Health Care Reform’s Effect on Tax-Exempt Hospitals

Paige Gerich
March 3, 2011

Overview

• Background & Basics
• Provisions Applicable to 501(c)(3) Hospitals
• Schedule H Impact
• Where Do We Go From Here?
• Other Key Tax Provisions
Background & Basics

Basics of the Act

• Patient Protection and Affordable Care Act (Pub. L. No. 111-148) (Mar. 23)
• Act consists of 906 pages, 10 titles
• $940 billion package, with $438 billion in new & higher taxes
• Act revised by Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-151) (Mar. 30)
Hospital Exemption Fundamentals

• Act adds criteria for hospital tax exemption (IRC sec. 501(r))
• Preexisting requirements (IRC sec. 501(c)(3)) continue to apply
  – Charity care & community benefit rules
  – No private inurement
  – No substantial lobbying
  – No political campaign activity

Charity Care Law History

• Rev. Rul. 56-185 (care of those unable to pay)
• 1959 regs. (definition of various ways to be “charitable”)
• Rev. Rul. 69-545 (promotion of health as independent way to be “charitable”; community benefit standard)
Charity Care Law History

- Rev. Rul. 83-157 (emergency room not required)
- 1992 IRS audit guidelines
- 2001 IRS field service memorandum
- 2006 IRS questionnaire & reports on exempt hospitals
  - 72 questions dealing with community benefit
  - Final report issued in 2009 setting the stage for future inquiry
- 2008 Schedule H, Revised Form 990

Form 990, Schedule H

- Charity care policies
- Annual community benefit reports
- Community needs assessments
- Bad debt, Medicare & collection practices
- Joint ventures
- Management companies
Provisions Applicable to 501(c)(3) Hospitals

Hospital Organizations

- Organization that operates facility which is required by state to be licensed, registered or similarly recognized as a hospital
- Any other organization that IRS determines has provision of hospital care as its principal function or purpose
Hospital Organizations

- Hospital must meet requirements for each facility it operates
- Hospital will not retain exempt status with respect to non-compliant facility
  - Does this mean the entire organization will lose exemption?
  - Does only the non-compliant facility file Form 990-T to report UBI?
- Applicability of new rules to some government-owned hospitals “dual status”

Hospital Organizations

- “Dual Status” Governmental Hospitals
  - Exempt under IRC Section 501(c)(3) & IRC Section 115
  - Reasons for secondary exemption under 501(c)(3)
    - Access to employee benefit plans not available to governmental entities at the time
    - Bonds issued as non-governmental issuer
    - Determination letter for donors
  - Must comply with new rules to maintain 501(c)(3) status
  - Action items
    - Confirm if governmental hospital has “dual status”
    - Confirm need for “dual status”
    - Maintain compliance until more guidance is issued
      - Currently no mechanism to voluntarily revoke dual status
Community Health Needs Assessments

- Hospital must conduct community health needs assessment at least every 3 years
- Assessment must
  - Have input from representatives of broad interests of community served
  - Have input from public health experts
  - Be made widely available to public

Community Health Needs Assessments

- Hospital must adopt implementation strategy to meet identified needs
  - Hospitals must describe any some identified needs not addressed
- $50,000 excise tax applies for failure to meet assessment rules (IRC sec. 4959)
- Tax potentially applicable annually
- Planning
  - Need plan for preparation of strategy & assessments report
  - Review 2010 Schedule H
**Financial Assistance Policy**

- Hospital must have financial assistance policy, which includes
  - Eligibility criteria for financial assistance
  - Statement as to free or discounted care
  - Basis for calculating patient charges
  - Method for applying for assistance
  - Statement as to nonpayment actions
  - Measures to publicize policy in community

- Planning
  - Development of policy
  - Review 2010 Schedule H

**Emergency Medical Care Policy**

- Hospital must have written emergency medical care policy
- Organization must provide emergency care without discrimination
- Care must be provided irrespective of patients’ eligibility under financial assistance policy

- Planning
  - Development of policy
  - Review 2010 Schedule H
Limitation on Charges

- Hospital must meet requirements as to charges
  - Amounts charged for medically necessary care, to individuals eligible under financial assistance policy, cannot exceed amounts generally billed to those with insurance
  - Gross charges prohibited
    - Whether or not gross charges less discount can be shown on patient’s bill is open question
  - Other questions regarding charges
    - How do deductibles & coinsurance come into play?
    - How often must this be re-calculated?
    - Can hospitals use proxy rate, such as Medicaid, as substitute?
      There may be legislative precedence for this
  - 2010 Schedule H offers some insight

Billing & Collections

- Hospital must meet billing & collection rules
  - No extraordinary collection action before determination as to eligibility of patient under financial assistance policy
  - Reasonable efforts standard
  - 2010 Schedule H offers some guidance
Effective Dates

• General rule - new law effective for tax years beginning after March 23, 2010
• Community health needs assessment rules apply to years beginning after March 23, 2012
• Excise tax applies to assessment failures occurring after March 23, 2012

Mandatory IRS Review

• IRS must review, at least once every 3 years, community benefit activities of every tax-exempt hospital organization
• Concept of “community benefit activities”
• Concept of “review”
• IRS’s ability to conduct these reviews
IRS Annual Report

• IRS must annually submit charity care levels report to
  – House Ways & Means Committee
  – House Education & Labor Committee
  – House Energy & Commerce Committee
  – Senate Finance Committee
  – Senate Health, Education, Labor, Pensions Committee

• Report must include
  – Information with respect to tax-exempt, taxable & government-owned hospitals regarding
    • Levels of charity care provided
    • Bad debt expenses
    • Unreimbursed costs for services provided with respect to means-tested & non-means tested government programs
  – Information with respect to tax-exempt hospitals regarding costs incurred for community benefit activities
IRS Trends Report

- IRS required to conduct study on trends in information provided in annual charity care levels reports
- Within 5 years, IRS must submit report on this study
- Report to be submitted to above-referenced Congressional committees

Schedule H  Impact
2010 Schedule H

• Released February 23, 2011
• Delayed filing until July 1, 2011 for hospital organizations required to file Schedule H for their 2010 tax year (years beginning after December 31, 2009)
• Compliance with new rules outlined in Part V Facility Information
  – Section A Hospital Facilities
  – Section B Facility Policies & Practices
  – Section C Other Facilities
• Audited financial statement (or consolidated statement) must be attached to Form 990

2010 Schedule H

• Part V Facility Information
  – Section A Hospital Facilities

<table>
<thead>
<tr>
<th>Section A. Hospital Facilities</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>General Hospital &amp; ER</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Specialty Hospitals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

How many hospital facilities did the organization operate during the tax year?

Name and address

<table>
<thead>
<tr>
<th>1</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2010 Schedule H

• Part V Facility Information
  – Section B Facility Policies & Practices

2010 Schedule H

• Community Health Needs Assessment

<table>
<thead>
<tr>
<th>Community Health Needs Assessment</th>
<th>Lines 1 through 7 are optional for 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. During the tax year or any prior tax year, did the hospital facility conduct a community health needs assessment? (Yes/No)</td>
<td>Yes</td>
</tr>
<tr>
<td>a. A description of the community served by the hospital facility</td>
<td></td>
</tr>
<tr>
<td>b. Demographics of the community</td>
<td></td>
</tr>
<tr>
<td>c. Existing health care facilities and resources within the community that are available to respond to the health needs of the community</td>
<td></td>
</tr>
<tr>
<td>d. How data was obtained</td>
<td></td>
</tr>
<tr>
<td>e. The health needs of the community</td>
<td></td>
</tr>
<tr>
<td>f. Primary and chronic disease needs and other health issues of uninsured persons, low-income persons, and minority groups</td>
<td></td>
</tr>
<tr>
<td>g. The process for identifying and prioritizing community health needs and services to meet the community health needs</td>
<td></td>
</tr>
<tr>
<td>h. The process for consulting with persons representing the community’s interests</td>
<td></td>
</tr>
<tr>
<td>i. Information gaps that limit the hospital facility’s ability to access all of the community’s health needs</td>
<td></td>
</tr>
<tr>
<td>j. Other (describe in Part VI)</td>
<td></td>
</tr>
<tr>
<td>2. Indicate the tax year the hospital facility last conducted a Needs Assessment: 20</td>
<td></td>
</tr>
<tr>
<td>3. In conducting its most recent Needs Assessment, did the hospital facility take into account input from persons who represent the community served by the hospital facility? Yes/No</td>
<td>Yes</td>
</tr>
<tr>
<td>4. Was the hospital facility’s Needs Assessment conducted with one or more other hospital facilities? Yes/No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
2010 Schedule H

• Community Health Needs Assessment

5 Did the hospital facility make its Needs Assessment widely available to the public? If “Yes,” indicates how the Needs Assessment was made widely available (check all that apply):
a  [] Hospital facility’s websites
b  [] Availability upon request from the hospital facility
c  [] Other (describe in Part VI)
6 If the hospital facility addressed needs identified in its most recently conducted Needs Assessment, indicate how (check all that apply):
a  [] Adoption of an implementation strategy to address the health needs of the hospital facility’s community
b  [] Execution of the implementation strategy
c  [] Participation in the development of a community-wide community benefit plan
d  [] Participation in the execution of a community-wide community benefit plan
e  [] Inclusion of a community benefit section in operational plans
f  [] Adoption of a budget for provision of services that address the needs identified in the Needs Assessment
g  [] Prioritization of health needs in its community
h  [] Prioritization of services that the hospital facility will undertake to meet health needs in its community
i  [] Other (describe in Part VI)
7 Did the hospital facility address all of the needs identified in its most recently conducted Needs Assessment? If “No,” explain in Part VI which needs it has not addressed and the reasons why it has not addressed such needs.

2010 Schedule H

• Financial Assistance Policy

Financial Assistance Policy

8 Did the hospital facility have in place during the tax year a written financial assistance policy that:

a  [] Explained eligibility criteria for financial assistance, and whether such assistance includes free or discounted care?

9 Used federal poverty guidelines (FPG) to determine eligibility for providing free care to low income individuals?

If “Yes,” indicate the FPG family income limit for eligibility for free care: ___ ___ %
### 2010 Schedule H

**Financial Assistance Policy**

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Used FPG to determine eligibility for providing discounted care to low income individuals?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Explained the basis for calculating amounts charged to patients?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- If &quot;Yes,&quot; indicate the factors used in determining such amounts (check all that apply):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Income level</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Asset level</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Medical indigency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Insurance status</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Uninsured discount</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f. Medicaid/Medicare</td>
<td></td>
<td></td>
</tr>
<tr>
<td>g. State regulation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>h. Other (describe in Part VI)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. Explained the method for applying for financial assistance?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Included measures to publicize the policy within the community served by the hospital facility?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Billings & Collections**

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. Did the hospital facility have in place during the tax year a separate billing and collections policy, or a written financial assistance policy that explained actions the hospital facility may take upon non-payment?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Check all of the following collection actions against a patient that were permitted under the hospital facility's policies at any time during the tax year:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Reporting to credit agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Lawsuits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Liens on residences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Body attachments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Other actions (describe in Part VI)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Did the hospital facility engage in or authorize a third party to perform any of the following collection actions during the tax year?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- If &quot;Yes,&quot; check all collection actions in which the hospital facility or a third party engaged (check all that apply):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Reporting to credit agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Lawsuits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Liens on residences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Body attachments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Other actions (describe in Part VI)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Indicate which actions the hospital facility took before initiating any of the collection actions checked in line 16 (check all that apply):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Notified patients of the financial assistance policy on admission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Notified patients of the financial assistance policy prior to discharge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Documented its determination of whether a patient who applied for financial assistance under the financial assistance policy qualified for financial assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Other (describe in Part VI)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2010 Schedule H

• Emergency Medical Care

Policy Relating to Emergency Medical Care

<table>
<thead>
<tr>
<th>18</th>
<th>Did the hospital facility have in place during the tax year a written policy relating to emergency medical care that requires the hospital facility to provide, without discrimination, care for emergency medical conditions to individuals regardless of their eligibility under the hospital facility's financial assistance policy?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

If “No,” indicate the reasons why (check all that apply):

- a  ☐ The hospital facility did not provide care for any emergency medical conditions
- b  ☐ The hospital facility did not have a policy relating to emergency medical care
- c  ☐ The hospital facility limited who was eligible to receive care for emergency medical conditions (describe in Part VI)
- d  ☐ Other (describe in Part VI)

2010 Schedule H

• Charges for Medical Care

Charges for Medical Care

<table>
<thead>
<tr>
<th>19</th>
<th>Indicate how the hospital facility determined the amounts billed to individuals who did not have insurance covering emergency or other medically necessary care (check all that apply):</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>☐ The hospital facility used the lowest negotiated commercial insurance rate for those services at the hospital facility</td>
</tr>
<tr>
<td>b</td>
<td>☐ The hospital facility used the average of the three lowest negotiated commercial insurance rates for those services at the hospital facility</td>
</tr>
<tr>
<td>c</td>
<td>☐ The hospital facility used the Medicare rate for those services</td>
</tr>
<tr>
<td>d</td>
<td>☐ Other (describe in Part VI)</td>
</tr>
</tbody>
</table>

20 | Did the hospital facility charge any of its patients who were eligible for assistance under the hospital facility’s financial assistance policy, and to whom the hospital facility provided emergency or other medically necessary services, more than the amounts generally billed to individuals who had insurance covering such care? |

| Yes | No |
21 | Did the hospital facility charge any of its patients an amount equal to the gross charge for any service provided to that patient? |

| Yes | No |
Where Do We Go From Here?

Comments to IRS

- BNA Recap of Comments
  - Coordinate 501(r) with Form 990 reporting
  - Define making the CHNA “widely available”
  - Define “widely publicizing” financial assistance policy
  - Distinguish between “gross charges”, “amounts charged” & “amounts generally billed”
  - Define “extraordinary collection actions” & “reasonable efforts”
Comments to IRS

• AHA Comments
  – Focused on the need for clear & consistent reporting
  – Uniform CHNA definition
  – Recognition of “gross charges” as appropriate starting point for calculating financial assistance reductions
  – Clarification of numerous terms & modification of Schedule H instructions for various terms
  – Clarification on the effect of lack of compliance for one hospital in multi-hospital system
    • Requested grace period to “cure” violation before loss of exemption

• BKD Comments
  – Focused on the applicability of 501(r) to governmental hospitals with dual status under 501(c)(3)
  – Requested exemption of requirement under 501(r)
Other Key Tax Provisions

- Forms 1099 reporting issues & impact of current House & Senate bills
  - Effective 2012
  - Applies for all goods & services
  - Greater than $600
  - Penalties for failure to file
  - Penalties for failure to withhold
- Both the House & Senate have passed bills attempting to rescind this rule

Other Key Tax Provisions

- Forms W-2 & health insurance disclosure
  - Effective for Forms W-2 beginning in 2011
  - 2011 reporting is optional
  - Report value of employer-sponsored health insurance coverage
    - Calculate under COBRA continuation coverage rules
    - Report aggregate premium
    - Code DD, Box 12, Form W-2
Other Key Tax Provisions

• Withholding on Government Payments
  – Effected for payments after December 31, 2011
  – Withhold 3% on any payments paid to person providing
    • Property
    • Services
  – Does not apply to credit card payments during 2012
  – Person includes
    • Corporation
    • Individual
    • Joint stock company
    • Group
    • Joint Venture
    • Estate/trust
    • Partnership
    • Syndicate
    • Pool
    • Other unincorporated organization or group

Upcoming Webinar

• What Hospitals Need to Know About Medicare Cost Report Changes
  – Presented by Sue Brammer & Kevin Wellen, BKD, LLP
  – Tuesday, March 22, 2011
  – 10-11:30 a.m. Central time

• For more information about this webinar or to register, visit www.bkd.com/webinar/healthcare
Questions?

Paige Gerich, CPA
Partner
2800 Post Oak Boulevard, Suite 3200
Houston, TX  77056
Phone:  713-499-4639
Email:  pgerich@bkd.com