

HEALTH CARE PRACTICE GROUP ADVISORY

IRS Releases Nonprofit Hospital Study

The United States Internal Revenue Service (the “IRS”) recently released its *IRS Exempt Organizations Hospital Compliance Project Final Report* (the “Report”). The Report is the result of an IRS study of nonprofit hospitals which began in 2006. The purpose of the study was to provide the IRS a better understanding of nonprofit hospitals and their community benefit and executive compensation practices and reporting. As part of the study, the IRS sent questionnaires to more than 500 nonprofit hospitals.

The Report’s findings with respect to community benefit practices have received particular attention since the release of the Report. “Community benefit” refers to the legal standard for determining whether a nonprofit hospital is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The standard utilizes a “facts and circumstances” test to assess whether a nonprofit hospital benefits the community it serves through the promotion of health (e.g. free care, education and research). The Report indicates that the almost 500 hospitals which responded to the IRS survey reported spending an average of 9 percent of their total revenues on providing community benefits, including free medical care, education and research. However, the Report states that uncompensated care and community benefit expenditures were concentrated in certain hospitals and unevenly distributed. For example, 14% of the hospitals reported 63% of the aggregate uncompensated care expenditures of all the hospitals surveyed.

The executive compensation section of the Report indicates that there is widespread reliance upon the “Rebuttable Presumption of Reasonableness” by hospitals when determining executive compensation. The Rebuttable Presumption of Reasonableness refers to a process involving an independent body to review and establish the amount of compensation in advance of actual payment, use of permissible comparability data to establish the compensation, and contemporaneous documentation of the process used to establish the compensation in the particular instance. The Report states that nearly all compensation amounts were upheld as established pursuant to the rebuttable presumption of reasonableness.

Members of Congress have responded to the Report by indicating that legislation is necessary to hold nonprofit hospitals more accountable for their tax breaks. It is expected that such legislation would require nonprofit hospitals to spend a minimum amount on free care for the poor and set curbs on executive compensation and conflicts of interest.

If you have any questions regarding the Report, please do not hesitate to contact any of the attorneys at The Rogers Law Firm. The Report can be found at:
<http://www.irs.gov/charities/charitable/article/0,,id=203109.00.html>.

This Advisory is published by The Rogers Law Firm to keep you informed of developments in health law. The Advisory should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. If you have any questions or concerns regarding the Advisory or would like legal advice or legal opinion concerning a specific matter, please do not hesitate to contact any of the attorneys at The Rogers Law Firm at 617-723-1100.