The legal issues associated with the delivery of healthcare services have become substantially more complex. An evolving and complicated regulatory environment, new technologies and medical procedures, shifts in reimbursement programs, shrinking capital sources and market demands are just a few of the reasons why healthcare providers require specialized legal services.

Ungaretti & Harris’ Healthcare Department remains devoted to meeting the changing needs of the healthcare industry. Our firm of 100-plus lawyers devotes a substantial portion of its firm-wide practice to the legal needs of healthcare providers and other related clients.

The IRS’s Director of the Exempt Organizations Division issued guidance on the tax implications of financial assistance donated by tax-exempt hospitals to physicians with staff privileges for the acquisition of software to support electronic health records (EHRs). In its May 11, 2007 memorandum, the IRS clarified that it will not treat subsidies for EHR software and technical support services provided by a hospital to its physicians as an impermissible private benefit or inurement to the hospital in violation of section 501(c)(3) of the Tax Code, so long as the following conditions are met:

- The benefits provided to physicians are within the scope of the Department of Health and Human Services’ (HHS) federal Anti-Kickback Statute and Stark Law EHR regulations issued August 8, 2006.
- The hospital and participating physicians agree to comply with the HHS EHR regulations on a continuing basis.
- The hospital may continue to access all electronic medical records created by the physicians using the subsidized items and services.
- The hospital makes EHR items and services available to all of its medical staff physicians.
- Finally, the hospital provides the same level of subsidy to each of all its medical staff physicians, or varies the level of subsidy according to the healthcare needs of the community.

Among the key provisions of the HHS EHR regulations are the requirements that donations include only software, information technology and training services (not hardware); that donated software be interoperable and used “predominantly” to create, maintain, transmit or receive EHRs; and that recipients share at least 15 percent of the cost of the donated items and services.

The memorandum does not address the tax implications of the donations to the receiving physicians.

The IRS memorandum is available here.

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