



Garfunkel, Wild & Travis, P.C.

New York New Jersey Connecticut

Legal Alert

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IRS Released Final Form 990

In June 2007, the IRS released a draft redesigned Form 990 (Return of Organization Exempt from Income Tax). This was the first major overhaul of the form in almost 30 years. On December 20, 2007, the IRS released a final Form 990. There are areas in the new form that will impact your institution. For example: there are significant changes (1) requiring substantial additional information in the disclosure of executive compensation and benefits, (2) affecting transactions with interested parties, (3) relating to corporate governance, and, (4) for hospitals in particular, community benefit information reporting.

Corporate Governance

The new Form 990 focuses on corporate governance matters. The IRS believes a well-governed entity is more likely to be tax compliant. There are questions regarding board size and composition, conflicts of interest practices, independence of directors, relationships between board members, audit committee operations, availability of written policies, and Board involvement in the preparation and review of the Form 990 itself.

For example, the form asks whether compensation decisions are made in accordance with the excess-benefit rules (Intermediate Sanctions). In order to answer this question in the affirmative, your institution needs to ensure that it has a board committee composed of independent members (not salaried employees or Board members with business relationships with the institution) who review compensation decisions using comparability data, and engage in substantive deliberations that are contemporaneously recorded in minutes.

There is also a new disclosure section for business relationships between board members, officers, and key employees. This may require modification to existing conflict of interest disclosure statements for board members.

We can provide an educational session to your board on these governance issues.

Compensation

New disclosure requirements include a breakdown of the components of compensation. The existence of certain "IRS red flag" items -- such as entertainment reimbursement, first class or charter travel, travel for companions, residences, tax payments, club dues, discretionary spending accounts, personal services, and revenue based incentive compensation arrangements — must now be reported, along with disclosure of policies and practices. In addition, loans and other transactions with current and former personnel and certain other persons must be reported.

Community Benefit

The new Schedule H in Form 990 goes more deeply into a hospital's community benefit practices. The form is now designed to quantify the community benefit standard applicable to tax-exempt hospitals.

- Cost-based information for community benefits, including charity care costs and Medicaid, community health care needs assessment, and ER operations must now be disclosed.

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- Bad debt and Medicare shortfall information is to be reported and an explanation is permitted why a portion should be considered community benefit. Disclosure of debt collection policies is required.
- Disclosure of the structure and activities of management companies and joint ventures, focusing on private inurement and private benefit issues, is now mandated.
- There are now sections for general information on exempt activities, community needs assessment, and community building activities.
- All facilities that provide hospital or medical care and a description of the services provided must be described.
- There are questions allowing description of how community needs are assessed, how financial assistance program information is disseminated, how activities promote community health, and the characteristics of the communities served.

Most of the information in Schedule H was not required before. Hospitals will likely need to establish or modify recordkeeping systems to compile or report such information. Recognizing that hospitals need time to adjust to the new form, only the facility identification part of Schedule H (Part IV) is required for 2008 returns. Other parts of the new Schedule H are mandatory for 2009.

2008 Year Filing

Although the first filing of the new Form 990 will not occur until 2009 (covering the 2008 year), it is essential that your facility review the new schedules against your current practices now and identify required disclosures. You should also determine where changes to current practices are necessary and/or appropriate. A "mock" return prepared on the new form would aid in this endeavor. Please keep in mind that, in addition to providing more information to the IRS to assist it in its enforcement duties, public disclosure rules allow the Form 990 to be viewed by the state attorney generals, the press, the legislature, employees, unions, donors and other members of the general public.

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We can review and advise when changes, if any, of current facility policy procedures, etc. may be advisable. Please let us know if you would like to discuss this further. Contact any of the GWT attorneys with whom you usually speak.

About Garfunkel, Wild & Travis, P.C.

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