From:	Waitkus, Robert
To:	*TE/GE-EO-F990-Revision;
CC:	Pattara Theresa; Schultz Ronald J;
Subject:	Cleveland Clinic comments on IRS Proposed Redesigned Form 990
Date:	Friday, September 14, 2007 4:16:02 PM
Attachments:	CCF Final Comments to IRS 9 14 2007 (2).pdf clevelandclinic.jpg

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Dear Director Lerner,

On behalf of the Cleveland Clinic Health System, my colleague, Stephanie Switzer, and I would like to submit the attached comments regarding the proposed redesigned Form 990 and supporting schedules. We respectfully request that the Service take our comments into account in finalizing the redesign of the Form 990. Please feel free to call me at (216) 445 2526, or Stephanie at (216) 297 7024 if you would like to discuss our comments or thoughts on the redesigned form.

Thank you for your time and consideration.

Regards,
Bob Waitkus

Cleveland Clinic

Robert F. Waitkus | Senior Director Taxation & Compliance |Division of Finance
Cleveland Clinic | 9500 Euclid Ave. | Cleveland, OH 44195 | (216) 445-2526

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Cleveland Clinic

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Theresa Pattara
Internal Revenue Service Project Manager for the Form 990 Redesign

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Comments on the Draft Redesigned Form 990

Dear Mses. Lerner and Pattara, and Mr. Schultz:

The Cleveland Clinic (CC) recognizes that the draft redesigned Form 990 issued by the IRS on June 14, 2007 represents a significant achievement in the Service's efforts to enhance transparency and accountability among charitable organizations, as well as in its efforts to establish a more uniform system of community benefit reporting for tax exempt hospitals. CC has worked to advance good governance principles in nonprofit healthcare[1] and was one of the first non-denominational systems to adopt the Catholic Health Association (CHA) model of community benefit reporting.[2] CC supports these goals and welcomes the opportunity to provide comments.

CC was established in Cleveland, Ohio on February 10, 1921, as a nonprofit multi-specialty group practice, by four physicians who envisioned an organization in which physicians would share clinical expertise and educate future medical practitioners in an environment where medical procedures and practices would be advanced through research. In 1924, CC opened its first hospital located near the clinic facilities. The fundamental mission of CC was then and remains today: better care for the sick, conduct of medical research, and educating the medical professions. CC continues to operate as an integrated and cooperative group practice, as an academic medical center and as an active research institute. CC currently employs more than 1,700 physicians in 86 clinical specialties and subspecialties and approximately 200 faculty level scientists working as part of CC's Lerner Research Institute.

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[1] Cleveland Clinic COI Summit, "A National Dialogue on Biomedical Conflicts of Interest," September 20, 2006, Cleveland, Ohio.

[2] CCHS Community Connections, published Fall 2005.

CC has been recognized as an IRC § 501(c)(3) organization since October 10, 1928. In addition to its Cleveland main campus academic medical center, CC leads an extensive integrated health system, the Cleveland Clinic Health System (CCHS). CCHS currently includes eleven hospitals (the main campus facility in Cleveland, a hospital and outpatient clinic in Florida, and nine community hospitals), sixteen outpatient health and surgery centers, and various ancillary services in surrounding Northeast Ohio communities. In 1998, CC applied for a group ruling on behalf of the CCHS and received a favorable determination from the IRS in 2000.

Given the scope and complexity of the activities of academic medical centers and health systems like CC, we recognize that the IRS and the public need a comprehensive but accessible means of evaluating and comparing the activities of similarly situated health care systems. However, CC believes that all parties would benefit from more thorough consideration of the Draft Form 990. We have focused our comments on those aspects of the Draft that need reconsideration or refinement to ensure that the final Form 990 solicits relevant information that the IRS and the interested public require without overburdening charitable organizations. In particular, CC is concerned about the impact on group returns and the Draft's reporting requirements on compensation, governance, tax-exempt bonds, and hospitals.

CC offers the following comments on the Draft Form 990:

Implementation. The IRS stated that it anticipates using the Draft Form 990 for the 2008 tax year (returns filed in 2009), and that certain changes associated with the Draft Form 990 will require the adoption of new or amended regulations. Additionally, the IRS has solicited comments in broad areas related to the Draft Form 990, such as whether group returns should be precluded, use of the CHA model of community benefit and defining relatedness for compensation and other purposes.

The IRS recognizes that this presents an aggressive schedule for finalizing the Draft Form 990, particularly if the IRS intends to modify the Draft Form 990 based on the comments that it receives. This leaves charitable organizations with little time in which to digest what the new Form 990 reporting requirements will be. With final guidance and worksheets scheduled for mid-2008, it is unclear whether organizations will have any time to ensure that systems are in place to capture all relevant data that the final redesigned Form will require. Accordingly, CC recommends that the IRS delay implementation of the final redesigned Form 990 until fiscal year 2009 (returns filed in 2010) and provide additional time for the implementation of Schedule K (Tax-Exempt Bonds).

Group Returns. The IRS has specifically requested comments on whether it should preclude group returns. Presently, under Treas. Reg. § 1.6033-2(d), a tax-exempt organization, which is not a private foundation, may file a group return on Form 990 for two or more subordinates that satisfy certain criteria, including:

- Each subordinate organization is affiliated with the parent at the close of the parent's annual accounting period;

- Each subordinate is subject to the general supervision or control of the parent;
- Each subordinate is exempt from federal taxation under the same paragraph of IRC § 501(c), but not necessarily exempt under the same paragraph of IRC § 501(c) as the parent;
- No subordinate is a private foundation; and
- The tax-exempt status of the subordinates is established under a group exemption letter issued to the central organization.[3]

Significantly, the group return does not relieve the parent organization of the obligation to file a separate Form 990 for itself.[4]

We believe the requirements for group returns that the IRS has articulated in existing regulations provide adequate safeguards against any perceived abuse resulting from filing on a group basis. As noted above, the fact that the IRS requires the tax-exempt status of the subordinates to be established under a group exemption letter provides significant protection. A tax exempt parent organization must apply separately for a group determination letter for its subordinates, demonstrating to the IRS that each of the subordinates included in the letter, among other things, are subject to its general supervision or control and entitled to exempt status as other than private foundations.

Prohibiting group returns would impede the IRS' goals of promoting transparency and accountability. Group returns in the health care industry allow parent organizations to report comprehensive and relevant financial information to the IRS and the public on the activities of an entire health care system. The consolidated nature of the group return allows the IRS and the public to compare similarly situated organizations. Without the ability to file group returns, the IRS and the public would need to examine the individual Form 990 filings of each organization within a health care system in order to view the charitable activities of the system as a whole. This creates additional work for charitable organizations, the IRS and the public with no real benefit. In fact, it creates a risk for health care systems that their charitable activities would be misconstrued as a result of mistakes in consolidating information from multiple Forms 990.

Our experience with group returns is that they enhance transparency and provide more relevant information. They enable health systems like ours to provide a comprehensive source of information on the charitable, research and educational activities of the entire CCHS. Thus, we agree with other commentators that instead of eliminating group returns, the IRS should consider amending existing regulation to address any perceived deficiencies.

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[3] *See*, e.g., Treas. Reg. § 1.6033-2(d)(1) and (4).

[4] *Id.*

Consolidated Reporting. Even for multi-entity tax exempt organizations without a group exemption, we believe the IRS should allow such systems to report their financial information on the Draft Form 990 on a consolidated basis, rather than on separate forms by EIN as currently envisioned.

Health care systems often have or must create separate nonprofit entities as a result of state law and regulation, but it is the collection of entities as a whole that carries out the charitable, research and/or educational missions of the entire system. It is important that the IRS consider the hospitals' community benefit in the context of all of affiliated entities that work as a whole to provide community benefits through patient care, education, and research. Some teaching hospitals may have related entities, such as a research organization or a medical school, each of which has its own EIN and each of which works in combination to provide community benefit. In other organizations, these functions may operate out of one or a few entities. In order to achieve the goals of transparency and comparability, it should not matter whether a health care system or academic medical center accomplishes its tax exempt mission under one EIN or several.

CC recommends that the IRS allow consolidated financial reporting for tax exempt systems on Form 990 in a manner analogous to that which exists for taxable corporations. Presently, the parent of a consolidated group may file a tax return for itself and its controlled subsidiaries. These returns are drawn from consolidated financial statements that have been prepared in accordance with GAAP. If the IRS is concerned about maintaining detailed reporting in certain areas by entity, the Service should request that consolidating schedules be included. CC believes that the IRS should encourage consolidated group filing and provide additional guidance in this area.

CC also supports the American Hospital Association (AHA) comment that tax-exempt hospitals should have the option of reporting community benefit by facility or on a consolidated basis on Schedule H to the Draft Form 990. However, CC further suggests that for multi-hospital systems, if filers consolidate community benefit data, they should do so by metropolitan statistical area. This would allow the IRS and the public to see how the system is doing in their community and would allow the system to report appropriately all the services provided to the community.

Draft Form 990, Part I, Summary. Part I of the Draft Form 990 provides a snapshot of certain metrics about an organization, including information regarding the total size of its governing board and the number of independent members of its governing board. The IRS states that, "By looking at the summary page, users will find a breakdown of the organization's revenues, expenses, assets, liabilities, and net assets, to quickly see the size and *key financial measure* of the organization." (Emphasis added). CC supports the IRS goal of providing information in an easy-to-use format, but has concerns that Part I of the Draft Form 990 sacrifices accuracy for convenience.

Compensation. Part I, Line 7 seeks the compensation amount for the organization's highest paid employee, but does not offer the organization any opportunity to put that amount in context, such as the person's title. Repeating this information in Part I provides no greater transparency and

promotes no more accountability than reporting the information in Part II alone. Instead, without any ability to put the information in context, Part I may result in users ignoring the context that Part II provides.

Financial Indicators. We understand that IRC § 6033 confers broad discretion on the IRS to require exempt organizations to report annually any information necessary "for purposes of carrying out the internal revenue laws . . . ."[5] However, Part I of the Draft Form 990 goes beyond even this broad grant of discretion by requiring charitable organizations to disclose potentially misleading financial ratios that are not tied to any existing federal tax law. For example, Line 19b requires each organization to compute fundraising expenses as a percentage of contributions and grants and Line 24b seeks total expenses as a percentage of net assets.

CC agrees with the Independent Sector comments to the IRS that exempt organizations should not be required to report certain percentages of revenues and expenditures as indicators of public benefit or financial performance. These requirements suggest that, despite no statutory mandate to enforce, the IRS believes that organizations should satisfy a pre-determined ratio in order to retain tax-exempt status. Placing these ratios in the "snapshot" of the organization suggests the IRS endorses these ratios as appropriate indicators by which to evaluate exempt organizations. Yet these potentially misleading percentages do little to facilitate the IRS' or public's understanding of an exempt organization. For example, in the tax-exempt health care sector, providers may conduct long-term fundraising drives for their operations and capital campaigns for hospital facilities that have a disproportionate share of expenses in the initial years of these programs. CC requests that the IRS eliminate these ratios from the Draft Form 990. Deleting them would not deprive the IRS or any member of the public of this information. In fact, since the raw data is provided on the Form, interested persons can easily calculate whatever percentages they think useful as performance indicators for an exempt organization.

Draft Form 990, Part II, Highly Compensated Individuals. Part II, Line 2 of the Draft Form 990 requires exempt organizations to report the total number of individuals who receive reportable compensation in excess of $100,000 from the organization. CC believes that the $100,000 reporting threshold for Part II, Line 2 is unreasonably low and the scope of the reporting requirement that Part II, Line 2 imposes is ambiguous. The number of persons receiving compensation in excess of $100,000 would vary widely depending on an organization's geographical location, activities, complexity, and size. For example, academic medical centers require a significant number of highly educated medical professionals to serve the health care needs of their patients, and certain academic health centers employ their doctors. The Founders of CC developed an employed physician model because they believed that it was in the best interest of patients to pool the resources and talents of multiple physician specialties in order to develop and apply the best medical techniques. Recruiting, retaining and managing the highest quality physicians is an integral part of being able to carry-out this mission and therefore, an important priority for CC. Without any context around this number, reporting it would not promote comparability among health care organizations, let alone across different

[5] *See* IRC § 6033(b)(14).

types of tax exempt organizations. CC submits that, to reduce the burden on exempt organizations of tracking this information, the IRS should delete this Line or at a minimum raise the threshold of Part II, Line 2 to $250,000.

In addition, Part II, Line 2 needs to be clarified if it remains. It requests the total number of "individuals" who receive compensation in excess of the threshold amount. Draft Form 990 does not define the term "individuals." The term "individuals" as used in the Draft Form 990 could be interpreted to include employees and unspecified others, but not independent contractors who are subject to a corresponding reporting requirement in Part II, Line 10b. CC recommends that, to ensure consistent reporting by exempt organizations, the IRS should clarify that Part II, Line 2 is limited to the organization's employees.

Draft Form 990, Part III, Governance Practices (Lines 1 through 9). CC supports good governance practices and transparency in tax-exempt organizations. As noted above, however, Congress has identified the types of information that the IRS may require exempt organizations to disclose as part of the Form 990; namely, only information that is necessary to enforce existing federal tax laws.[6] Part III of the Draft Form 990 does not clearly distinguish between statutory requirements for exemption and perceived "best practices" for corporate governance. CC believes that the IRS should limit Part III's specific questions to legal requirements, *i.e.*, changes to organizing or governing documents (Line 2) and accessibility of Forms 990 and 990-T (Line 11). The IRS could include another question so that organizations can list other documents that they may choose to make available publicly.

In addition, many of the questions in Part III create a risk of providing misleading or irrelevant information. For example, Part III, Line 3b asks for the number of transactions the organization reviewed under its conflicts of interest policy. This question has little, if anything, to do with how well an organization enforces its conflicts of interest policy. A better question, designed to show the integrity of the organization with respects to conflicts, would be whether the organization has a conflicts on interest policy consistent with the IRS Model Policy and whether it regularly distributes its conflicts policy to its board and officers and requires regular disclosure of potential conflicts of interest. Accordingly, CC recommends that the IRS revise Part III by eliminating all questions that are not directly tied to statutory requirements. The IRS could add here another question permitting organizations to identify other "good governance" practices they have adopted, but without the suggestion or implication that such practices are a requirement for exemption.

Draft Form 990, Part III, Board Review (Line 10). CC agrees that good governance practices include review of the Form 990 by the appropriate individuals on an organization's governing board. However, CC believes that depending on the size and structure of the organization, a board committee such as an audit or finance committee may be better suited to reviewing and approving the Form 990 prior to its filing. Accordingly, CC believes that the IRS should

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[6] *See*, e.g., IRC § 6033(b).

rephrase Part III, Line 10 to ask an organization to describe how the governing board reviews or approves the Form 990.

Draft Form 990, Part III, Document Disclosure (Line 11). While exempt organizations must adhere to federal requirements to make copies of their Forms 990 and 990-T publicly available, no similar federal mandate exists for the disclosure of conflict of interest policies, financial statements, or audit reports. These documents may help an exempt organization explain the public benefit that it provides in exchange for its exempt status, but these documents may also contain confidential and/or proprietary information that the organization's governing board has a fiduciary duty to protect. By referencing these other documents, the Draft Form 990 implies that the Service believes that making them available to the public is a requirement for exemption. CC believes that Part III, Line 11 should be revised to reflect current federal disclosure requirements. To the extent that the Service would like information on other types of documents that the organization makes publicly available, such as its financial statements or conflicts of interest policy, as we have suggested in other areas for Part III, it could ask the organization to identify any other such documents that are available without the suggestion that disclosure is a condition of exemption or indicative of proper corporate governance.

Part IX. Statement of Program Service Accomplishments. We believe that it is critical that organizations be provided as much additional space as necessary to describe activities that advance their mission, and both here and in other areas of the Form including Schedule H, be allowed to provide attachments.

Glossary Definitions. There are a number of terms used in the Draft Form 990 that we believe need definitional clarification, should be used consistently throughout the Form, and/or must be defined in conformity with existing Tax law definitions.

Definition of "Conflict of Interest." The Glossary of the Draft Form 990 contains a definition of a "Conflict of Interest Policy" which includes a description of how a conflict of interest arises:

> .... A conflict of interest arises when a person is in a position of authority over an organization, such as an officer, director or manager, may *benefit personally* from a decision he or she could make. (Emphasis added).

CC supports the position that tax exempt organizations should have a conflict of interest policy to ensure that all members of its governing body are aware of their duty of loyalty, and that the organization, its employees, and its board should conduct the affairs of the organization subject to the policy. Tax exempt healthcare organizations have available to them the IRS Model Conflicts Policy in the 1997 CPE Text. We believe that the Glossary definition in the Draft Form 990 should be revised to separately define what a conflicts policy is and what a potential conflict is. In addition, the definition of conflict of interest should be clarified, consistent with the IRS Model Policy, to make clear that a "personal benefit" relates only to financial benefits.

Definition of "Independent Member" of Governing Board. The Draft Form 990 refers to the concept of an "independent member" of a governing body several times in several sections of the Form. The Glossary defines an "independent member of [a] governing body" as follows:

> A person: [i] Who is not compensated as an employee of the organization; [ii] Who does not receive compensation or other payments from the organization as an independent contractor (other than reimbursement of expenses or reasonable compensation for services provided in the capacity of serving as a member of the governing body); [iii] Who does not receive, directly or indirectly, *material financial benefits* from the organization except, if applicable, as a member of the charitable class served by the organization; and [iv]Who is not a spouse, sibling, parent, or child of any individual who is employed by, or receives compensation or other *material benefits* from, the organization. (Emphasis added.)

CC supports the general approach taken by the IRS in the Glossary on independence. CC believes that the IRS should issue guidance on independence and require boards to adopt policies that define independence for their board members. However, until the IRS adopts a substantive definition of independence, the Form 990 should make clear that independence is not a substantive law requirement. In addition, the portions of the Glossary definition, "material financial benefit/material benefit" need to be clarified. We believe that the IRS should issue guidance here as well, ensuring flexibility given that "materiality" may differ from organization to organization and under varying circumstances. We believe that the IRS should defer to a board's judgment if it establishes a "material benefit" standard consistent with IRS guidance and reviews the standard periodically.

Schedule D, Supplemental Financial Statements Schedule D, Supplemental Financial Statements. Schedule D, Part VII of the Draft Form 990 requires an exempt organization to reproduce the text of the footnote to its audited financial statements that reports the organization's liability for uncertain tax positions under FIN 48. CC believes this information request should be substantially modified or removed. The isolated use of a footnote from a set of audited financial statements without the context of the accompanying financial statements would be potentially confusing, misleading or easily misconstrued. For example, many multi-entity health systems have audited financial statements prepared on a consolidated basis for all affiliated entities. The footnote prepared for those financial statements will provide no useful information for a single exempt entity affiliate filing a stand-alone Form 990. In addition, many smaller nonprofits do not have audited financial statements. For those organizations, the footnote disclosure will simply not exist. This raises comparability issues across filers. Without clarification, the absence of a footnote disclosure could lead to two entirely different interpretations. For these reasons, CC requests that the IRS eliminate this requirement when the Draft Form 990 is finalized.

Schedule H, Hospitals. CC strongly supports the use of the CHA community benefit reporting guidelines on the Form 990 as the format in which to report hospital community benefit. As noted previously, CC has been using the CHA guidelines for the community benefit reporting of

all its System hospitals since 2004. CC agrees with the AHA comments that the IRS should explicitly incorporate the community benefit standard into Schedule H, in the same manner that standard is reflected in IRS' rulings and as incorporated in Forms such as the 1023. However, the charts and worksheets that the IRS has included in the Draft Schedule H raise some serious concerns for hospitals, in that certain items are entirely unrelated to community benefit, are ambiguous and require clarification, or are inconsistent with existing statutory requirements.

In particular, CC endorses the AHA comments that:

- The proposed chart on draft Schedule H, Part II relating to billing should be eliminated entirely. It has no relationship to community benefit, and requires disclosure of information that hospitals either do not keep or information that is highly sensitive to competitors and health insurers alike.

- The IRS should include all aspects of quantifiable community benefit as expressed in the CHA guidelines, including community building. Health care providers are often one of the few or the only safety net in their communities, and many are involved in aspects of charitable work outside of health care. Whether the activity is charitable as exempt health services, research, education or lessening the burdens of government, it is exempt activity pursuant to existing statutory guidance.

Part II of Schedule H asks the organization to explain how it calculates bad debt expenses. CC believes the IRS should adopt the standards in Health Care Financial Management Association's Statement 15, which sets forth a basis for distinguishing bad debt from charity care for financial accounting purposes. While it is important that organizations take all reasonable steps to make charity care eligibility determinations before or at the time of service, the nature of urgent care and other circumstances require that determinations of eligibility for indigent care can and should be made at any time during the revenue cycle. The issue of reclassifying eligible bad debt into charity care is one of timing; not whether all bad debt should count as charity care.

Schedule J, Compensation. Line 1, Column C requires an organization to report nonqualified deferred compensation. We agree with other commentators that the Form should eliminate double counting of deferred compensation by clarifying the instructions. In addition, Line 1 Column E requires reporting of nontaxable expense reimbursement. Because expenses properly reimbursed under an accountable plan are not deemed compensation, the Schedule should be revised to move this out of the chart and into another question to avoid the implication that the amounts are compensation, or the request should be deleted entirely.

Schedule K, Tax-Exempt Bonds. CC has concerns regarding the broad scope of information that the Draft Form 990, Schedule K, requests on tax-exempt bonds and the burden that Schedule K reporting will impose on organizations. For example, CC submits that the IRS should delete all data requested on defeased bonds. Additionally, Schedule K duplicates many items that organizations must already report on Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues. For these items, Form 8038 should remain the single source of information to ensure consistent reporting of that data.

Schedule K places an immense burden on exempt organizations by requiring recordkeeping that goes beyond what many organizations have done historically. First, Schedule K requires an annual full scale audit of every issue each year. For multi-hospital systems, this will require significant manpower and expense. When the proceeds of a single issue are used for projects for several entities within a system, it is unclear how the system or any single entity within it can complete the Schedule.

Second, Schedule K requests information about refunded bonds without limiting the scope of that request to any specific period. Organizations that have been in existence for many years, including CC, have multiple bond issues over many years, often with a labyrinth of refinancings and refundings. Without any limit on the scope of information that Schedule K requests, the burden for such organizations associated with tracking prior use on refunded bonds becomes onerous.

Third, existing federal regulations give organizations up to eighteen months after the placed in service date to allocate the sources of those funds to particular costs. Draft Schedule K is inconsistent with this regulatory flexibility because it appears that an organization would be required to file this information before the eighteen-month period expires. CC agrees with comments from other organizations that the IRS should revise Schedule K so that the timing of the Form 990 filing obligation coincides with this regulation.

Fourth, the level of due diligence that will be necessary annually to answer fully and accurately the questions that Schedule K has regarding private use will be significant. Certain of the requests relating to private use are misleading and should be deleted, such as data about use that is "good use." Other requests should be revised to correspond directly to the regulatory standards governing private use; for example, private use is measured over the life of the tax-exempt bonds, not on a current filing year basis.

Fifth, a number of other items requested by Schedule K are irrelevant for enforcement and should be deleted, such as the highest percentage of the project subject to a management or research contract found in Schedule K, Part III, Line 4. This request is simply unhelpful to the IRS and the public in the case of a compliant management or research contract under applicable IRS guidelines.

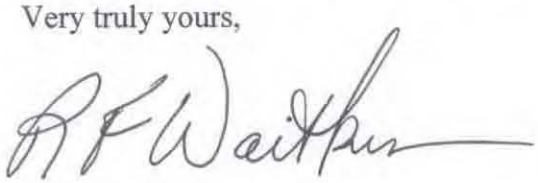
Finally, the purpose of the disclosures on compensation to third parties contained in Schedule K, Part IV is unclear. If the IRS included this provision fearing conflicts of interest, those concerns should be addressed by the portions of the Draft Form 990 seeking information specifically about conflicts of interest, or more properly should be reported on and drawn solely from Form 8038 relating to a particular bond issue. In addition, no obligation exists under federal law for a competitive bid process for engagements related to a bond issue. CC agrees with the AHA comment that organizations should be permitted to rely on selections of bond counsel and/or a qualified underwriter with a reasonable review of qualifications. If the IRS concern is to be able to audit costs of issuance, that should be made clear and a question relating to all costs of issuance should request itemization of such costs. If not, at a minimum, "formal selection process" must be defined.

Given the concerns that CC has with respect to the scope of information that Schedule K requests and the burden of compiling that information, CC supports a three-year extension in the implementation of Schedule K and the limitation of Schedule K to only those bond issuances that occur after the implementation date of the Schedule. By taking these steps, the IRS will ensure that organizations have sufficient time to complete the analyses required for reporting the information that the Schedule requests, and will reduce the burden that the current draft Schedule K imposes on organizations with tax-exempt bonds.

Conclusion. CC applauds the efforts by the IRS to increase transparency and promote accountability among tax-exempt, charitable organizations. We also support formal adoption of the community benefit standard for tax exempt hospitals in the Form 990 and the CHA reporting model. CC believes that the Draft Form 990 represents a good effort toward achieving those goals, but as noted in the comments above, we believe that the IRS should reconsider certain aspects of the Draft Form 990 to ensure that appropriate and relevant information is reported.

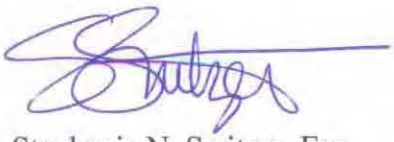
If you have any questions regarding these comments, please contact me at 216-445-2526.

Very truly yours,



Robert F. Waitkus

Senior Director of Taxation and Compliance



Stephanie N. Switzer, Esq.

Office of General Counsel

From:	Sandman, Todd
To:	*TE/GE-EO-F990-Revision;
CC:	
Subject:	Comments on Form 990 Revisions - Presbyterian Healthcare Services - 09/14/07
Date:	Friday, September 14, 2007 4:05:01 PM
Attachments:	irs comment schedh phs final 091407.doc

Thank you for the opportunity to comment.

Todd Sandman
Director of Public and Government Relations
Presbyterian Healthcare Services
(505) 923-6578

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Presbyterian Healthcare Services
P.O. Box 26666
Albuquerque, NM 87125-6666
(505) 923-5700
www.phs.org

September 14, 2007

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, D.C. 20224

RE: COMMENTS ON REVISED FORM 990 AND SCHEDULE H

On behalf of Presbyterian Healthcare Services, a private, not-for-profit healthcare system serving New Mexico since 1908, thank you for the opportunity to comment on the revised form 990 and the proposed Schedule H (Hospitals), released for comment on June 14, 2007.

We appreciate the work that the IRS has put into the new form and schedules and its openness to comments from the hospital community. We do believe that a hospital-specific schedule is appropriate, but we have serious concerns about Schedule H as proposed. We are proud of our community benefit activities and programs, which include $20 million in free medical care in 2006 to patients without the means to pay, sustaining critical hospitals and programs throughout our state at a loss, and much more.

Based on our initial reviews, we have three primary concerns with Schedule H as proposed that we are asking the IRS to address:

- The filing deadline is far too short and should be extended;
- The full value of hospital community benefit would not be reflected by the information reported; and
- Information that is unrelated to community benefit and not meaningful to the public should be removed from the form.

A. IMPLEMENTATION SHOULD BE DELAYED UNTIL 2010 TO ACCOMMODATE THE DELAY THE IRS ANTICIPATES IN ISSUING INSTRUCTIONS, AS WELL AS THE NEED TO ADJUST OR CREATE SYSTEMS TO CAPTURE THE REQUIRED FINANCIAL INFORMATION.

We are committed to transparency. However, the burden of having to reconfigure financial and data record-keeping systems in time to begin capturing by January 1, 2008 the substantial amount of data required just for the Part I Community Benefit Report is itself significant. The task is further made virtually impossible by the fact that the instructions and worksheets that would define the data requirements are not expected to be finalized until mid-2008. To require hospitals to overhaul financial and data record-keeping systems before the definitions, line item instructions and worksheets have been completed will result in unnecessary expense and costly disruption. Our concern is that these unnecessary costs would ultimately result in a higher cost of care to the communities we serve.

Given the number of questions and concerns about the proposed Schedule H that have surfaced, we urge the IRS to consider providing a second draft in 2008 and allowing for another review period, with the goal of finalizing the schedule by December 31, 2008 and extending the effective date of the revised form and schedules to tax year 2010. That would give hospitals sufficient time during 2009 to revise their financial and data record-keeping systems in order to be ready in 2010 to track and capture the information that will need to be reported.

B. THE FULL VALUE OF THE BENEFITS HOSPITALS PROVIDE SHOULD BE INCLUDED IN SCHEDULE H.

Hospitals qualify for the charitable purpose of promoting health by meeting the community benefit standard. The community benefit standard permits us to tailor our programs and services to the needs of our individual communities. Among those needs is providing care for elderly Medicare patients and low-income patients who may not be able to afford the costs of their care. Yet we provide their care proudly, and the costs we absorb in doing so should be reflected as a community benefit on Schedule H.

- The unreimbursed costs of providing Medicare services rightfully qualify as community benefit and should be reportable as such in Schedule H. Like Medicaid, Medicare often does not pay the full cost of patient care. As a result, our hospitals must absorb and compensate for these underpayments.

- Medicare currently reimburses hospitals less than the cost of care for 17 of the most frequently-billed Medicare DRG's (*Modern Healthcare*, April 23, 2007). The Medicare Payment Advisory Commission (MedPAC) in its March 2007 report to Congress cautioned that hospital margins are reaching a 10-year low at *negative* 5.4 percent. In 2006, the net reimbursement for services provided to Medicare patients in our hospitals was more than $30 million less than our cost to provide these services.

- Moreover, an increasing number of Medicare beneficiaries are also low-income. More than 46 percent of Medicare spending is for beneficiaries whose income is below 200 percent of the federal poverty level. We see no reason to distinguish between the community benefit of serving the Medicaid population at below cost and the community benefit of similarly serving those entitled to Medicare.

- As a charitable community-based health care provider, we do not select the patients we serve as other providers in the community may choose to do. Medicare underpayments represent a real cost of serving members of our community and should be counted as community benefit.

C. SCHEDULE H NEEDS TO BE STREAMLINED TO ELIMINATE QUESTIONS THAT ARE BURDENSOME AND CONFUSING, AND QUESTIONS THAT FAIL TO PROVIDE MEANINGFUL INFORMATION TO THE COMMUNITY.

- The proposed chart on Schedule H, Part II relating to billing should be eliminated. That information has no bearing on determining whether a hospital is meeting the community benefit standard. These forms should not be used to create new reporting standards that may provide information to payers and competitors that will put the reporting hospital at a competitive disadvantage when negotiating payment rates. Similar information is not required from for-profit hospitals, nor reported by those hospitals in any public forum.

- Relevant information is already provided in other parts of the Form 990. Detailed information on charity care will be provided in Part I of Schedule H. Information related to a hospital's revenues and Medicare and Medicaid payments will be included in Form 990. Duplicate entries should be avoided.

- The information requested in the chart found in Schedule H, Part II, Section A is unduly burdensome. In addition, some of the information requested is competitively sensitive.

D. ADDITIONAL COMMENTS ON THE REVISED 990, INCLUDING SCHEDULE K.

- Questions 4 and 5b of Schedule K, Part III should be limited to reporting any amount of private use exceeding the allowable 5% limit and should only require reporting contracts, agreements, and third-party usage that does not meet any safe harbor and thus truly constitutes "private use." See Schedule R, Part V, Transactions with Related Organizations and Noncharitable Exempt Organizations.

- With respect to the "Core Form, Part I, Summary," we are concerned that displaying this information in such a limited form and at such a prominent place on the return face will serve only to confuse and mislead the reader. All of the information that would be provided on this summary is provided within the return body or on accompanying schedules and is done so with better descriptions and in a better context. It is our belief that the prominence and content of this "summary" is inconsistent with how the IRS gathers similar information in other schedules and returns.

- Question 4 of Schedule K, Part III, "Private Use**,"** requires the disclosure of the "highest percentage" of a bond-financed project that was subject to either a management contract or a research agreement. Under Rev. Proc, 97-13 and 97-14, management contracts and research agreements do not constitute private use if their terms satisfy certain criteria. Therefore, most bond issuers do not maintain an inventory of contracts and agreements that comply with these requirements. Maintaining such an inventory and calculating the percent of each bond project that is under any such contract would impose an additional reporting burden that is not supporting compliance with existing laws and regulations.

- Question 5b, Schedule K, Part III also asks for the "highest percentage of use" of a bond-financed project by a third party, even though that usage may not be "private use" per current regulations. This is an additional reporting burden that is not supported by any law or regulation relating to tax-exempt financing and it gives the reading public the false impression that all such use constitutes inappropriate private use.

We recognize that there are other concerns about Schedule H, Form 990 and many other schedules. We urge you to work with the hospital community and other stakeholders to identify and resolve those issues before asking us to file a new Form 990 or any of its schedules.

Thank you for the opportunity to comment on draft Schedule H.

Sincerely,

James H. Hinton
President and CEO