CCH Health Care Compliance LETTER

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On The Front Lines 4

Compliance officers, boards outline compliance priorities by Catherine Hubbard, MA

Fraud and Abuse 1

- Supplementary guidance for hospitals published

HIPAA 2

- OCR provides Q&A guidance on HIPAA disclosures
- HIPAA will increasingly apply to financial institutions, expert cautions

Tax 6

- IRS and charity care lawsuits target exempt organizations, hospitals

Letters to the Editor

The CCH Health Care Compliance team welcomes comments or questions regarding articles published in the CCH Health Care Compliance Letter. Send comments to Sharon Sofinski, Coordinating Editor, at sofinsks@cch.com. For more information about the CCH Health Care Compliance Portfolio visit our online store at http://health.cch.com.

Supplementary guidance for hospitals published

by Sharon Sofinski, Coordinating Editor

The Office of Inspector General (OIG) announced that it has published the "Supplemental Compliance Program Guidance for Hospitals."

Issued in 1998 to promote compliance with the rules and regulations for participation in Medicare and other federal health care programs, the original compliance program guidance (CPG) focused on how hospitals could design effective voluntary compliance programs. The supplemental CPG offers hospitals guidance on how to measure and improve existing compliance programs, and highlights additional fraud and abuse risk areas for hospitals.

Compliance program effectiveness. The supplemental CPG discusses the roles of corporate leadership and self-assessment of hospital compliance programs. Topics covered include:

- Code of conduct
- Regular review of program effectiveness
- Designation of a compliance officer and compliance committee
- Development of policies and procedures, including standards of conduct
- Developing open lines of communication
- Training and education
- Internal monitoring and auditing
- Response to detected deficiencies, and
- Enforcement of disciplinary standards.

The CPG also offers guidance on self-reporting any instance of misconduct, stating that "reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions...".

Risk areas. The OIG's supplemental CPG highlights the following risk areas for hospitals:

- Billing under the outpatient prospective payment system
- The physican self-referral (Stark) law
- The antikickback statute
- Relationships between hospitals and physicians
- Relationships between hospitals and other providers
- Joint ventures
- Practitioner recruitment, and
- Furnishing of substandard care.

Stressing that the supplemental CPG "is not intended to be a one-size-fits-all guidance," OIG recommends that each hospital focus its compliance efforts on risk areas most relevant to its organization.

The OIG received numerous suggestions in response to two Federal Register notices soliciting public comment on the original CPG. Many of those suggestions, most of which related to fraud and abuse risk areas, were incorporated into the final supplemental CPG. The OIG also considered other OIG guidance (advisory opinions, special fraud alerts) in crafting the supplemental CPG, as well as consulted the Centers for Medicare & Medicaid Services, the HHS Office for Civil Rights (OCR) and the Department of Justice.

The complete supplemental CPG is posted on the OIG website at http://www.oig.hhs.gov/fraud/docs/complianceguidance/012705HospSupplementalGuidance.pdf ■

CCH Chicago Bureau, January 31, 2005

HIPAA

OCR provides Q&A guidance on HIPAA Privacy disclosures

by Gené Stephens Connolly, JD

The Department of Health and Human Services Office for Civil Rights (OCR) released a new set of facts and questions that provide guidance on how the HIPAA Privacy Rule applies to the use and disclosure of protected health information (PHI) for judicial and administrative proceedings. The guidance includes a list of nine questions and answers ranging from questions on the disclosure of PHI for litigation and discovery requests to rules regarding adherence to privacy of PHI by business associates of a lawyer who is representing a covered entity or individual.

The new HIPAA questions include the following:

(1) May a covered entity that is a party in a legal proceeding use or disclose PHI for litigation?

(2) May PHI be disclosed in response to a subpoena or discovery request absent a court order?

(3) May a covered entity use or disclose PHI for litigation?

(4) What "satisfactory assurances" are required before responding to a subpoena without a court order?

(5) When must a covered entity account for disclosures of PHI made during the course of litigation?

(6) For legal proceeding disclosures, when is a copy of the subpoena sufficient satisfactory assurance and notice?

(7) Must lawyer-business associates require others to agree to the privacy conditions that apply to the lawyers?

(8) For legal proceeding disclosures, can notice be given to the individual's lawyer?

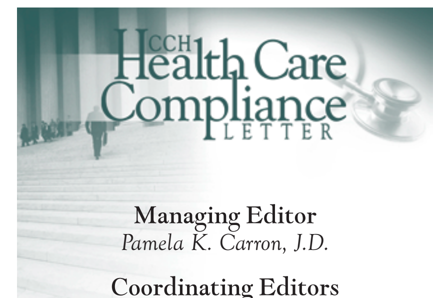
(9) May a covered entity disclose PHI in response to a court order?

The OCR website provides detailed explanations for each of the above questions and places particular emphasis on the treatment of PHI disclosure in court proceedings. The OCR also makes specific references to the regulations (45 C.F.R. 164.514) and cautions that while covered entities may, as part of a legal proceeding or court order, use or disclose PHI, reasonable efforts must be made to limit the use and disclosure of the information to the minimum necessary for the requested, court-ordered disclosure.

Listed below are highlights from some of the OCR answers to the new HIPAA Privacy questions:

- A lawyer who is a business associate must apply the minimum necessary standard to its disclosures of PHI, as the business associate contract may not authorize the business to further use or disclose PHI in a manner that would violate the HIPAA Privacy Rule. In certain circumstances, this may include de-identifying the information or stripping direct identifiers from the information to protect the privacy of individuals. Lawyers may also avail themselves of the protections routinely afforded for similarly confidential information within the litigation forum, such as protective orders on the use of information.
- In response to a subpoena, discovery request or other legal process that is not accompanied by a court order, a covered entity may disclose PHI if certain conditions are met. Specifically, a covered entity who is a non-party litigant may disclose PHI without a court order where: (1) the covered entity receives a written statement and accompanying documentation from the party seeking

continued on page 3



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Unless otherwise noted, all paragraph references are to the CCH Health Care Compliance Reporter.

the information that reasonable efforts (or satisfactory assurances of a good faith effort) have been made either to ensure that the individuals who are the subject of the information have been notified of the request, or to secure a qualified protective order for the information, or (2) the covered entity makes reasonable efforts, itself, to either provide notice to the individuals or to seek a qualified protective order (45 CFR 164.512(e)).

- While individuals have a right to receive, upon request, an account of disclosures of PHI made by a covered entity (or its business associate), certain exceptions apply. The exceptions, or instances where a covered entity is not required to account for disclosures, include disclosures for treatment, payment, or health care operations and disclosures authorized by the individual (45 CFR 164.528).
- For disclosures for judicial and administrative proceedings, a copy of the subpoena is sufficient when, on its face, it meets the requirements of 45 CFR 164.512(e)(1)(iii), such as: (1) demonstrating that the individual whose PHI is requested is a party to the litigation; (2) providing notice that the request has been provided to the individual or her attorney; and (3) providing verification that the time for the individual to raise objections has lapsed and that objections were not filed, or that any objections filed have been resolved.

The full text of the FAQs is posted on the OCR website at http://www.hhs.gov/ocr/hipaa. ■

CCH Chicago Bureau, January 27, 2005

HIPAA will increasingly apply to financial institutions, expert cautions

by Catherine Hubbard, MA
Contributing Editor

A growing number of banks are processing health care transactions that contain protected health information (PHI), making it likely that more financial institutions will eventually become business associates—or even covered entities—under the HIPAA rules, according to Kirk Nahra, a partner with Wiley Rein and Fielding, Washington, D.C. "What banks have been doing for health care customers has changed over the last 10 years," he said at a January 25 conference in Washington, D.C., hosted by the American Conference Institute.

The three HIPAA rules that have been implemented so far include the Privacy Rule, the Security Rule, which goes into effect in April 2005 and the Standard Transaction Rule. The Standard Transaction Rule is the least successful of all the three HIPAA rules, Nahra said. "It's a mess right now," he said, adding that it has caused enormous confusion.

"There is a problem with the rule and how it is working now," said Nahra in comments after the conference. "Banks can be part of the solution, because the current environment isn't working well," he said.

"Banks are increasingly playing a role in providing services to health care companies dealing with those standardized transactions," and under any scenario they're routing those transactions, said Nahra. "There's an increasing level of attention being paid to the fact that banks have a tremendous amount of health care information" that they could choose to use, he added.

Of the three categories of covered entities under HIPAA: health providers, health plans and health care clearinghouses, the clearinghouses, those who convert non-standardized electronic health care transactions into standardized HIPAA transactions, is the third category that will likely affect banks. "It's a very specific kind of middleman," Nahra said. Currently, he noted, there are few, if any, banks acting as HIPAA clearinghouses.

One question banks will face is whether they will become a covered entity by becoming a clearinghouse by virtue of the services they are providing, Nahra said. "There's a substantial business opportunity there, but it will carry with it some of these HIPAA obligations," he added.

Banks as business associates. Banks could be affected in a far-reaching way, Nahra said. For instance, if a bank provides a service for a health care company that involves PHI, than it must become a business associate, meaning it will have to sign a business associate contract.

That contract is more detailed than any Gramm-Leach-Bliley Act (GLB) agreement, Nahra said, noting that while GLB contracts are usually a few paragraphs, HIPAA contracts span many pages. Lots of banks will be covered as business associates, he said, noting that as banks are doing more value-add services for health care companies, they increasingly will have to deal with this issue.

continued on page 6

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On The Front Lines

Compliance officers, boards outline compliance priorities

by Catherine Hubbard, MA

Health care organizations are well on their way toward creating effective compliance programs, involving the boards in compliance decisions and making compliance part of their core missions. The government is doing its part as well, by providing guidance, rather than hard and fast rules, and by listening to the successes and concerns of compliance officers.

Recently, the Health Care Compliance Association (HCCA) and the Health and Human Services Office of Inspector General (HHS OIG) held a roundtable discussion on governance in compliance programs and discovered some surprising and some positive trends. The meeting highlighted the importance of tailoring programs to meet the individual needs of the organization, keeping lines of communication open and fostering a mature compliance program.

HCCA President Al Josephs said the roundtable discussion among the OIG and four health care organizations, both large and small, was a success from both the government's and private sector's view. "The presenters did a wonderful job in terms of sharing what they do," he said.

Catholic Health East, Newtown Square, Pennsylvania; CHRISTUS Health, Irving, Texas; University Health Systems of Eastern Carolina, Greenville, North Carolina; and Samaritan Medical Center, Watertown, New York, participated in the event.

At the meeting, a compliance officer, a member from the board of directors, and general counsel from each organization answered questions posed by the American Health Lawyers Association and the OIG. During the discussion, it became evident that the boards recognize that compliance must be part of the core mission, said Josephs during a recent interview. "That was the reason a lot of the people were board members. They believed in what they were doing and they have a strong belief in their mission, vision and values," he said.

> **"The meeting clearly demonstrated the importance the organizations place on compliance and their willingness to devote substantial authority to compliance officers."**

Board members also showed that they have a mature understanding of the industry, Josephs said. "A lot of effort had gone into the compliance programs and each organization had support of their leadership and full board for the development and ongoing operation of the programs," he added. "It was an active exchange of ideas, and those ideas were based on experiences, rather than theory."

Responsible Reporting

The roundtable included about 80 people from different sizes and types of organizations, large and small, for-profit and nonprofit. Josephs said he noticed that the organizations tailored their reporting requirements to meet their individual needs. While reporting was not quite as frequent in the smaller systems, all compliance officers reported to the boards at least quarterly. Josephs said it is helpful that the government had the foresight to put together guidance, rather than rules, allowing each organization to find which system works best. "Each individual board can determine how often they want to see the reports," he said.

For routine updates on annual compliance programs, quarterly updates seem to be adequate, said Josephs, "But if the organization has major compliance issue, I'm sure the board would want to be appraised of those more frequently," he said. Hillcrest Health System, Waco, Texas, a larger organization where Josephs is director of corporate compliance and privacy, is increasing the frequency of its meetings from every other month to monthly. "It shows the board's interest," when members request more frequent meetings, he said, adding that he is looking forward to the challenge.

Also encouraging, Josephs said, is that many boards prefer to meet with the compliance officers without the CEO or senior management present. In some organizations, the compliance officers have private meetings with the board, usually either before or after a board meeting, he noted. "It

was nice to see that the compliance officers had direct access to the board," he said.

Authority

The meeting clearly demonstrated the importance the organizations place on compliance and their willingness to devote substantial authority to compliance officers, Josephs said. Many of the boards were finding out on a regular basis whether more funds were needed, he continued. "One of the responsibilities the board felt they had was to make sure the compliance program had the right level of resources," he said, noting that providing adequate resources is one of the best ways to ensure an effective program. "It's a very important part of the governance of an organization and also the management of the organization in terms of getting the job done right in protecting the organization," Josephs said.

"We've had tremendous success in working with the OIG."

Integrity officers even had access to money that was not in the budget. "It speaks strongly of their priorities," he said.

At CHRISTUS Health, for instance, the Integrity Officer is authorized to issue guidelines supporting management directives; to establish budgets and to access funding (including resources not in the budget); to implement the compliance work plan; to initiate audits and access audit resources; to suspend billing, to engage outside counsel/consultants; to recommend and establish internal controls; and to request executive sessions.

Legal Issues

Protecting attorney-client communication and maintaining a transparent process often are conflicting goals since counsel wants to protect the institution. But both goals must be met. One suggestion that arose during the meeting was to plan ahead—if a voluntary disclosure is probable, then treat it as not privileged from day one.

Josephs noted that the boards understood there has to be a balance between protecting attorney-client privilege and keeping lines of communication open so that legal counsel knows what the issues are and has the independence to operate and conduct investigations.

Another decision, whether to hire external or internal counsel, will often depend on the size of the firm, said Josephs. "While legal issues are important, they become extremely unique operating issues to each organization," he said.

In one organization, the compliance officer was also general counsel, but the provider was about to separate the duties, bringing "additional balance to how they manage their compliance activities," he said. Many large firms have general counsel, but for small organizations, external counsel often plays that role, he noted. Often at Hillcrest, the compliance staff directs the external counsel in terms of managing the investigation. "That way no one gets spread too thin and it protects the integrity of the investigation," he said.

Selecting Board Members

The discussion also highlighted the goal of having a well-qualified board. "The board members present have a desire to get really qualified people on who are willing to take the time and commit the time to understand compliance," said Josephs. Compliance officers and program officers said they participate in board orientation, making sure the board understands quality issues, medical staff issues and how to read financial statements, he said. As the members come on board, compliance officers need to make sure they're conducting effective orientation and ongoing education, he emphasized.

Outcome

The roundtable, the fourth government-industry forum the OIG has co-sponsored with HCCA, provided several benefits, Josephs said. "It gives the OIG and other government officials an opportunity to hear what most people in the trenches are doing," he said. "It's also rewarding for the government to see the number of organizations out there doing their best to have effective compliance programs," he said. Josephs added that the roundtable helped the OIG to understand where it might improve or target their enforcement activities.

"We're fortunate to have this kind of working relationship with the OIG, and the fact they have an interest in doing this speaks well of their desire to not make this an onerous activity, but assist in providing the kind of guidance we need to have effective compliance programs," said Josephs.

"We've had tremendous success in working with the OIG," he said.

Source: Continuing a Partnership for Effective Compliance: A Summary of the Government-Industry Roundtable on the Role of Governance in Compliance Programs, June 16, 2004, Health and Human Services Department Office of Inspector General. Available at www.hcca-info.org. Catherine Hubbard is a writer/analyst in CCH Incorporated's Washington, DC, office. She hold a Master's Degree in Government and covers developments in health care, tax, banking, and other areas for CCH publications.

It's not the easiest time for banks to get involved as business associates. By April 14, 2003, with a few exceptions, every health care company had to have a contract signed with every vendor that they use. Now, a few more provisions must be added to the contracts to comply with the Security Rule, effective April 2005, Nahra said. "Business associate contracts on the whole are staying complicated," he concluded, adding that security rule components are creating new confusion.

Enforcement. Many of the more visible problems in the health care industry have related to security concerns, rather than privacy concerns. Banks, as they provide more services for the health care industry, will be affected by this trend, Nahra predicted.

Nahra noted that enforcement of the Privacy Rule over the last two years has been surprisingly sparse. "It's an open issue as to whether enforcement will ever be significant," he added. The government "has made some noises about starting to get tough on privacy enforcement, but it really hasn't happened yet," he said. So far, the focus remains on voluntary compliance, informal resolution and education, he noted.

Out of more than 8,000 complaints, the government has closed 57 percent, said Nahra. "That number is misleading," he said, adding that the 43 percent that haven't been closed involved privacy problems officials have had to look into.

Top complaints are impermissible use or disclosure of PHI; lack of adequate safeguards to prevent such use or disclosure; failure to provide access to PHI; disclosure of PHI that exceeds the minimum necessary standard; and failure to provide notice of privacy practices. The top targets of complaints are private health care providers, doctors, general hospitals, pharmacies, outpatient facilities and group health plans. About 125 complaints have been referred to the Department of Justice for criminal investigation, he added.

There has been no public enforcement with one exception, the *Gibson* case, where the defendant accepted a plea bargain on the use of PHI for personal monetary gain. In that case, a hospice worker took patient information and used it to sign up for credit cards. This is not a typical problem, said Nahra, adding that some experts believe HIPAA was not needed to prosecute Gibson. Since Gibson was an employee, an individual, he does not have obligations under HIPAA. The DOJ is engaged in a "dramatic debate" about whether individuals can be prosecuted under HIPAA, he said.

But the *Gibson* case shows that not only covered entities can be prosecuted for a criminal violation, but also individual employees of covered entities. "The *Gibson* case raises an issue of who can be prosecuted," Nahra said.

While privacy advocates contend that banks are a major gap in the HIPAA structure, Nahra noted that the HIPAA statute is not a general medical privacy law, since it protects privacy only in limited contexts. Most providers and health insurers are covered, yet workers' compensation, medical underwriting for life insurance and car insurance are a few areas that are not covered under HIPAA. He further predicted that a far-reaching law is years away. "I have not yet seen any sign of movement in Congress to pass a general medical privacy law," he said.

However, the reach of HIPAA will continue to broaden in terms of its impact, beyond immediate covered entities, said Nahra. He concluded that the debate will continue over whether banks in some situations need to be brought more directly within the scope of HIPAA. "There's a lot more recognition of the role that banks play in processing and transmitting medical information," he said. ■

CCH Washington Bureau, January 31, 2005

Tax

IRS and charity care lawsuits target exempt organizations, hospitals

by Larry Perlman, JD, LLM, CPA, Contributing Editor

Exempt organizations, especially those in the health care industry, have recently been subject to increased scrutiny by the IRS and have been hit with numerous charity care lawsuits.

Current legal challenges to a hospital's exempt status center on use of facilities, amount of charity care provided, and billing and collection practices. In some cases, hospitals are losing their exemption because they are using too much of their facility for nonexempt purposes, are providing little charity care, or are using abusive collection practices by outside agencies.

The lawsuits have created uncertainty in the health care field. "Now that [tax exemption/class action lawsuits] have been elevated to a national credit issue," Lisa Goldstein, Senior Vice President, Health Care Ratings, Moody's Investors Service, predicted that they would have future financial implications for the sector.

The recent Ernst & Young's 14th Annual Health Sciences Tax Conference addressed IRS and public inspection in the sector, while offering nonprofits and their advisors planning guidance.

Charity care. Hospitals are feeling the need to demonstrate that their return of benefits to the community exceeds the value of their exempt statuses, stated R. Bradley Fletcher, Ernst & Young, Dallas. This need is driven by scrutiny of the benefits of tax-exemption relative to what hospitals give back to the community. This scrutiny is from the IRS, in possible federal and state legislation, and in class-action lawsuits. Defendants in the lawsuits are large and small nonprofits, rural and urban, and single and multi-facility. Suits have been filed nationwide.

The assaults are very worrisome to Norm Tabler, Senior Vice President and General Counsel, Clarian Health Partners, Indianapolis. "In view of the rapidly expanding

continued on page 7

number of defendants and at the aggressive tactics of the plaintiff attorneys, if you have a lot of uninsured patients, chances are high you will get named."

He warned that "We're in a real dilemma because if we are known as the only place that gives free care, we can be in trouble financially. This problem will become worse with the skyrocketing number of uninsured individuals."

The class-action lawsuits allege sticker shock (charging uninsured patients "full sticker price" while those with insurance receive deep discounts), whether the organization is fulfilling its public charitable purpose, overstating public benefit provided to the community, accumulating piles of cash and having offshore captive insurance programs to hide cash, according to Tom Gregory, Ernst & Young, Atlanta. In the summer of 2004, 53 of these lawsuits were filed against nonprofit hospitals and the American Hospital Association. Some cases have recently been dismissed. "The political environment for this is very hot. Plaintiff attorneys like to jump on a moving train, and they definitely saw a train in this area."

Fletcher said that potential results from this increased scrutiny are:

(1) If some of the current lawsuits are successful then there is a risk that more lawsuits will be filed so that more tax-exempt hospitals could be affected, and the estimated value of an organization's tax exemption could be set aside in a trust fund to be used for a community's needs.

(2) Some sort of reporting could be required to describe community benefits, including charity care and the value of the tax exemption. "Congress may be leaning this way."

Some tax-exempt hospitals that are the subject of the lawsuits are in the process of reviewing the value of their tax-exempt status and the value of the community benefit they provide, including charity care that they deliver, as part of their defense. Exempt hospitals that are not the subject of suits are also performing a review to be ready for any future reporting requirements or defend themselves in a future lawsuit, Fletcher said.

To value community benefits, it is "important to include as many benefits as possible," noted Thomas Neubig, Ernst & Young, Washington, D.C. "You're going to be compared to how much you are doing in the community benefit area above and beyond what for-profit hospitals are doing."

He said community benefit should include the value of outreach programs, education and screenings, research, scholarships, and charity care. This care includes direct care provided to uninsured or underinsured patients, unprofitable services or facilities that are part of the hospital's charitable mission, and bad debt write-offs in certain cases. In addition, economic and fiscal benefits provided by a hospital to the local community should be included. These benefits include increased local jobs, increased purchases from local suppliers, and additional sales and property taxes.

A recent study by the Metropolitan Chicago Healthcare Council shows the impact of these economic benefits in a community. The MCHC study showed that Chicago-area hospitals generate $23.7 billion in personal income for residents, account for more than 400,000 primary and secondary jobs, and contribute $1.8 billion in capital improvements.

It is important to quantify and present the community benefit not just as a compliance measure, but to show the value of the hospital to the community, Neubig added.

An analysis of the value of tax-exempt status, Neubig said, looks at four areas:

(1) Federal tax liabilities. "Calculate income taxes last; paying taxes such as property taxes may eliminate taxable income."

(2) State and local tax liabilities.

(3) Tax liability on built-in gain of existing assets.

(4) Non-tax costs, such as no longer being able to benefit from lower interest rates of tax-exempt bond financing, loss of fundraising dollars and volunteer labor, and higher postage costs.

The value of the tax-exemption cannot simply be added together—there are interactions and behavioral implications. "If a simplistic approach is used, it might greatly overstate the value of tax exemption," Neubig remarked.

Reporting community benefit. Community benefit is reported on Form 990, Return of Organization Exempt From Income Tax, Part III—Statement of Program Service Accomplishments. "In light of today's environment, this is the one place on an annual basis that you have to toot your own horn," advised Donna Borgese, Senior Manager Corporate Taxation, UPMC Health Systems, Pittsburgh. "One of the biggest ways to do this is through [community benefit] measurements."

She said that the public also uses information in the Form 990 for other purposes, such as charity care challenges. More detailed community benefit information may lead to fewer challenges and government scrutiny. Borgese added that an organization "needs to value [community service data] in an auditable manner."

In addition, make sure Form 990 information is consistent with other information provided to the public, said Cara Breidster, Ernst & Young, Indianapolis. She suggested running the community benefit information past the organization's CEO and the marketing group.

Team audits. In FY 2004, the IRS's EO division closed 5,800 examinations, including 764 large cases ($100 million in revenue) and 237 in the hospital category, reported Andre Re, Ernst & Young's IRS Practice & Procedures Group. He said that in FY 2005, the IRS is going to devote 30 percent of examination resources to its Team Examination Program (TEP).

To manage a TEP audit, Mark Hellmer, Ernst & Young, Chicago, provided some best practices:

(1) Meet with the IRS team to establish expectations. "Understand their issues and help guide them."

(2) Designate an internal point person for daily interaction with the IRS team.

(3) Maintain a comprehensive log of all outstanding and completed information document requests (IDRs). "The critical element is documentation," agreed Re.

continued on page 8

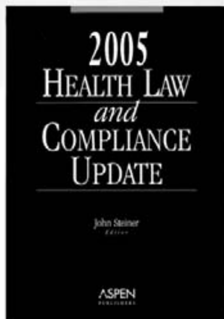
(4) Maintain a separate and exact copy of all records and responses provided to the IRS. "It's okay to respond verbally to clarify an IRS request."
(5) Establish ground rules for the IRS.
(6) Carefully review all IDRs and respond only to specific information requested.
(7) Prepare IDR responses to help the IRS determine that there is no issue in the area being examined.
(8) Strategically involve management in the audit process and IRS meetings.
(9) Hire appropriate professionals, such as accounting or law firms, to assist with technical analysis and strategic advice.
(10) Team with the IRS team. "It's not necessary to be adversarial with the IRS. Lead them to the path in their files where the answer is. Treat them with respect and professionalism."

IRS & executive compensation. Another IRS audit initiative involves audits of executive compensation as part of a Form 990 audit. The initiative targets highly-paid executives and reviews the design and operation of compensation plans. Approximately 2,000 letters will be sent to public charities. "It's mainly information gathering for the IRS," said Linda Mason, Ernst & Young, Miami. "The intent of the IRS is to ensure contemporaneous written documentation and proper reporting."

Risks for executives include increased income tax under constructive receipt or economic benefit principles, intermediate sanctions, a full Form 1040 audit, and unfavorable press reports. Problems for the exempt organization include delinquent FICA tax and the 100-percent penalty, damage to its reputation in the community, and executive tax gross-up for underpayments to the employee.

To reduce these risks, Charlie Deliee, Ernst & Young, Washington, D.C., suggested that organizations and their advisors review the organizations' compensation programs' design, review operations for compliance with the Internal Revenue Code, assess risk associated any identified issues, and educate the organization's board and executives. Mason said that this education should include all highly-compensated employees, not just officers. ■

CCH Chicago Bureau, January 21, 2005



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2005 Health Law and Compliance Update

by John E. Steiner, Jr., Esq.

The ***2005 Health Law and Compliance Update*** brings you the latest information on emerging issues in Health Law every year. Each article is authored by an expert in the area and includes analysis of the latest cases and statutes. The ***2005 Edition*** of this valuable resource brings you new chapters that examine issues such as e-health, antitrust, privacy and confidentiality, ERISA preemption, and Sarbanes-Oxley compliance. The "*Year in Review*" chapter addresses the most significant issues in health law this past year, including false claims and fraud, EMTALA, HIPAA, and tax.

SUMMARY OF CONTENTS

1. Year in Review: Health Care Case Law and Other Developments
2. Compliance and Governance Issues and Trends After Sarbanes-Oxley
3. Compliance Program Effectiveness
4. Compliance and Health Law Update for Long-Term Care
5. Recent EMTALA Developments
6. Fraud & Abuse/False Claims Act Developments
7. Recent Developments in Managed Care
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