

THE 2011 FORM 990: PART II - SCHEDULE H

This Health Care Tax News article is Part II in a series addressing recent changes to Form 990 and Instructions. The previous installment addressed changes to the Core Form and can be accessed by [clicking here](#).

As part of the January 21, 2012 unveiling of the 2011 Form 990 and its Schedules, the IRS released a revised version of Schedule H, which is the Schedule that must be filed by all organizations that operate tax-exempt hospitals ("Hospital Organizations"). Of the relatively few changes in the 2011 Schedule H, most are minor, while others are quite significant and address open questions. In addition and of particular importance, certain portions of the 2010 Schedule H were optional last year but are mandatory this year. In fact, the 2010 changes to the Schedule H were far more extensive than this year's changes, so Hospital Organizations that have not already reviewed the prior changes closely will need to familiarize themselves with the entire 2011 Schedule H quickly to ensure that they have made all necessary preparations to answer the questions appropriately - and to avoid inadvertently signaling to the IRS that they are out of compliance with the Internal Revenue Code (the "Code").

BACKGROUND

The IRS released the 2010 Schedule H in February of 2011. The most significant change to the 2010 Schedule H was the addition of Part V.B, which asked 21 questions (many with subparts) designed to verify that the Hospital Organization fulfilled all requirements of recently adopted Section 501(r) of the Code. In many cases, the Schedule's new "yes-no" questions were linked so closely to the new Code Section 501(r) requirements that an incorrect answer would signal that the Hospital Organization was out of compliance with Code Section 501(r). Even before the 2010 Schedule H was released, however, the IRS announced that it would extend the filing deadline to allow Hospital Organizations (and the IRS itself) additional time to implement the changes required by Code Section 501(r), and the IRS subsequently decided to make all of the new questions relating to Code Section 501(r) optional for 2010. Hall Render previously published articles regarding the new 2010 Schedule H, the initial extension of the 2010 filing deadlines and the ultimate decision to make portions of the Schedule optional.

CHANGES IN THE 2011 SCHEDULE H

Under the newly released 2011 Schedule H, Part V.B's questions are, for the most part, no longer optional. (As a lone exception, Lines 1-7, which relate to community health needs assessments, are optional because Hospital Organizations generally are not yet required to conduct such assessments until next year.) While the 2011 changes are far less extensive than what the IRS unveiled in 2010, the 2011 Schedule H and its Instructions provide helpful guidance for Hospitals and answer some of the questions raised by the previous year's revisions. Some of the more significant changes, all of which are in Part V.B or the corresponding portions of the Instructions, are as follows:

The Instructions for Line 3 (optional for 2011) state that a Hospital Organization must describe in Part VI how it took into account input from persons who represent the community served by the Hospital and list various channels for consulting with such persons (specifically meetings, focus groups, interviews, surveys and written correspondence).

Line 15 has been revised to allow a Hospital Organization to check "no" if it took any of the several listed actions (such as reporting an individual to a collection agency) only after making reasonable efforts to determine eligibility under the facility's financial assistance policy ("FAP").

In connection with the 2011 Schedule H's questions about the facility's billing and collection practices, the Instructions for Lines 15 and 16 state that "no inference should be made" that the various listed actions (including lawsuits, liens on residences and body attachments) are "extraordinary collection actions" that cannot be taken before making reasonable efforts to determine eligibility under the facility's FAP. (These assurances notwithstanding, Hospital Organizations likely will want to refrain from engaging in any of the listed practices before making the requisite reasonable efforts.)

Line 21 of the 2010 Schedule H asked broadly if the facility billed any of its patients an amount equal to gross charges, suggesting that the IRS might interpret Code Section 501(r)(5) as a blanket prohibition on such billing practices. The 2011 Schedule H revises this question to ask only if the facility billed "any of its FAP-eligible patients" an amount equal to gross charges, so it appears that uninsured patients who are

not FAP-eligible may be billed an amount equal to gross charges.

The Instructions for the 2011 Schedule H at Line 20 (which asks if any FAP-eligible patient was billed an amount greater than that generally billed to insured patients) and Line 21 (described above) both allow the facility to check "no" if it billed the greater amount before knowing the patient was FAP-eligible and corrected the bill within a reasonable time after learning the individual was eligible.

PROCEDURAL QUESTIONS

The adoption of the 2011 Schedule H has not been without controversy. On February 2, 2012, the American Hospital Association, the Healthcare Financial Management Association and VHA Inc. sent a letter to the Office of Management and Budget ("OMB") asserting that the IRS failed to follow the requisite procedures under the Paperwork Reduction Act in issuing the new Schedule. They also contend that Part V.B of the Schedule is unduly burdensome. As relief, they request that OMB withdraw Part V.B of the Schedule or make it optional for 2011, while the IRS revises and seeks review and approval for the Schedule from OMB. Whether this will cause any delay in implementing the 2011 Schedule H remains to be seen, but at least for now, it appears that Hospital Organizations should plan to complete the 2011 Schedule H as released by the IRS.

CONCLUSION

In sum, the 2011 Schedule H offers valuable clarification of key issues, but its changes are far less extensive than those implemented in 2010. Hospital Organizations should familiarize themselves with the 2010 and 2011 changes to this important Schedule and should ensure that those completing the 2011 Schedule H on their behalf are familiar with the applicable provisions of Code Section 501(r).

For your reference, the 2011 Form 990 and Instructions (including all Schedules) can be found here: <http://www.irs.gov/charities/article/0,,id=233830,00.html>.

Should you need assistance with your organization's evaluation of the 2011 or 2010 Schedule H, please contact Jeffrey L. Carmichael at (317) 977-1443 or jcarmichael@hallrender.com, Calvin R. Chambers at (317) 977-1459 or cchambers@hallrender.com or your regular Hall Render attorney.