AMERICAN COLLEGE OF LEGAL MEDICINE
55th Annual Meeting

Changes in Medical Practice Incorporation and Tax Status in 2015

Jayme R. Matchinski

February 27, 2015

Las Vegas, Nevada

This presentation and outline are limited to a discussion of general principles and Should not be interpreted to express legal advice applicable in specific circumstances.

CHANGES IN MEDICARE PRACTICE INCORPORATION & TAX STATUS IN 2015

The focus of this presentation is to provide an overview of the key changes which impact physician practices' incorporation and tax status in 2015. There are many factors which impact Physician practices, including: Health Care Reform, fluctuating Medicare reimbursement, increasing government audits and investigations, and regulatory changes. In structuring and operating their practices, physicians are required to make decisions regarding incorporation and tax status. This presentation will provide an overview of key practice incorporation and tax issues and a summary of the changes in Medicare practice incorporation and tax status for 2015.

CHANGES IN MEDICAL PRACTICE INCORPORATION AND TAX STATUS IN 2015

<u>More Acquisitions of Physician Practice Group</u>

- Since the passage of the Affordable Care Act (ACA) in 2010, health care systems have been acquiring physician practice groups to strengthen their market positions and form networks to take advantage of incentives under the ACA.

<u>More Hospital Mergers</u>

- One study found that hospital mergers and acquisitions increased 10% in the first quarter of 2014, compared to the first quarter of 2013. Overall, studies indicated an increasing number of acquisitions.

MEDICAL PRACTICE INCORPORATION

Impact of Physician Practice Group Acquisition:

- Consolidation of group practices.
- Collaborative efforts and gainsharing between physicians and health care systems.
- Primary care physicians and specialty practices are merging and being acquired by health care systems.
- DOJ and FTC enforcement efforts will be focused on health care as stewards of the public's demand for fair competition and limits on monopolistic behavior.
- Mergers provide hospitals with greater access to capital, as hospital size is closely tied to a hospital's bond rating.

TAX STATUS TRENDS

- On December 31, 2014, the IRS issued final guidance for not-for-profit hospitals on billing and collections and clarified certain provisions of the ACA.
  - → 60% of U.S. hospitals are not-for-profit hospitals.
- Non-compliance with these new provisions outlined in section 501(r) in the Internal Revenue Code, can result in loss of tax-exempt status.
- These rules apply even if a hospital operates a facility through a partnership or limited liability company where the hospital has an ownership stake.
- Hospitals must make a good faith effort to comply immediately, but the final rules are effective for taxable years beginning December 29, 2015.

TAX STATUS TRENDS

Based upon the IRS final guidance, tax-exempt hospitals should:

1) Make the community health need assessment available to the public.
   – Tax-exempt hospitals must conduct a community health needs assessment (CHNA) at least once every three (3) years and adopt an implementation strategy to meet the needs identified.
   – Both the assessment and the strategy must be made "widely available to the public" which can be satisfied if posted online.
   – The ACA imposes a $50,000 tax on hospitals that fail to satisfy the CHNA requirement for each year of non-compliance.
2) Revisit written financial assistance policy (FAP) and post the FAP online.
   – FAP must spell out eligibility criteria, process and how charges are calculated.

TAX STATUS TRENDS (CONT'D)

3) FAP must explain the actions that may be taken in the event of non-payment.
   - FAP should list all providers besides those employed by the hospital who delivered emergency and medical care, and note which services are covered and not covered by the FAP.
   - FAP, FAP application, and a plain-language summary, must be available both online and in paper form and displayed prominently in the hospital.
   - There must be a non-English translation of at least 5% of the hospital's communities or 1,000 people, whichever is lower.
4) Evaluate debt collection efforts for future compliance.
   - Not-for-profit hospitals cannot sell a patient's debt, defer or deny medically necessary care or report adverse information to a patient's credit agency until the patient has had eight (8) months (from the first post-discharge bill) to apply for financial assistance and confirm FAP eligibility.

TAX STATUS TRENDS (CONT'D

5) Ensure FAP patient charges can be billed according to the new provisions.
   - Hospitals must limit FAP-eligible patient's charges for emergency or medically necessary care to not more than the "amounts generally billed" (AGB) to individuals with insurance covering that care.
   - AGB calculations are dictated by the regulations.

Conclusions:

* These IRS guidelines make maintaining tax-exempt status significantly more difficult for non-profit hospitals which play a vital role in rural areas.
* The rapid consolidation of the health care system coupled with the dire budget constraints of some local jurisdictions increases the likelihood of scrutiny and the potential for large tax assessments.

Jayme R. Matchinski
(312) 985-5940
jmatchinski@clarkhill.com