)						
b Unreimbursed Medicaid (from worksheet 3, column a)						
c Unreimbursed costs - other means-tested government programs (from worksheet 3, column b)						
d Total Charity Care and Means-Tested Programs						
<b>Other Benefits</b>						
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 to community groups (from worksheet 8)						
j Total Other Benefits						
k Total (line 7d and 7j)						

For Paperwork Reduction Act Notice, see the Instructions for Form 990. Cat. No. 50192T Schedule H (Form 990) 2008



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# I. *Charity & Benefits*

- **Six questions on policies, guidelines, budgets, reports**
  - (yes/no/  )
- **Reporting \$ and % for charity care, Medicaid and other programs**
  - (all #s and %s)





# Charity & Benefits Close Up

## 7 Charity Care and Certain Other Community Benefits at Cost

Charity Care and Means-Tested Programs	(a) Number of activities or programs (optional)	(b) Persons served (optional)	(c) Total community benefit expense	(d) Direct offsetting revenue	(e) Net community benefit expense	(f) Percent of total expense
<b>a</b> Charity care at cost (from worksheets 1 and 2) . . . . .						
<b>b</b> Unreimbursed Medicaid (from worksheet 3, column a) . . . . .						
<b>c</b> Unreimbursed costs – other means-tested government programs (from worksheet 3, column b) . . . . .						
<b>d</b> Total Charity Care and Means-Tested Programs . . . . .						
<b>Other Benefits</b>						
<b>e</b> Community health improvement services and community benefit operations (from worksheet 4) . . . . .						
<b>f</b> Health professions education (from worksheet 5) . . . . .						
<b>g</b> Subsidized health services (from worksheet 6) . . . . .						
<b>h</b> Research (from worksheet 7) . . . . .						
<b>i</b> Cash and in-kind contributions to community groups (from worksheet 8) . . . . .						
<b>j</b> Total Other Benefits . . . . .						
<b>k</b> Total (line 7d and 7j) . . . . .						

# *Page One Highlights*

- **Use of most accurate costing methodology to calculate #s & %s**
- **Restricted grants are not offset in calculating #s & %s**

➔ Unless from a “related” organization

- **Bad debt amounts removed from functional expense total**
- **IRS worksheets optional**

➔ “Alternative equivalent” documentation is okay



# *More Page One Highlights*

- **Subsidized services can include physician clinics and SNFs**

➔ But, for physician clinics, services and costs must be identified in Part VI



# Page 2

**Part II Community Building Activities** (Complete this table if the organization conducted any community building activities) (Optional for 2006)

	(a) Number of activities or programs (optional)	(b) Persons served (optional)	(c) Total community building expenses	(d) Direct offsetting revenues	(e) Net community building expense	(f) Percent of total expenses
1 Physical improvements and housing						
2 Economic development						
3 Community support						
4 Environmental improvements						
5 Leadership development and training for community members						
6 Coalition building						
7 Community health improvement advocacy						
8 Workforce development						
9 Other						
10 Total						

**Part III Bad Debt, Medicare, & Collection Practices** (Optional for 2006)

**Section A—Bad Debt Expense**

	Yes	No
1 Does the organization report bad debt expense in accordance with Healthcare Financial Management Association Statement No. 16?		
2 Enter the amount of the organization's bad debt expense (at cost)		
3 Enter the estimated amount of the organization's bad debt expense (at cost) attributable to patients eligible under the organization's charity care policy.		
4 Provide in Part VI the text of the footnote to the organization's financial statements that describes bad debt expense. In addition, describe the costing methodology used in determining the amounts reported on lines 2 and 3 or rationale for including other bad debt amounts in community benefit.		

**Section B—Medicare**

5 Enter total revenue received from Medicare (including DSH and IME)	5	
6 Enter Medicare allowable costs of care relating to payments on line 5	6	
7 Enter: line 5 less line 6—surplus or (shortfall)	7	
8 Describe in Part VI the extent to which any shortfall reported in line 7 should be treated as community benefit, and the costing methodology or source used to determine the amount reported on line 6 and indicate which of the following methods was used: <input type="checkbox"/> cost accounting system <input type="checkbox"/> cost to charge ratio <input type="checkbox"/> Other		

**Section C—Collection Practices**

9a Does the organization have a written debt collection policy?	9a	
b If "Yes," does the organization's collection policy contain provisions on the collection practices to be followed for patients who are known to qualify for charity care or financial assistance?	9b	

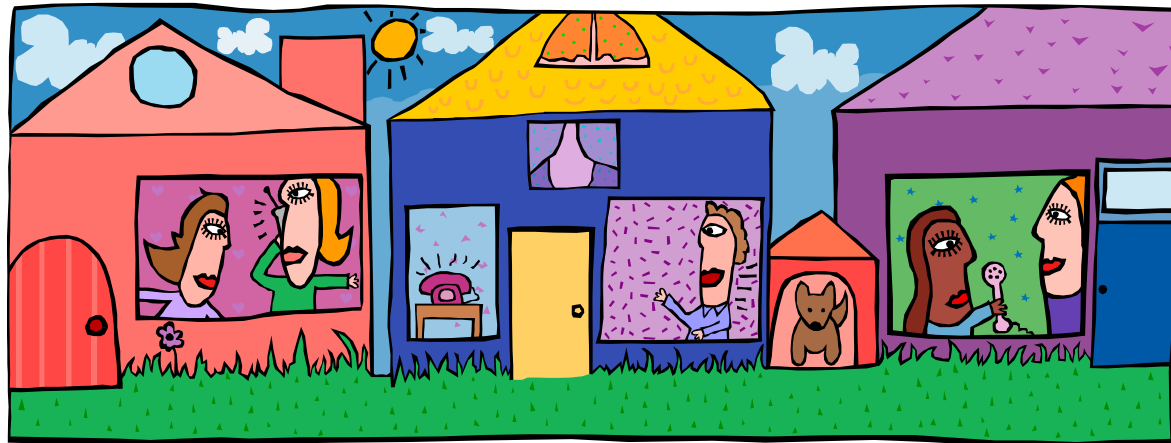
**Part IV Management Companies and Joint Ventures** (Optional for 2006)

(a) Name of entity	(b) Description of primary activity of entity	(c) Organization's profit % or stock ownership %	(d) Officers, directors, trustees, or key employees' profit % or stock ownership %	(e) Physicians' profit % or stock ownership %
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				



## *II. Community Building*

- **Allows reporting on programs and activities listed on the form and described in IRS instructions**



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# Community Building Highlights

- **Nine different categories for community building, including “other”**

- IRS descriptions are intended to be examples NOT the entire list

→ *“may include not limited to ...”*

- For programs or activities not on the list be prepared to explain why it belongs

→ Begin by asking is this a service my community needs?

## ***III. Bad Debt/Medicare***

- **Careful inclusive approach**
- **Collection of data described as “important”**
- **Calls for numbers, estimates and policies**
  - Description of collection policies



# *Bad Debt/Medicare Highlights*

- **Bad debt -- *can report the amount that reasonably could be attributed to persons who likely would qualify for assistance under the charity care policy***

→ *May use any reasonable methodology to estimate this amount: applications, demographics, other*





# *More Highlights*

- **HFMA Statement 15 -- IRS says it is not a trick question; just 'yes' or 'no'**

→ *Statement 15 provides instructions for recordkeeping, valuation and disclosure of bad debt*



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# More Highlights

- **Medicare**

- Report “allowable” costs from cost report

- May describe total costs, *i.e.*, physician services, clinical lab, in Part VI

- Describe the rationale for Medicare underpayments reported as community benefit

- No guidance as to what IRS is looking for -- dual eligibles; poor Medicare population; funds not available for other services?



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## **V. Facility Info *Required* '08**

- **List the name and address of each facility that was required to be licensed, registered or similarly recognized as a health care facility under state law**



# *More Facility Info Reporting*

- **In addition, in Section VI., hospitals must list the number and type of facilities (other than those listed in Section V.) for which information is reported in H**

 Rehab clinics; 4 diagnostic centers; 3 SNFs

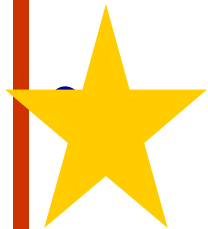


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# VI. Supplemental Info

- **Carry over questions from other sections of H plus a hodgepodge of questions on policies and practices, such as:**
  - *How patients are informed about charity care*
  - *Characteristics of the community served*



***Consider using first line to add up pages 1 & 2***



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# *Form 990 - Governance*

The crown jewel of our work on governance is clearly the redesigned Form 990 and its new governance section

***Steve Miller, IRS Commissioner Tax Exempt and Government Entities***



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# Governance

- **New governance section:**
  - **Composition and independence of the board**
    - **New criteria for determining independence**
  - **How and whether financial information is made available to the public**
  - **Governance policies and procedures**



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# Schedule J. Compensation

**SCHEDULE J**  
**(Form 990)**

**Compensation Information**

OMB No. 1545-0047

**2008**

**Open to Public Inspection**

Department of the Treasury  
Internal Revenue Service

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees  
To be completed by organizations that answered "Yes" to Form 990, Part IV, line 23.

Name of the organization

Employer identification number

**Part I Questions Regarding Compensation**

	Yes	No								
<p><b>1a</b> Check the appropriate box(es) if the organization provided any of the following to or for a person listed in Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.</p> <table border="0"> <tr> <td><input type="checkbox"/> first-class or charter travel</td> <td><input type="checkbox"/> housing allowance or residence for personal use</td> </tr> <tr> <td><input type="checkbox"/> travel for companions</td> <td><input type="checkbox"/> payments for business use of personal residence</td> </tr> <tr> <td><input type="checkbox"/> tax indemnification and gross-up payments</td> <td><input type="checkbox"/> health or social club dues or initiation fees</td> </tr> <tr> <td><input type="checkbox"/> discretionary spending account</td> <td><input type="checkbox"/> personal services (e.g., maid, chauffeur, chef)</td> </tr> </table>	<input type="checkbox"/> first-class or charter travel	<input type="checkbox"/> housing allowance or residence for personal use	<input type="checkbox"/> travel for companions	<input type="checkbox"/> payments for business use of personal residence	<input type="checkbox"/> tax indemnification and gross-up payments	<input type="checkbox"/> health or social club dues or initiation fees	<input type="checkbox"/> discretionary spending account	<input type="checkbox"/> personal services (e.g., maid, chauffeur, chef)		
<input type="checkbox"/> first-class or charter travel	<input type="checkbox"/> housing allowance or residence for personal use									
<input type="checkbox"/> travel for companions	<input type="checkbox"/> payments for business use of personal residence									
<input type="checkbox"/> tax indemnification and gross-up payments	<input type="checkbox"/> health or social club dues or initiation fees									
<input type="checkbox"/> discretionary spending account	<input type="checkbox"/> personal services (e.g., maid, chauffeur, chef)									
<b>b</b> If line 1a is checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain . . . . .	<b>1b</b>									
<b>2</b> Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all officers, directors, trustees, and the CEO/Executive Director, regarding the items checked in line 1a? . . . . .	<b>2</b>									
<p><b>3</b> Indicate which, if any, of the following the organization uses to establish the compensation of the organization's CEO/Executive Director. Check all that apply.</p> <table border="0"> <tr> <td><input type="checkbox"/> compensation committee</td> <td><input type="checkbox"/> written employment contract</td> </tr> <tr> <td><input type="checkbox"/> independent compensation consultant</td> <td><input type="checkbox"/> compensation survey or study</td> </tr> <tr> <td><input type="checkbox"/> Form 990 of other organizations</td> <td><input type="checkbox"/> approval by the board or compensation committee</td> </tr> </table>	<input type="checkbox"/> compensation committee	<input type="checkbox"/> written employment contract	<input type="checkbox"/> independent compensation consultant	<input type="checkbox"/> compensation survey or study	<input type="checkbox"/> Form 990 of other organizations	<input type="checkbox"/> approval by the board or compensation committee				
<input type="checkbox"/> compensation committee	<input type="checkbox"/> written employment contract									
<input type="checkbox"/> independent compensation consultant	<input type="checkbox"/> compensation survey or study									
<input type="checkbox"/> Form 990 of other organizations	<input type="checkbox"/> approval by the board or compensation committee									
<b>4</b> During the year, did any person listed in Form 990, Part VII, Section A, line 1a:										
<b>a</b> receive a severance payment or change of control payment? . . . . .	<b>4a</b>									
<b>b</b> participate in, or receive payment from, a supplemental nonqualified retirement plan? . . . . .	<b>4b</b>									
<b>c</b> participate in, or receive payment from, an equity-based compensation arrangement? . . . . .	<b>4c</b>									
If "Yes" to any of 4a-c, list the persons and provide the applicable amounts for each item in Part III.										
<i>501(c)(3) and 501(c)(4) organizations only must complete lines 5-8.</i>										
<b>5</b> For persons listed in Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:										
<b>a</b> the organization? . . . . .	<b>5a</b>									
<b>b</b> any related organization? . . . . .	<b>5b</b>									
If "Yes," describe in Part III.										
<b>6</b> For persons listed in Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:										
<b>a</b> the organization? . . . . .	<b>6a</b>									
<b>b</b> any related organization? . . . . .	<b>6b</b>									
If "Yes," describe in Part III.										
<b>7</b> For persons listed in Form 990, Part VII, Section A, line 1a, did the organization provide any non-fixed payments not described in lines 5 and 6? If "Yes," describe in Part III . . . . .	<b>7</b>									
<b>8</b> Were any amounts reported in Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regs. section 53.4958-4(a)(3)? If "Yes," describe in Part III . . . . .	<b>8</b>									



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# *Compensation Transparency*

Another area of focus for the IRS in recent years has been in the area of executive compensation. Schedule J expands the reporting with questions related to perquisites and compensation packages.



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# *Interest by the Press*

## **ModernHealthcare.com**

*Not-for-profit execs still see wage gains as tax-reporting changes loom*

And starting this year, the public—thanks to changes by the Internal Revenue Service—will know in greater detail just how well some top-tier, and perhaps midlevel, healthcare jobs pay.

# *Transparency or ?*

- **Check the box for:**








- First-class travel**
- Travel for companion**
- Maid, chauffeur, or chef service**
- Discretionary spending account**
- Health or social club dues**



# *In-depth Inquiry*

## **Form requires details for:**

- compensation 
- deferred compensation 
- non-taxable benefits 
- non-taxable expense reimbursement 
- whether the organization has complied with excess benefit restrictions 



# *Opportunities*

- **Not letting numbers become the entire story for policymakers and communities**
  - Filling in the gaps left by Schedules



# Challenges

- **Activities could be more ‘number’ driven**
  - If it’s not easily quantifiable or doesn’t generate much spending, is it worth it?
- **IRS and others could use the information reported to set new numerical benchmarks**
  - A commensurate test?



