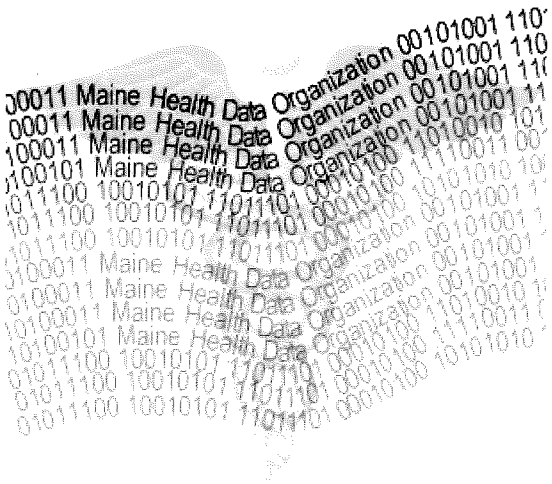

DirigoHealth

Working For Maine

Findings of the Work Group

Established Under

Resolves 2009, Chapter 66

To Create a Working Group to Provide Transparency Concerning Operating Expenses for Hospitals

Presented to the Joint Standing Committee on Health and Human Services
of
The 124th Maine State Legislature

Report prepared
by the

Maine Health Data Organization and the
Governor's Office of Health Policy and Finance

February 2010

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I. Background

In May 2009, the 124th Maine State Legislature enacted Resolve 2009, Chapter 66, *"Resolve, To Create a Working Group to Provide Transparency Concerning Operating Expenses for Hospitals"*. Chapter 66 replaced L.D. 724 "An Act to Provide Transparency Concerning Operating Expenses for Hospitals", which received an *ought not to pass* vote by the Joint Standing Committee on Health and Human Services.

II. Mission and Purpose

Chapter 66 required the Maine Health Data Organization (MHDO) and the Governor's Office of Health Policy and Finance to convene a working group to examine and make recommendations for hospital data reporting that would provide transparency concerning operating expenses, including, but not limited to, annual operating budgets and other financial information. The working group was to review current data being collected by all state agencies and to identify any additional operating expense data to improve transparency of hospital operating expenses.

(See Appendix A for a copy of the Resolve)

III. Establishment of the Hospital Operating Expenses Transparency Work Group

In accordance with the provisions of Chapter 66, a Hospital Operating Expenses Transparency Work Group was established in October, 2009. The group first met on October 20, 2009, with subsequent meetings held on November 4, December 8, 2009, January 5, and January 19, 2010.

As specified in Chapter 66, the work group was to be composed of representatives from the Maine Hospital Association, the Maine Health Data Organization and the Governor's Office of Health Policy and Finance, and any other stakeholders needed to determine the appropriate data sets, schedules and format of the data and reports. Chapter 66 also required that the Maine Health Data Organization and the Governor's Office of Health Policy and Finance provide the Joint Standing Committee on Health and Human Services and staff advance notice of the time and place of the meetings. Senator Lisa T. Marrache, Joint Standing Committee on Health and Human Services member and sponsor of L.D. 724 chose to participate in the work group. Prior to the first meeting it was suggested that the Department of Health and Human Services send a representative to participate in the work group, since they also collect financial information from Maine hospitals.

At the initial meeting additional stakeholders were identified to be a part of the work group. These stakeholders included representatives from Maine Consumers for Affordable Health Care, the Maine Health Management Coalition, and the Maine Association of Health Plans.

The following individuals were participants in the work group meetings:

Trish Riley, representing the Governor's Office of Health Policy and Finance
Al Prysunka and Debbie Dodge, representing the Maine Health Data Organization
David Winslow, representing the Maine Hospital Association
Roderick Prior, representing the Department of Health & Human Services

Joe Ditre', Doug Clopp, and Mia Poliquin Pross, representing Maine Consumers for Affordable Health Care
Ed Kane, representing the Maine Association of Health Plans & Harvard Pilgrim

The following individuals agreed to participate in the work group but were unable to attend any of the scheduled meetings:

Elizabeth Mitchell, representing the Maine Health Management Coalition
Katherine Pelletreau, representing the Maine Association of Health Plans

In addition, Katie Fullam-Harris, representing MaineHealth was in attendance at one of the meetings.

(See Appendix B for copies of all Agendas and Meeting Minutes)

IV. Presentations/Discussions

Meeting 1: October 20, 2009

At its initial meeting the work group reviewed Chapter 66 in detail. The group reviewed the purpose, identified other stakeholders who should be involved in the initiative, and discussed the content of the information requested in Chapter 66, including definitions for the terms that were referenced.

The group also discussed the list of additional hospital system data to be evaluated for reporting: advertising, operating budgets, income sources, operating expenses, salary ranges by position, transfers from/to affiliated entities, and profit-generated facilities. Senator Marrache raised an additional concern regarding actual hospital expenditures related to community benefits and whether cost shifting should be included as a community benefit.

The MHDO provided an overview to the work group of the hospital and parent information and data sets currently being collected by the MHDO and the Department of Health and Human Services (DHHS), in an attempt to identify any gaps in data needs. The MHDO collects both financial and organizational information on parent and hospital entities through its statutory authority and rules, Chapter 300: Uniform Reporting System for Hospital Financial Data *and* Chapter 630: Uniform System for Reporting Baseline Information and Restructuring Occurrences for Maine Hospitals and Parent Entities. The MHDO collects standardized financial templates annually from Maine's 39 hospitals (beginning in FY 2005). The financial templates contain information found in the balance sheet, statement of operations, changes in net assets, and cash flow statements of the annual hospital audited financial statements. Maine hospital fiscal year end dates vary over a nine month span of time and all financial data is due to the MHDO within 6 months from the hospital's fiscal year end date. Due to the varying fiscal year end dates, it is an extensive period of time before the MHDO can release the data. Each year, the data received is reviewed, updated, and included in the three financial reports found at the MHDO's web-site at http://www.healthweb.maine.gov/hospital financial/. The reports include summaries of common financial data elements and ratios derived from those data elements. The MHDO also receives audited financial statements from the parent organization of the hospital entity. While this information is available to the public in paper

format, the information is not received on a standardized template and the information is not posted on the MHDO web-site for public review.

The MHDO also collects organizational information from both the parent and hospital entities. While this information is available to the public, it is primarily used for internal purposes in determining if the MHDO is receiving all required data from Maine's hospitals.

The Maine Department of Health and Human Services also provided an overview explaining that the Division of Licensing and Regulatory Services collects copies of the Federal Internal Revenue Service (IRS) Form 990 and all related discloseable schedules for each hospital licensed in the state and filed with the Department as required in 22 M.R.S.A. Section 1819-A, Financial Disclosure. This requirement does not include Mayo Regional Hospital, New England Rehab, and Cary Medical Center. These forms are available to the public at http://www.maine.gov/dhhs/dlrs/medical_facilities/hospitals/financial.shtml.

In addition, DHHS receives the IRS Form 1120, used for each *for-profit* entity in which the hospital has a controlling interest. These forms are received in electronic and paper format. While these forms are collected by the Department and they are public information, they are not available on the Department's web site.

DHHS, Division of Audit also collects copies of Maine hospital Medicare Cost Reports, an extensive report on costs required to be filed annually with the Centers for Medicare and Medicaid Services (CMS), but this information is primarily used by MaineCare for hospital reimbursement purposes. These reports do not provide the level of detail that is identified in Chapter 66.

Meeting 2: November 4, 2009

At the initial meeting the question was asked if the MHDO had the legal authority to collect financial information from "for-profit" entities. After consultation with the Office of the Attorney General, it was reported that, due to the broad definition of health care facilities in MHDO statutory language, the MHDO does have the legal authority to collect information from parent entities and/or health systems and "for-profit" entities affiliated with hospitals.

Also at the November 4th meeting, Barbara McGuan, a CPA from Berry, Dunn, McNeil & Parker provided the group with an overview of the IRS Form 990. This presentation included various schedules with an emphasis on Part VII *Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors* (also Schedule J) and Schedule H, required by hospitals and reports on their community benefits and charity care policies. All schedules are available for public disclosure at the Guidestar web-site at http://www.Guidestar.org. While all non-profit entities are required to file the 990, many sections are *optional* for hospital fiscal year (FY) 2008, but are mandatory for FY 2009. The FY 2008 IRS 990 consisted of 9 pages and 2 schedules. The FY 2009 IRS 990 consists of 11 pages and 16 schedules.

Meeting 3: December 8, 2009

At this meeting, Jeremy Veilleux, Principal, and Rick Cyr, Senior Audit Manager at Baker, Newman, and Noyes provided an overview of hospital audited financial statements. This

presentation included an overview of the balance sheet, income statement, and cash flow statements, with an explanation of some basic accounting terminology. Mr. Veilleux and Mr. Cyr also compared the audited financial statement to the IRS Form 990, and described the process that takes place between the accounting firm and a hospital prior to the audit being conducted. They also provided an overview of how the audited financial statements can be analyzed to determine the strength of an organization, including common techniques used in the industry.

Later in the meeting, Nancy Kane, Professor at Harvard School of Public Health, who consulted for the Maine Hospital Study Commission, joined the group via phone to share her thoughts with regard to collecting additional financial information. Professor Kane stated that operating budgets are really designed for hospital management and are useful tools for internal control purposes only. Professor Kane also stated that the MHDO has collected a wealth of information and that attention should now be given to doing analysis with the data. While the MHDO web site has some analysis on Maine's hospital finances, more could be done to link the financial data to other MHDO databases. She suggested that the MHDO contact Kate Nordahl, Assistant Commissioner for Policy and Research of the Massachusetts Division of Health Care Policy and Finance, to learn more about their analytical efforts.

Meeting 4: January 5, 2010

At the fourth meeting, John Gale, Muskie School of Public Health provided the work group with a presentation on hospital community benefits. This included the history of community benefits standards, definitions, current IRS reporting requirements, and current national and state level activity. The new IRS 990, Schedule H (required for 2009) will be submitted to DHHS starting in the Fall of 2010. This schedule is based upon the Catholic Health Association's community benefit framework. It was also discussed that the new form will capture more information on costs, but less information about the types of community building activities that exist. It was suggested that additional discussion take place to identify priority community activities for Maine's hospitals.

At the suggestion of Professor Kane during the previous meeting on December 16, 2009, MHDO staff spoke with Kate Nordahl, the Assistant Commissioner for Policy and Research, at the Massachusetts (MA) Division of Health Care Finance and Policy. The state of MA has just started to build its capacity in doing more analytical work with their financial, cost and quality databases. This work is being done both in-house and through sub-contractors. They have utilized the services of Mathematica, a firm based out of D.C., to look at cost and premium trends and the services of Professor Kane to evaluate hospital systems. They have also used the WebMD health share tool in calculating market share in exchange for their MA Hospital Discharge Data Set. In addition, they have prepared a few confidential analytical reports as needed for internal purposes only. However, at this point in time, no public reports have been produced.

V. Summary/Findings

Meeting 5: January 19, 2010

At this final meeting the Hospital Transparency work group discussed the findings of the work group and made its recommendations.

IRS Form 990

Although the IRS Form 990 is an extensive requirement for the hospitals and parent entities and/or health systems, the information is not reviewed and its accuracy is a concern. The IRS Form 990 is not audited, is often prepared by the hospital finance staff and may not be subjected to review by a CPA firm. Disclosures, schedules and other information are in accordance with IRS requirements and not Generally Accepted Accounting Principles (GAAP).

In contrast, audited financial statements require: an independent auditor's opinion attesting to their accuracy in accordance to GAAP; consideration of internal controls; substantive tests performed over account balances to verify their accuracy and existence; and specific disclosures for significant accounts.

Standardized templates for parent entities and/or health systems

In the continued discussion surrounding the need for more transparency, the work group discussed the feasibility of collecting the standardized template from all parent entities and/or health systems. Currently, the MHDO receives independent audited financial statements from all Maine hospital parent entities. This would be a new requirement for the hospital parent entities/health systems. However, the same template that is completed for the hospital can be used for the parent and/or health system.

Templates for all other entities in addition to the hospital or parent and/or health system

The work group reviewed four hospital systems to evaluate the extent of the hospital/parent and/or health system relationships and their respective affiliated entities. While the MHDO has the authority to collect financial information from both non-profits and for-profit entities for the hospital and parent systems, it would be an additional burden for both the hospital and the MHDO to require all entities to submit the information. The work group explored this requirement and decided that, due to the large number of entities that are affiliated and/or subsidiaries of the hospital and/or parent entity, they should not be required to submit a standardized template at this time.

Lines added to the template for reporting

Advertising Expenses

There is some concern about the types of advertising that is being reported under the Total Operating Expenses section by the hospitals and parent and/or health systems. The standardized template used by MHDO to collect financial information from audited financial statements does not break out advertising expense as a line item. Since more transparency is requested, lines will need to be added to the template to capture this information. The group decided to adopt the definitions currently being used by CMS that captures allowed and non-allowed advertising expenses *(see Appendix C for definitions)*. There will be three additional lines added to the template to capture total advertising expenses, allowed advertising expenses and non-allowed advertising expenses.

Salary and Benefit information

Salary and benefit information is not collected on the standardized template under the Income Statement section but it is included in aggregate with Other Operating Expenses

on the template. In addition, it is not identified in audited financial statements but captured under the general "administrative" heading. While the IRS Form 990 will capture some salary information on the top salary personnel, it does not collect ***all*** hospital and parent entity and/or health system salary and benefit information. The work group is interested in collecting the aggregate salary and benefits for each position of $150,000 and greater for the parent and/or health system, and hospital entities.

Transfers to and from affiliate entities

While the MHDO collects financial information on the standardized template for money transfers made to and from affiliates, it is in aggregate and does not specify the exact amount and to whom the transfer was made. Transfers to and from affiliates are collected on the standardized template under the Balance Sheet, Assets and Liabilities sections. The workgroup would like to see additional lines added to the template that would identify both the entity name and the amount of transactions of $100,000 or more in aggregate that are being transferred between the hospital, parent and/or health system, and other entities.

Operating Budgets

According to the research of this work group, no agency collects operating budgets for the hospitals in Maine. Operating budgets are mainly used by hospital management for their own internal purposes for projecting costs. The audited financial statements, although not available until after the fact, provide the most accurate financial information reported by the hospitals. The work group concluded that the requirement for hospitals to send in operating budget information would be of no value at this time.

Community Benefits

Defining "community benefits" will take additional time and effort and should be addressed outside the arena of this work group. There are not only questions surrounding the definition of community benefits, but also if it is reasonable to include charity care under the definition when such contributions are usually cost shifted to commercial payers. While the IRS 990, Schedule H, which includes charity care and community benefit information will be provided to the DHHS for FY 2009, it will not be available to the public until November, 2010 through August, 2011. This work group would like to see the Joint Standing Committee on Health and Human Services (with recommendations to the full Legislature) discuss community benefits standards, including the potential adoption of a definition and its application for the state of Maine. However, the workgroup agreed that the IRS Form 990, Schedule H, Part IV, "Management Companies and Joint Ventures" reported to DHHS should be posted on the MHDO web-site for further transparency of its financial data.

Analyticial Needs

The work group also discussed how there is a need for the MHDO to do more analytical work with the hospital financial data, and to have this information available to the public. It was felt that consumers need this information when making decisions about their own health care, and policymakers need the information to help guide further discussion about healthcare reform in Maine. While there is a considerable amount of information currently being collected by the MHDO, there is limited analytical work being completed. Further analysis should focus on integrating and reporting on information from the financial, operational, quality, and claims databases for both the hospital and parent/health systems. Timeliness and accuracy of the data that the MHDO collects is also an area of concern and focus.

VI. Recommendations

The following represent the Hospital Operating Expenses Transparency Work Group's final recommendations:

- *A standardized MHDO template, similar to those currently being submitted by Maine hospitals should be required for parent entities (including the health system). The definition for parent entity and/or health system that currently exists in the MHDO Chapter 300 rules should be used.* ***(general consensus reached)***

- *Additional lines should be added to the standardized parent/health system and hospital templates to identify each entity that transfer $100,000 or greater in aggregate to or from another entity.* ***(general consensus reached)***

- *Additional lines should be created on the standardized template to allow for the capture of total advertising expenses, allowed adverting expenses and, non-allowed advertising expenses using the CMS definitions.* ***(general consensus reached)***

- *A line should be added to the standardized template to capture salaries and benefits in aggregate. In addition, hospitals and parent entities and/or health systems should be required to report salary and total benefit information on all positions (medical and administrative) receiving greater than, or equal to, $150,000 in salary and benefits. If an individual holds* ***more*** *than one position and the aggregate compensation of all positions held is greater than, or equal to, $150,000, the "title", "amount" and "type" of benefit (salary and/or fringe) for each position, with a" total" dollar amount for all positions held by the same individual must be identified. The IRS Form 990's will only capture key employees who are compensated more than $150,000* ***and*** *who have control over 10% of budget revenue. In addition, Cary Medical, Mayo Regional and New England Rehab are* ***not*** *required to file the IRS Form 990 with DHHS.* ***(The Maine Hospital Association was not in support of this recommendation)***

- *A position should be added to the MHDO to do analytical work from the various databases, provided it can be absorbed under the current revenue.* ***(general consensus reached)***

- *The IRS Form 990, Schedule H, Part IV, Management Companies and Joint Ventures reported to the DHHS should be provided to the MHDO annually. A summary of Part IV information will be included with the Hospital Financial Data on the MHDO's Healthweb web-site.* ***(general consensus reached)***

- *The Joint Standing Committee on Health and Human Services should discuss community benefits standards, including the adoption of a definition and its application to Maine hospitals.* ***(general consensus reached)***

Appendix A

Resolve, To Create a Working Group to Provide Transparency Concerning Operating Expenses for Hospitals

APPROVED	CHAPTER
MAY 2 2 '09	6 6
BY GOVERNOR	RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND NINE

S.P. 273 - L.D. 724

Resolve, To Create a Working Group To Provide Transparency Concerning Operating Expenses for Hospitals

Sec. 1. Convene working group. Resolved: That the Maine Health Data Organization and the Governor's Office of Health Policy and Finance shall convene a working group to examine and make recommendations for hospital data reporting that will provide transparency concerning operating expenses, including, but not limited to, annual operating budgets and other financial information. The working group must include representatives of the Maine Hospital Association, the Maine Health Data Organization and the Governor's Office of Health Policy and Finance and any other stakeholders needed to determine the appropriate data sets, schedules and format of the data and reports. The Maine Health Data Organization and the Governor's Office of Health Policy and Finance shall provide the Joint Standing Committee on Health and Human Services and staff advance notice of the time and place of the meetings; and be it further

Sec. 2. Duties of working group. Resolved: That the working group under section 1 shall review current data being collected and identify additional data needed to provide transparency concerning operating expenses, including, but not limited to, annual operating budgets, income sources, profit-generating facilities, salary ranges by position, the value of transactions between hospitals and their affiliates and advertising. The working group shall identify all schedules, forms and methods needed for data collection as well as a deadline and a format for reporting the information to the Legislature; and be it further

Sec. 3. Report recommendations. Resolved: That, by January 1, 2010, the Maine Health Data Organization and the Governor's Office of Health Policy and Finance shall report to the Joint Standing Committee on Health and Human Services the findings and recommendations of the working group under section 1, including any necessary implementing legislation; and be it further

Sec. 4. Legislation. Resolved: That, after receipt and review of the report and recommendations submitted pursuant to section 3, the Joint Standing Committee on Health and Human Services may submit legislation to the Second Regular Session of the 124th Legislature.

Appendix B

Hospital Operating Expenses Work Group
Meeting Agendas and Minutes

Hospital Operating Expenses Transparency Work Group
Organizational Meeting

Maine Health Data Organization, Conference Room
151 Capitol Street, Augusta, ME 04330
October 20, 2009, 2:00 – 4:00 P.M.

I. Introductions

II. Purpose/Mission of the work group (as defined by Resolves 2009, Chapter 66)

III. Information currently collected
- **Maine Health Data Organization**
- **DHHS**

IV. Legislative Intent (clarify Sec. 2 of the Resolve)

V. Gaps/Data Needs

VI. Identify others who should be involved in addition to parties mentioned in resolve (ie: MEAHP, CAHC, MHMC)

VII. Next Steps

Thank you for your participation!

Hospital Operating Expense Transparency Work Group

October 20, 2009 2:00 p.m.

Maine Health Data Organization Conference Room
151 Capitol Street, Augusta, Maine

Those present were: Alan Prysunka, Maine Health Data Organization (MHDO) Executive Director, Trish Riley, Executive Director of Health Policy and Finance, Lisa Marrache, Maine Senator, Rod Prior, Department of Health and Human Services Medical Director, David Winslow, Maine Hospital Association and Debbie Dodge, MHDO Health Planner. Linda Adams, Administrative Assistant for the MHDO was present to take notes.

Purpose/Mission - Mr. Prysunka stated that L.D. 724 was passed by the Legislature as a resolve (Chapter 66), which defines the purpose and mission of the work group. The Maine Health Data Organization and the Governor's Office on Health Policy and Finance were charged with looking at information currently being collected on Maine hospitals and what will be proposed to be collected. The work group must present a report to the Joint Standing Committee on Health and Human Services by January 1, 2010.

Information Currently Collected: Maine Health Data Organization - Debbie Dodge distributed handouts outlining what is collected under the MHDO rules Chapter 300: Uniform Reporting System for Hospital Financial Data and Chapter 630: Uniform System for Reporting Baseline Information and Restructuring Occurrences for Maine Hospitals and Parent Entities. A graph of each hospital's fiscal year was disseminated showing a 21-month period of time from when the first hospital fiscal year end is until the last hospital financial template is received by the MHDO. Dave Winslow stated that he believed the fiscal year end dates were staggered so that the state and federal audit work would be spread throughout the year. Financial data is now standardized, except for the submission deadline dates.

Ms. Dodge explained that MHDO rule Chapter 630 was implemented in 2006 and hospitals started submitting organizational and restructuring information in January 2007. While organizational data are public information there are no immediate plans to put the information online. Senator Marrache understood that the information is a snapshot in time and not relevant to present day, but would like to have it available online. It was stated that the Attorney General has access to this information, as well as Certificate of Need.

Senator Marrache expressed her desire for transparency in transfers between for-profit and not-for-profit hospital entities. Ms. Dodge stated that transfers to affiliates are reported on the templates. It was stated that the tax exempt status by the IRS does not allow non-profit entities to transfer money to for-profit entities, but grant money can be transferred.

DHHS - The IRS link to Form 990 can now be found on the Department of Health and Human Services' web site. Trish Riley disseminated a copy of an IRS 990 form. The Schedule H is a relatively new requirement of the hospitals to be submitted to the state and federal government, due five months after each hospitals' fiscal year end.

Legislative Intent/Gaps/Data Needs - Senator Marrache raised concerns regarding actual costs that hospitals are spending for community benefit. Hospitals cost shift bad debt and charity care. Community benefit funds paid are listed in the hospital cost reports, but marketing and advertising is not specific enough. She would like the hospitals to define marketing and advertising and provide a breakdown of these costs.

Salary information was discussed and it was stated that the MHDO receives salary information under "Other Operating Expenses" in the financial templates. Senator Marrache wants to collect hospital budgets from whole systems and wants to know what they have in their reserves. Mr. Prior said to look at per capita expenditures.

One issue that needs review is parent entities not being defined as a health care facility and that they are not licensed, which would mean that the MHDO may not have the authority to collect parent company financial information. Mr. Prysunka will consult with Paul Gauvreau, MHDO Legal Counsel. There was some discussion regarding the templates being rolled under parent entity and Ms. Riley stated that Nancy Kane, who led in the creation of the templates, felt strongly that they should remain at the hospital level for more accurate comparisons. Senator Marrache requested acquiring Ms. Kane's research and analysis in establishing the template. Ms. Riley will give her the power point presentation Ms. Kane provided to the Maine Hospital Study Commission.

Senator Marrache requested organizational charts from profit generating entities to determine what links for-profits and non-profit, joint ventures; who they are and their affiliations; including subsidiaries. She also requested hospital salary information for everyone making over $100,000 per year total compensation.

It was stated that tracking investment assets, income, and balance sheets for trend information is important. Senator Marrache may ask for help from members of a conference she and Ms. Riley attended.

Identify Additional Parties - The work group discussed other interested parties who should be included in any upcoming meetings. It was decided that representatives of advocacy groups such as Consumers for Affordable Health Care, the Maine Association of Health Plans, and the Maine Management Coalition should be invited to attend. Senator Marrache will talk to Senator Peter Mills.

Next Steps - The work group will hold another meeting in the MHDO Conference Room on November 4th at 2:00 p.m. and the additional parties identified will be invited to attend.

Barbara McGuan, Berry, Dunn & McNeil will be contacted about giving a presentation explaining the 990 Form and Schedule H at the next meeting.

MHDO Legal Counsel at the Attorney General's Office will be contacted about the legality of the MHDO collecting parent company financial information.

Nancy Kane will be contacted about her work in establishing the hospital financial template.

The Hospital Operating Expense Transparency Work Group meeting ended at 4:00 p.m.

Hospital Operating Expenses Transparency Work Group
Organizational Meeting

Maine Health Data Organization, Conference Room
151 Capitol Street, Augusta, ME 04330
November 4, 2009, 2:00 – 4:00 P.M.

I. Introductions

II. Approval of meeting minutes

III. Brief overview of first meeting for new members of the work group

IV. Presentation of the IRS Form 990 (including Schedule H), Barbara McGuan, CPA, Berry, Dunn, McNeil & Parker

V. Updates

- **MHDO's legal authority to collect information from the "for-profit" entities**
- **Nancy Kane's availability to the work group**

VI. Further clarification of data needs

VII. Next Steps

Thank you for your participation!

Hospital Operating Expense Transparency Work Group
November 4, 2009, 2:00 p.m.

Maine Health Data Organization Conference Room
151 Capitol Street, Augusta, Maine

Introductions were made and the meeting began at 2:05 p. m. with the following in attendance: Alan Prysunka, Maine Health Data Organization (MHDO); Trish Riley, Governor's Office of Health Policy and Finance; Lisa Marrache, Maine State Senate; Rod Prior, Department of Health and Human Services (DHHS); David Winslow, Maine Hospital Association; Doug Clopp, Consumers for Affordable Health Care; Katie Fullam-Harris, MaineHealth; and Debbie Dodge, MHDO. Linda Adams, MHDO was present to take meeting minutes.

Approval of meeting minutes - The work group approved the October 20, 2009, minutes as written.

IRS Form 900 Presentation - Barbara McGuan, CPA from Berry, Dunn, McNeil & Parker was present to explain the IRS Form 990 to the work group, including the Schedule H, which is specific to hospitals. She stated that beginning with fiscal year 2008 the forms were expanded from only nine pages and two schedules (Schedule A and B) to 11 pages and 16 schedules. All of the schedules are available for public disclosure, with the exception of Schedule B, Schedule of Contributors, which lists names, addresses and donation amounts. Beginning with fiscal year 2008, the forms are required to be filed five months after the end of 2009, but there is an automatic three-month extension period, with the option to request an additional three-month extension. GuideStar gets copies of the 990 Forms and organizations are required by law to make available upon request three prior years. The forms are available on GuideStar in January of the next calendar year. Currently, many of the schedules are optional for FY08, but the IRS will require all schedules to be submitted beginning with FY09. Maine hospitals are now required to file the 990 Form with DHHS five months after filing with the IRS; and the Attorney General may request the forms.

Page 6 of the 990 Form contains "conflict of interest" information regarding executive compensation, and Page 7 lists compensation for the following categories:

- all current officers (including CEO's and CFO's), directors, trustees regardless of their amount of compensation and current key employees (key employees receive more than $150,000 total compensation);

- the five current highest paid employees (other than an officer, director, trustee, or key employee) who received reportable compensation of more than $100,000;

- all former officers, key employees and highest compensated employees for five prior years who received more than $100,000 of reportable compensation; and

- all former directors or trustees that received more than $10,000 of reportable compensation from the organization and any related organizations.

Also listed are individuals with reportable compensation and other benefits from related entities greater than $150,000 (related meaning more than 50% ownership or control). The five highest compensated independent contractors that received more than $100,000 are listed on Page 8.

Schedule D, Supplemental Financial Statements of Expenses, Page 4 is a reconciliation to the 990 with donated services and unrealized gains/losses pulled out. Donated property is considered revenue.

Schedule H, Hospitals, Page 1 relates to charity care and community benefit policies. Ms. McGuan referred to Catholic Health's web site that hospitals use as a reference guide to explain community benefits. She will e-mail the link to Debbie Dodge for distribution to the work group. Entities that are set up separately need to file separately and hospitals can only get an exemption if requested as a group. Nursing homes not licensed as a hospital do not have to file a separate Schedule H. The worksheets in Schedule H do not allow for bad debt or Medicare shortfalls. Medicaid shortfalls are considered "community benefit". Schedule H is optional for 2008 but required to be filed for 2009. Community building includes economic development, leadership support and workforce development. Part III, is a new section for bad debt and Medicare numbers to be quantified. Hospitals can explain why these amounts may be considered a community benefit.

Schedule I, Grants and Other Assistance to Organizations, Governments, and Individuals in the U.S., shows all grant information over $5,000. Schedule J, Compensation Information, shows additional compensation for those reporting salaries greater than $150,000, plus benefits and bonuses to executives, which should be taxable, non-fixed compensation. Schedule K, Supplemental Information on Tax Exempt Bonds, provides additional information about tax exempt bonds issued after 2002 and is optional in 2008 but required for 2009 reporting.

Schedule L, Transactions With Interested Persons, lists officers, directors, key employees, board members, highly paid employees, business entities, etc. with combined transactions of $100,000 for a year or individual transactions if more than $10,000 (35% ownership). Schedule R, Related Organizations and Unrelated Partnerships, shows related organizations (not board members or key employees) with taxable partnerships greater than 5%. Joint ventures usually have controlling interest and could risk exemption if they didn't show transactions as "for-profits". Their percentage of gross revenues and expenses is based on their percentage of ownership. Ms. McGuan explained that with a joint venture the hospital only owns 50% and the other group owns 50%; they are not related because the hospital doesn't own the majority, unless the individual is a Board member or an interested person is a board member or medical staff, but not a voting board member. Any transactions with hospitals above 35% or more must be disclosed.

Senator Marrache stated that she would like to see Schedule H in its entirety to determine where the money flows into organizations. She would also like to see a community benefit report with organization links presented to the legislature annually.

MHDO Legal authority - Mr. Prysunka informed the work group that the preliminary findings from the Attorney General's Office states that, due to the broad definition of health care facilities and the history of Maine Health Care Finance Commission from which the MHDO emerged, the MHDO does have legal authority to collect information from parent entities and for-profit entities affiliated with the hospital. There was some discussion about modifying the template for parent companies to get the information requested in the simplest way. The work group questioned whether parent entities or only individual hospitals are required to submit the Schedule H. Ms. Harris offered to find out if

MaineHealth is considered an entity required to submit a Schedule H and will report back to the work group.

A suggestion was made to amend the existing templates to include information from the 990 Form. It was recommended that the work group review what is collected on the 990 Form and the MHDO hospital financial templates to determine if the information Senator Marrache wants can be obtained. For example, community benefit and organizational information.

After some discussion regarding whether or not interpreter services, which are required by law, are considered a community benefit; Ms. Harris offered to provide Senator Marrache with MaineHealth's Community Benefit Report, and to clarify if interpreter services is a community benefit. Life Flight is considered a community benefit but is paid for, in part, by a bond. Senator Marrache questioned how hospitals cost shift due to charity care. Hospitals have a non-profit status and the Senator asked if non-profits should work within a cushion. Ms. Riley stated that the report Nancy Kane prepared for the Maine Hospital Study Commission will show Maine hospital reserves.

Nancy Kane - Debbie Dodge reported that Nancy Kane is willing to work with group, and Mr. Prysunka stated that he spoke with Wendy Wolfe of the Maine Health Access Foundation regarding a grant application. More detail is required of what needs to be done and there was talk of whether or not the group wants the MHAF to do the work.

Clarification of data needs - There was some discussion regarding who would work with the information collected to translate it and make it more usable. There were recommendations of hiring someone from Berry, McNeil, Dunn and Parker or a similar organization, and also Nancy Kane or a representative from her office. Senator Marrache had an offer from a consultant in Rhode Island to help do analysis and she will provide Mr. Prysunka with his name. Ms. Riley offered to contact Andy Coburn of the Muskie School who has an interest in hospital community benefit issues.

Senator Marrache wants to see affiliates at every level. It is important to determine what information the parent entities can provide that the hospitals are not already providing; concentrating on the transfer/flow of money. Transfers to profit/non-profit entities are not identified separately on the hospital financial templates. They are only reported in aggregate amounts and do not identify the specific entity name. All hospital systems are structured differently.

Next steps - Vinal Doody of Baker, Newman & Noyes was recommended as a CPA familiar with Hospital Audited Financial Statement to give a presentation at the next meeting. Debbie Dodge will contact Mr. Doody.

The next meeting is scheduled for November 16, 2009, at 2:00 p. m. in the MHDO conference room.

The Hospital Operating Expense Transparency Work Group meeting ended at 4:20 p.m.

Hospital Operating Expenses Transparency Work Group
Organizational Meeting

Maine Health Data Organization, Conference Room
151 Capitol Street, Augusta, ME 04330
December 8, 2009, 2:00 – 4:00 P.M.

I. Introductions

II. Approval of November meeting minutes

III. Brief overview for new members of the work group

IV. Presentation of hospital audited financial statements - Jeremy Veilleux, Principal and Rick Cyr, Senior Audit Manager, Baker, Newman & Noyes

V. Discussion of Maine hospital financial data - Nancy Kane, Harvard School of Public Health

VI. Further clarification of data needs

- Source of Data (MHDO template vs. IRS 990)
- Templates for all entities of hospital & parent entities (for-profit & non-profits)
- Adding lines to template to capture advertising expenses (define) & transfers from/to affiliates (entity names & amounts)
- Collection of operating budgets
- Collection of total compensation information from employees >100,000 (Chapter 300 rules, supplemental information)

VII. Next Steps

Thank you for your participation!

Hospital Operating Expense Transparency Work Group

December 8, 2009, 2:00 p.m.

Maine Health Data Organization Conference Room
151 Capitol Street, Augusta, Maine

Introductions were made and the meeting began at 2:05 p. m. with the following in attendance: Alan Prysunka, Maine Health Data Organization (MHDO); Lisa Marrache, Maine State Senate; David Winslow, Maine Hospital Association; Joe Ditre, Consumers for Affordable Health Care; and Debbie Dodge, MHDO. Linda Adams, MHDO was present to take meeting minutes.

Approval of meeting minutes - The work group approved the November 4, 2009, minutes as written.

Presentation of hospital audited financial statements – Jeremy Veilleux, Principal and Rick Cyr, Senior Audit Manager at Baker, Newman and Noyes disseminated a handout on audited financial statements and gave the workgroup an overview of the different types of financials, as well as an explanation of basic accounting terminology. Mr. Veilleux stated that the IRS Form 990 may not be audited information and is not reviewed for accuracy. The disclosure information is very different on 990 forms vs. hospital audited financial statements. Audited statements use accrual basis of accounting, the IRS 990 may not. The IRS Form 1120 (for-profit entities) is very difficult to compare to audited financial statements and are filed to report taxable income. The goal of the audited financial statements is to report to users (lenders, bond holders, the state, etc.) accurate financial information. Net service revenue on the audited financial statements and Form 990 may not match, but can usually be reconciled.

Mr. Cyr explained the audit process undertaken and provided an overview of the balance sheet. A discussion ensued regarding hospital charity care vs. bad debt. Most hospitals have specific policies regarding this and footnotes can be found in the audited financial statements regarding bad debt/charity care policies. The bottom line is that when the hospital expects to receive payment for services rendered, but do not, it is categorized as bad debt. However, when the hospital knows before services are rendered that the patient does not have the ability to pay it has to be considered charity care and the hospital cannot seek payment. Auditors never allow a change-over from bad debt to charity care. Hospitals have reserves for bad debt and charity care, and bad debt is an estimated allowance. Allowances also include contractual reserves (Medicaid/Medicare and Commercial).

The last stage of the audit is a review, using a long list of Generally Accepted Accounting Principles (GAAP); and a letter of accuracy is written.

A key number on the Income Statement of the audited statements is Income from Operations. This is gain or loss from patient services (health services). It excludes joint ventures and investment derivatives. A negative number is not good and means they will have to sell endowments or other assets.

Another key line is located on the Cash Flow Statement, "Net cash provided by operating and non-operating activities" and excludes debt and fixed assets.

Footnotes are a very important component of audited statements and are tailored to each organization. These are management statements in accordance with GAAP, and they provide a qualitative component. The Consolidating Schedules (Balance Sheets) show transfers among entities and are not required unless requested by management. The consolidating schedules cost approximately $15,000 extra to prepare. The MHDO receives hospital only consolidating schedules without the footnotes, but transfers to and from other entities are listed on the audited financial statements.

Presentation of Maine Hospital financial data - Nancy Kane, Professor at Harvard School of Public Health and who prepared the Maine Hospital Study Commission Report, joined the group by phone. She explained the differences between information found on the IRS Form 990 and what is found on the hospital audited financial statements. She recommended using the Schedule H as a guideline for community benefit information and stated that operating budgets are only useful for internal hospital management control purposes.

Consolidating schedules do show transfers to and from non-profit/for-profit entities and can be required to be submitted in a standard way. The 990 Form can also provide this information. Ms. Kane recommended the work group determine what types of transfers are desired. Transfers can also be in the form of loans and are sometimes provided to doctors and then forgiven at a later date. Receivables that are written off are shown as a loss, but not separated out. A one year in-depth analysis of the Form 990 and audited financial statements was recommended. Ms. Kane stressed that the MHDO has a wealth of information already and that analysis of the data is most important.

There was a discussion regarding rendering physicians not being clear when billing for hospital-owned physician offices. Payers are now being required to modify their systems to distinguish billing provider information from rendering provider information when the MHDO claims data rules become effective in February 2010. A question was asked to determine if hospitals charge Medicare more than a stand alone physician for the same service.

Ms. Kane will send Ms. Dodge contact information for Kate Nordahl, Assistant Commissioner for Policy and Research of the Massachusetts Division of Health Care Policy and Finance. Key ratios were mentioned and it was stated that key ratios are on the MHDO web site. Mr. Prysunka informed the work group that the MHDO Board of Directors will be holding a retreat in the near future and the MHDO undertaking data analysis will be discussed.

There was some discussion about money transfers and with using the existing template and applying it toward a parent template. Ms. Kane stated that the consolidated schedules show everything although money being transferred doesn't necessarily go through the parent entity. It was recommended that the work group prioritize what is needed and consider hiring additional staff for the MHDO to analyze the data that is currently being collected.

Clarification of data needs - It was agreed that a line should be added to the template for advertising expenses, but advertising expenses need to be defined. Mr. Winslow offered to obtain a list of definitions used by CMS. There was some question as to whether the MHDO is currently receiving hospital and parent system transfer of funds information in the consolidating schedules. Mr. Prysunka and Ms. Dodge will verify this and report back at the next meeting.

Senator Marrache decided that hospital operating budget information is not needed at this time. There was some discussion regarding obtaining total compensation information for employees earning more than $100,000 and it was agreed that this information is not needed at this time, but the importance of having it available in a timely fashion if needed in the future was expressed. It was also decided that a line should be added to the template for salary plus fringe benefits.

Next Steps - John Gale, Maine Rural Health Center, USM, will be invited to the next meeting to discuss community benefits. The next meeting was scheduled to be held on Tuesday, January 5, 2010 at 2:00 p.m.

The report to the Health and Human Services Committee should recommend adding staff for analysis of MHDO data with an explanation of necessity and stating that it will ultimately save money. It should also recommend a trends report and the MHDO should report to the Legislature possible problems observed when analyzing trends.

The meeting adjourned at 5:05 p.m.

Hospital Operating Expenses Transparency Work Group
Organizational Meeting

Maine Health Data Organization, Conference Room
151 Capitol Street, Augusta, ME 04330
January 5, 2010, 2:00 – 4:00 P.M.

I. Introductions

II. Approval of December meeting minutes

III. Brief overview for new members of the work group

IV. Presentation of Community Benefits – John A. Gale, Maine Rural Health Center, USM

V. Updates

- **Discussion with MA regarding analytical work being completed**
- **Financial data on hospital & parent systems from audited financials**

VI. Further clarification of data needs

- Templates for all entities of hospital & parent entities (for-profit & non-profits)

VII. Next Steps

Thank you for your participation!

Hospital Operating Expense Transparency Work Group

January 5, 2010 2:00 p.m.

Maine Health Data Organization Conference Room
151 Capitol Street, Augusta, Maine

Introductions were made and the meeting began at 2:05 p. m. with the following in attendance: Alan Prysunka, Maine Health Data Organization (MHDO); Lisa Marrache, Maine State Senate; Trish Riley, Governor's Office of Health Policy and Finance; David Winslow, Maine Hospital Association; Mia Poliquin Pross, Consumers for Affordable Health Care (CAHC); Ed Kane, Harvard Pilgrim; and Debbie Dodge, MHDO. Linda Adams, MHDO was present to take meeting minutes.

Approval of meeting minutes - The work group approved the December 8, 2009, minutes as written.

Brief overview for new members of the work group – Mr. Prysunka gave a brief overview of the previous meetings and of what the work group intends to accomplish.

Presentation of Community Benefits - John Gale, Muskie School of Public Health provided the work group with a PowerPoint presentation on hospital community benefit standards. Mr. Gale explained the history of community benefit standards, the definition of community benefit, current IRS reporting requirements, and current national and state level activity. He stated that the Catholic Health Association and VHA are leaders in community benefit reporting initiatives.

Mr. Gale stated that beginning in 2002 CHA, VHA and others collaborated on framework, which came out of the hospital industry, to establish hospital standardized accounting principles. In 2006 the IRS adopted CHA's A Guide for Planning and Reporting Community Benefit with minor changes.

Some discussion followed regarding charity care and cost shifting. It was stated that information should be collected and made available to the public in a user friendly manner. Ms. Poliquin Pross stated that CAHC has similar data available and she will distribute to the work group what they have available.

Mr. Gale stated that 34 of 36 Maine community hospitals (excluding Cary Medical Center and Mayo Regional Hospital) will be required to file the IRS 990 form in 2010 for tax year 2009. He also stated that not much narrative information exists on the 990 form. There is more information about costs and less about the types of community building activities. Mr. Gale suggested that additional discussion occur to identify priority community benefit activities for Maine hospitals asking what behaviors are worth encouraging and what is important.

Updates

Discussion with MA Regarding Analytical Work Being Completed - Debbie Dodge informed the Board that she had spoken with Kate Nordahl, Assistant Commissioner of the Massachusetts Division of Health Care Policy and Finance who is starting to build capacity to do analytical

work. Ms. Dodge circulated a copy of Massachusetts' hospital reports on quality and cost, financial, and operational analysis, stating that they have some information on their website that is similar to that of the MHDO. They do some in-house analysis work and subcontract with Mathmatica and Shram. They also utilize WebMD as a health share tool. WebMD has the Massachusetts Hospital Discharge data set and they can calculate market share using this tool. They have done work with Mathmatica to look at cost and premium trends. Senator Marrache stated that she would like to see periodic trend information. Ms. Dodge will stay in contact with Ms. Nordahl as the work progresses.

Financial Data on Hospital & Parent Systems from Audited Financials - Ms. Dodge distributed consolidating statements/schedules from four Maine hospital systems, which showed transfers between the parent systems and other entities. Mr. Prysunka asked the work group to note the captions: Current Assets, Liabilities Due to Affiliates, Inter-entity Receivables under Current Assets, and Inter-entity Payables. The handouts show what information the MHDO receives on hospitals and parent systems, and shows what data is available. There was a brief discussion on possibly requiring hospitals to submit additional standardized templates for parents and for all other entities, including for-profits.

David Winslow provided a handout explaining the definition of allowable and unallowable advertising costs established by CMS. It was agreed, based on the definition from CMS, that a line should be added to the standardized hospital templates requiring hospitals to provide advertising information.

Further Clarification of Data Needs

Templates for all entities of hospital & parent entities (for-profit and non-profits) - The work group continued its discussion of requiring hospitals to submit additional parent templates, a template for all entities, or adding lines to the existing financial templates.

They also discussed collecting salary and benefit information for positions greater than $100,000. It was stated that the MHDO should have additional staff with analytical skills and web-based knowledge. Mr. Prysunka informed the work group that an additional staff member may be hired through the Office of Information Technology. He also stated that vendors i.e.: DataBay could be obtained under contract and Senator Marrache stated that providing additional resources to the MHDO should be added to the list of recommendations that the work group submits to the Health and Human Services Committee.

Next Steps - It was stated that further discussion on hospitals reporting community benefit information is needed, and that priorities need to be set. The report to the Health and Human Services Committee needs to include the consensus reached by the work group and their recommendations. Mr. Prysunka will provide the work group with a list of further issues that need to be discussed at the next meeting. It was recommended that Mr. Prysunka check current legislation to avoid duplication of effort.

The final meeting was scheduled for January 19, 2010 from 3:00 p.m. to 5:00 p.m.

The meeting adjourned at 4:10 p.m.

Hospital Operating Expenses Transparency Work Group
Organizational Meeting

Maine Health Data Organization, Conference Room
151 Capitol Street, Augusta, ME 04330
January 19, 2010, **3:00 – 5:00 P.M.**

I. Introductions

II. Approval of 1/5/2010 meeting minutes

III. Issues Requiring Further Discussion

IV. Next Steps

Thank you for your participation!

Hospital Operating Expense Transparency Work Group
January 19, 2010 3:00 p.m.

Maine Health Data Organization Conference Room
151 Capitol Street, Augusta, Maine

The meeting began at 3:15 p. m. with the following in attendance: Alan Prysunka, Maine Health Data Organization (MHDO); Trish Riley, Governor's Office of Health Policy and Finance; Rod Prior, Department of Health and Human Services (DHHS); David Winslow, Maine Hospital Association; Joe Ditre, Consumers for Affordable Health Care; Ed Kane, Harvard Pilgrim and Debbie Dodge, MHDO. Linda Adams, MHDO was present to take meeting minutes.

Issues Requiring Further Discussion - From a handout received prior to the meeting, the work group discussed and reached a consensus on the following issues:

I. Additional standardized templates for parent entities/health systems, including for-profit: The work group discussed the definition of parent entity and the MHDO having legislative authority to collect system information. The consensus of the work group was to recommend collecting templates from hospital parent entities/health systems using the definition of parent entity in MHDO's Chapter 300: Uniform Reporting System for Hospital Financial Data as a starting point. They also agreed not to recommend requiring hospitals to submit standardized templates for other entities i.e.: nursing homes and other affiliates.

II. Additions to standardized template:
Transfers - Debbie Dodge stated that the templates show assets and liabilities on the balance sheet section and Mr. Prysunka explained how transfer information could be reported by adding additional lines to the templates. The consensus was to recommend that lines be added to the template (parent/health system and hospital) that would identify each entity and dollar amount transferred in excess of $100,000, in aggregate.

Advertising - The work group discussed the definition of allowed and non-allowed advertising costs. The group consensus was to add a line to the templates for total advertising expenses with two subcategories: allowed and non-allowed, based on the CMS definitions provided.

Salary & Benefits - The work group discussed information that is currently being collected on the standardized template, and information reported on the IRS 990 forms filed with DHHS, in an effort to avoid duplication. It was stated that Cary Medical Center, Mayo Regional Hospital and New England Rehabilitation Hospital of Portland are not required to file the 990 forms. The group also discussed which positions should be captured and the consensus was to add a line to report salary and benefits in aggregate on the template. Hospitals and parent entities/health systems should also be required to report to the MHDO salary and benefit information on all

non-physician administrative positions greater than $150,000 and all physician positions greater than $250,000.

III. Community Benefits Outstanding Issues: It was stated that the 990 form contains a considerable amount of information on community benefits. The work group discussed the issue and definition of bad debt write-offs vs. charity care, contractual reserves, and cost shifting. The consensus was that defining community benefits will take considerable time and should be addressed outside of the work group through the Health and Human Services Committee.

IV. Analytical Needs: It was reiterated from previous meetings that the MHDO already collects an array of relevant data that needs to be pulled together and presented to the public in an easily understandable format. Mr. Prysunka explained that there may be additional OIT personnel hired with savings from OIT fees. It was stated that there is a need for an analysis position, either at the MHDO or somewhere in state government and that the work group could ask for head count, especially if no additional money is needed. The work group discussed three important issues: 1. the need to produce reports, 2. putting information on the web for the public, and 3. to have timely data. Long-term consulting to set up what is needed was also mentioned. The MHDO needs to identify the type of analysis it will undertake and this will be discussed at the February 11 Board retreat. The consensus was to recommend adding one analytical staff at the MHDO included within the authorized budget.

Next Steps - MHDO staff will prepare a summary of the issues discussed and the consensus reached on each issue. This will be e-mailed to everyone present for their input, and then Mr. Prysunka will provide the summary to Senator Marrache (who was unable to attend the meeting) for further discussion and input.

Many of the details will be worked out through the rulemaking process and the group agreed that the report to the Health and Human Services Committee should set a realistic time in which to complete rulemaking, using the reporting timeframe of the IRS 990 form, Schedule H, which is thought to be September 2009. Staff will verify the date.

The meeting adjourned at 4:40 p.m.

Appendix C

CMS Definitions of Advertising Expenses

MED-MANUAL, CMS-MANUALS, §2136. ADVERTISING COSTS --GENERAL

Provider Reimbursement Manual (CMS-Pub. 15-1)

§2136. ADVERTISING COSTS --GENERAL

The allowability of advertising costs depends on whether they are appropriate and helpful in developing, maintaining, and furnishing covered services to Medicare beneficiaries by providers of services. In determining the allowability of these costs, the intermediary should consider the facts and circumstances of each provider situation as well as the amounts which would ordinarily be paid for comparable services by comparable institutions. To be allowable, such costs must be common and accepted occurrences in the field of the provider's activity.

MED-MANUAL, CMS-MANUALS, §2136.2 Unallowable Advertising Costs

Provider Reimbursement Manual (CMS-Pub. 15-1)

§2136.2 Unallowable Advertising Costs

Costs of fund-raising, including advertising, promotional, or publicity costs incurred for such a purpose, are not allowable.

Costs of advertising of a general nature designed to invite physicians to utilize a provider's facilities in their capacity as independent practitioners are not allowable. See section 2136.1 for allowability of professional contact costs and costs of advertising for the purpose of recruiting physicians as members of the provider's salaried staff.

Costs of advertising incurred in connection with the issuance of a provider's own stock, or the sale of stock held by the provider in another corporation, are considered as reductions in the proceeds from the sale and, therefore, are not allowable.

Costs of advertising to the general public which seeks to increase patient utilization of the provider's facilities are not allowable. Situations may occur where advertising which appears to be in the nature of the provider's public relations activity is, in fact, an effort to attract more patients. An analysis by the intermediary of the advertising copy and its distribution may then be necessary to determine the specific objective. While it is the policy of the Health Care Financing Administration and other Federal agencies to promote the growth and expansion of needed provider facilities, general advertising to promote an increase in the patient utilization of services is not properly related to the care of patients.

MED-MANUAL, CMS-MANUALS, §2136.1 Allowable Advertising Costs

Provider Reimbursement Manual (CMS-Pub. 15-1)

§2136.1 Allowable Advertising Costs

Advertising costs incurred in connection with the provider's public relations activities are allowable if the advertising is primarily concerned with the presentation of a good public image and directly or indirectly related to patient care. Examples are: visiting hours information, conduct of management-employee relations, etc. Costs connected with fund-raising are not included in this category (see § 2136.2).

Costs of advertising for the purpose of recruiting medical, paramedical, administrative and clerical personnel are allowable if the personnel would be involved in patient care activities or in the development and maintenance of the facility.

Costs of advertising for procurement of items or services related to patient care, and for sale or disposition of surplus or scrap material are treated as adjustments of the purchase or selling price.

Costs of advertising incurred in connection with obtaining bids for construction or renovation of the provider's facilities should be included in the capitalized cost of the asset (see Chapter I, § 104.10).

Costs of advertising incurred in connection with bond issues for which the proceeds are designated for purposes related to patient care, i.e., construction of new facilities or improvements to existing facilities, should be included in "bond expenses" and prorated over the life of the bonds.

Costs of activities involving professional contacts with physicians, hospitals, public health agencies, nurses' associations, State and county medical societies, and similar groups and institutions, to apprise them of the availability of the provider's covered services are allowable. Such contacts make known what facilities are available to persons who require such information in providing for patient care, and serve other purposes related to patient care, e.g., exchange of medical information on patients in the provider's facility, administrative and medical policy, utilization review, etc. Similarly, reasonable production and distribution costs of informational materials to professional groups and associations, such as those listed above, are allowable if the materials primarily refer to the provider's operations or contain data on the number and types of patients served. Such materials should contribute to an understanding of the role and function of the facility as a provider of covered health care in the community.

Costs of informational listings of providers in a telephone directory, including the "yellow pages," or in a directory of similar facilities in a given area are allowable if the listings are consistent with practices that are common and accepted in the industry.

Costs of advertising for any purpose not specified above or not excluded below may be allowable if they are related to patient care and are reasonable.

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