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September 10, 2015

**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Christie Preston  
Internal Revenue Service  
Room 6129  
1111 Constitution Ave. NW  
Washington, DC 20224

**Re: Comments on Form 990 and Related Schedules [80 Fed. Reg. 41141]**

Dear Ms. Preston:

This comment concerns Schedule H of the Form 990.

As a practitioner who advises many different types of health care organizations that have been recognized as being described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), I appreciate this opportunity to comment on Form 990, Schedule H. The class of organizations required to complete Schedule H, as defined in the Instructions<sup>1</sup>, could be interpreted in a manner that is slightly overbroad, thereby undermining the quality, utility, and clarity of the data the Internal Revenue Service collects and imposing unnecessary burdens on certain Section 501(c)(3) health care facilities that do not provide hospital care. Thus, I propose addition of a narrow clarification with respect to "Who Must File" as currently articulated in the Instructions.

The Instructions define a "hospital facility" as "one that is required to be licensed, registered, or similarly recognized by a state as a hospital." The Internal Revenue Service ("IRS") should be applauded for adopting a clear definition for Schedule H purposes and for the use of a general standard looking to state licensure and registration requirements to define the term "hospital facility." In fact, I was among the commenters to expressly recommend that approach during the Form 990 redesign in 2007 and 2008.<sup>2</sup>

Hospital licensure requirements, however, vary widely by state and in a few narrow circumstances may include facilities that do not provide any inpatient services or other

<sup>1</sup> Unless otherwise specified, all citations to the "Instructions" are to the 2014 Instructions to Schedule H (Form 990).

<sup>2</sup> See September 11, 2007, letter from T.J. Sullivan to Form 990 Redesign SE:T:EO ("Limit Schedule H to Licensed Hospitals"); May 30, 2008, letter from T.J. Sullivan to Draft Form 990 Instructions SE:T:EO ("Clarify distinction between 170(b)(1)(A)(iii) broader definition and Schedule H licensed hospital definition").

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intensive care that could reasonably be considered hospital care. For this reason, it is desirable to refine the definition of hospital facility in Schedule H (or the manner in which it is applied) to exclude facilities required to be licensed or registered as hospitals for state law purposes, but at which no part of the activities during the taxable year is the provision of hospital care.

I know from my time in the Office of Chief Counsel and the Office of the Assistant Commissioner (EP/EO) in the 1990s that the IRS often was asked by Congress and others for information on tax-exempt hospital activities. Historically, the IRS was unable to respond to these inquiries in detail due to a lack of hospital-specific data. Before the 2008 Form 990 redesign, the IRS categorized hospitals and certain other health care organizations together using the broad definition under Section 170(b)(1)(A)(iii) of the Code and the regulations thereunder. Because such organizations' operations and activities varied widely, it was difficult to glean meaningful data from the information collected. In adopting the state licensure and registration standard for purposes of Schedule H, the IRS wisely moved toward a narrower definition of a hospital facility in order to more specifically focus on tax-exempt hospitals. Given the varying landscape of state regulation, however, a definition that solely looks to state law could still be too broad to best achieve the purposes of Schedule H. The IRS, Congress, policy analysts, patient advocacy organizations and the public are best served by the IRS analyzing objective and comparable information about the activities of nonprofit, tax-exempt hospitals so that all can understand such organizations' activities and thereby exercise proper oversight of this important part of the nonprofit sector.

The Joint Commission (formerly the Joint Commission on Accreditation of Health Care Organizations) defines a hospital in its 2007 Hospital Accreditation Standards as "a healthcare organization that has a governing body, an organized medical staff and professional staff, and inpatient facilities and provides medical, nursing and related services for ill and injured patients 24 hours per day, seven days per week. For licensing purposes, each state has its own definition of a hospital." The Joint Commission definition correctly emphasizes some of the essential elements of what has traditionally been thought of as hospital care. Hospital care traditionally has included at least some inpatient capability. By contrast, certain states require outpatient clinics, multi-specialty group practices, and other non-hospital providers to be licensed, registered, or similarly recognized under their hospital statutes or regulations.

While it is important that all tax-exempt health care organizations report their charity care, community benefit, and other activities in furtherance of their tax-exempt missions, Schedule H was intended to obtain very detailed information about tax-exempt hospitals. Applying requirements designed to apply to hospitals to facilities at which no hospital care is provided, based solely on state licensure or registration, places an unnecessary burden on such organizations while detracting from the ability of all interested parties to

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ensure that hospitals report their community benefit activities in a meaningful and comparable fashion. Moreover, the resulting information would have no practical utility for the IRS.

Avoiding this situation would not require the IRS to move away from the state license and registration standard. The IRS could retain that general standard, while simply clarifying that such standard does not operate to sweep in providers or facilities at which no hospital care is provided in any taxable year. Adding such a clarification to the Instructions would not diminish the clarity and simplicity of the general standard, but simply ensure the exclusion of facilities to which Schedule H was never intended to apply.

Specifically, the IRS should amend the Instructions on Page two, under the heading "Who Must File," by adding the italicized phrase to the following sentence: "An organization that did not operate one or more facilities during the tax year that satisfy the definition of hospital facility, above, *or that satisfies that definition but no part of its activities during the tax year was the provision of hospital care*, should not file Schedule H (Form 990).

This comment letter proposes a simple clarification of the manner in which the definition of "hospital facility" applies for purposes of Schedule H. The proposed language would prevent the dilution of useful information obtained on Schedule H by clarifying that the state license and registration standard defining "hospital facility" does not operate to include facilities at which no part of the activities during the tax year is the provision of hospital care.

I appreciate your consideration and would be happy to answer any questions.

Very truly yours,

Drinker Biddle & Reath LLP

T.J. Sullivan

