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IRS Provides Comfort on Subsidized EHR Arrangements

In a memorandum dated May 11, 2007, the Internal Revenue Service (IRS) issued long-awaited guidance on exempt hospitals sponsoring subsidized electronic health record programs (EHR).

Last year, on August 8, 2006, the United States Department of Health and Human Services (HHS) published final regulations permitting hospitals (and others) to provide, within defined parameters, EHR software and technical support to staff physicians at subsidized prices without violating the Stark or the Anti-Kickback Statutes. Since then, individual exempt organizations and trade groups, including the American Hospital Association, have been seeking similar comfort from the IRS on exempt organization issues. This memorandum finally provides that comfort.

The memorandum was drafted in the form of a directive to agents handling audits or exemption applications of hospitals that provide subsidized EHR software and/or technical support to medical staff members. In it, the IRS broadly states, "We will not treat the benefits a hospital provides to its medical staff physicians as impermissible private benefits or inurement in violation of section 501(c)(3) of the Internal Revenue Code if the benefits fall within the range of Health IT Items and Services that are permissible under HHS EHR Regulations and the hospital operates in the manner described below."

The "manner described below" includes the following features:

- The EHR arrangement requires both the hospital and the participating physicians to comply with the HHS EHR regulations on a continuing basis
- The arrangement grants to the hospital, to the extent permitted by law, access to all records maintained on the system by physician participants
- Participation is open to all medical staff members on an equal basis (or any inequality is due to criteria "related to meeting the healthcare needs of the community").

With respect to the last requirement, the HHS regulations permit discrimination in excess of the level of subsidy provided among different physicians so long as

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the distinctions are not drawn directly on the basis of referrals. The IRS, on the other hand, permits discrimination only when related to "healthcare needs." In this regard, the IRS standards appear more restrictive than those of HHS.

To view the ruling, please visit the following link:

<http://www.irs.gov/pub/irs-tege/ehrdirective.pdf>