REPRESENTING AND MANAGING TAX-EXEMPT ORGANIZATIONS

EO Healthcare Issues

T.J. Sullivan, Esq.
Drinker Biddle & Reath LLP
Washington, D.C.
(202) 230-5157
tj.sullivan@dbr.com

Catherine E. Livingston, Esq.
Jones Day
Washington, D.C.
(202) 879-3756
clivingston@jonesday.com
Telemedicine and Tax

- Increasing use of technology to deliver health care services.
- Tax-exempt hospital or health care entity may be the site where the patient presents or may be the remote service provider.
  - Provider remotely monitors patient
  - Provider reviews images, test results etc.
  - Provider to patient consult
  - Provider to provider consult
Application of UBIT to Health Care Services

- Health care services to hospital’s patients are related to furthering exempt purpose.
- Services for the convenience of the patient are not an unrelated trade or business. (513(a)(2)).
- Services to individuals who are not otherwise patients of the hospital are an unrelated trade or business.
  - Exception if services are scarce in community.
  - Exception for services to small hospitals at or below cost (513(e)).
  - Exception for casual sales.
  - Exception for services that contribute to medical education.
Ancillary Services Subject to UBIT

- Management, administrative, or similar services for another provider are an unrelated trade or business unless there is a parent/sub relationship or structural and financial integration between service provider and service recipient (as with JOA).
Is this Your patient?

- Does the remote provider seek informed consent to treat the patient?
- Who is billing the patient?
- Does the remote provider give a HIPAA privacy notice?
- Is the physician licensed in the state where the patient is located?
- Is the physician on the medical staff of the hospital where the patient is located?
- Does the remote provider take a medical history?
Do Other Exceptions Apply?

- Are the remote site and the patient site linked by a common parent or operated together under a joint operating agreement?
- Do the remote site and the patient site participate in the same ACO?
- Are the services directed to patients who are elderly, low-income or disabled (charitable class)?
- Does the telemedicine function provide an opportunity for training or education?
Other Tax Considerations

- State Level UBIT
- State sales and use tax
- International taxation
HEALTHCARE REFORM - PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA)

• New Code Section 501(r), introduced by Sen. Grassley, then ranking minority member of Senate Finance
• New requirements for hospitals to maintain exemption from federal income tax under IRC Section 501(c)(3)
• If organization operates multiple hospitals, each hospital facility must separately meet these requirements
• Requirements generally effective for tax years beginning after March 23, 2010
• Final Regulations Dec. 29, 2014.
HEALTHCARE REFORM - PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA)

• Requires IRS to review the community benefit activities of each hospital at least once every 3 years.
• Requires annual reporting by Sec’y of Treasury on information with respect to private tax-exempt, taxable, and government-owned hospitals (and trend reporting by 5 years).
• IRS reviews performed by TE/GE unit in Ogden, UT. Not an examination, taxpayers not notified.
• 2011 Report to Congress (January 2015)
HOSPITALS AND SECTION 501(r)

- 501(r) applies to all state licensed hospitals
  - Includes those operated in joint ventures
- Includes public hospitals that sought recognition under Section 501(c)(3)
  - Some publics want to relinquish (c)(3)
  - At first, IRS required a ruling under Section 115
  - Comment on proposed regs requesting simplified process
  - TE/GE has begun ruling on relinquishment
HOSPITALS AND SECTION 501(r)

- New requirements in four areas—
  - Financial Assistance Policies
  - Limits on patient charges
  - Limits on collection practices
  - Community health needs assessments
- Also must provide audited financial statements with Form 990
HOSPITALS AND SECTION 501(r)

• Financial assistance policy (FAP) requirements
  • Shift in terminology from “charity care” to “financial assistance”
  • Must have written plan; publicize widely
  • Include eligibility criteria, whether care is provided free or at a discount, and basis for calculating charges
  • Separate written policy on emergency care
  • Premium support??? (Hospital vs. foundation; income vs. health)
• Limits on patient charges
  • May not use gross charges for anyone eligible for financial assistance
    • Applies to any medical care, not just emergency and medically necessary care, provided to a FAP-eligible individual
  • Must limit amounts charged to patients who qualify for financial assistance to not more than amounts generally billed to insured patients
FOREST VIEW OF HOSPITAL EXEMPTION STANDARDS 1969-2015

• Compare:
  - Community Benefit Standard
  - Revenue Ruling 69-545
  - No APA or public comment
  - Challenged, but S. Ct. said poor lacked standing
  - Little reporting, lack of definitions

• Versus
  - 501(r)
  - Statute/Notice and comment Regs
  - Input from hospitals, public health, advocates for poor and uninsured
  - Lots of reporting and definitions
  - Transparency
COMPLAINT ABOUT JACKSON HEALTH SYSTEM

- Advocates for poor and underserved filed a complaint with IRS
- Alleged violations of 501(r) financial assistance policy and billing and collection requirements
- Form 13909
- Jackson Health is a public hospital. Not clear that 501(r) applies
COMPLAINT ABOUT MISSOURI HOSPITAL

- ProPublica story about billing and collection practices
- Senator Grassley letter asks for information about 501(r) compliance
FINAL SECTION 501(r) REGULATIONS

- Rev. Proc. 2015-21
QUESTIONS