

Internal Revenue Service

memorandum

date: 05/11/07

to: Director, Exempt Organizations, Examinations SE:T:EO:E
Director, Exempt Organizations, Rulings & Agreements SE:T:EO:RA

From: Director, Exempt Organizations SE:T:EO
/s/ Louis G. Lerner

subject: Hospitals Providing Financial Assistance to Staff Physicians Involving Electronic Health Records

The purpose of this memorandum is to provide a directive for handling examination and exemption application cases involving hospitals that provide physicians who have staff privileges at those hospitals ("medical staff physicians") with financial assistance to acquire and implement software that is used predominantly for creating, maintaining, transmitting, or receiving electronic health records ("EHRs") for their patients.

Many hospitals described in section 501(c)(3) of the Internal Revenue Code ("Code") plan to establish interoperable EHR systems to improve the effectiveness and efficiency of their medical care and to reduce medical errors. Some hospitals believe that their medical staff physicians need a financial incentive to acquire and implement EHR software that would allow the physicians to connect to the hospitals' EHR systems. On August 8, 2006, the U.S. Department of Health and Human Services ("HHS") issued final regulations (see 42 C.F.R. Section 411.357 and 42 C.F.R. Section 1001.952) ("HHS EHR Regulations") that allow hospitals to provide, within specific parameters, EHR software and technical support services ("Health IT Items and Services") to their medical staff physicians without violating the federal anti-kickback law, 42 USC §1320a-7b and physician self-referral law, 42 USC §1395nn.

We will not treat the benefits a hospital provides to its medical staff physicians as impermissible private benefit or inurement in violation of section 501(c)(3) of the Code if the benefits fall within the range of Health IT Items and Services that are permissible under the HHS EHR Regulations and the hospital operates in the manner described below.

A hospital that is otherwise described in section 501(c)(3) of the Code enters into Health IT Subsidy agreements with its medical staff physicians for the provision of Health IT Items and Services at a discount ("Health IT Subsidy Arrangements"). These Health IT Subsidy Arrangements require both the hospital and the participating physicians to comply with the HHS EHR Regulations on a continuing basis. The Health IT Subsidy Arrangements provide that, to the extent permitted by law, the hospital may access all of

the electronic medical records created by a physician using the Health IT Items and Services subsidized by the hospital. The hospital ensures that the Health IT Items and Services are available to all of its medical staff physicians. The hospital provides the same level of subsidy to all of its medical staff physicians or varies the level of subsidy by applying criteria related to meeting the healthcare needs of the community.

This memorandum does not apply to a hospital that allows its earnings to inure to the benefit of one or more medical staff physicians through arrangements that are other than Health IT Subsidy Arrangements, because the hospital would not be considered to be described in section 501(c)(3) of the Code.

If you have any questions regarding this memorandum, please contact Stephen Clarke at 202-283-9474, or Steven Grodnitzky at 202-283-8941.