

Health Law ADVISORY

Current legal insights for healthcare executives

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Julie A. Knutson, Editor

New IRS Initiatives - Compliance Checks

In 2006, the IRS implemented two new “compliance check” initiatives affecting tax-exempt hospitals – one referred to as the “executive compensation initiative” and the other as “compliance check questionnaire – tax-exempt hospitals.”

1. What is a compliance check? A compliance check is an inquiry by the IRS about some aspect of the continuing qualification for tax exemption.

2. What happens in a compliance check? The IRS sends a questionnaire to the exempt organization, and the exempt organization submits a written response. The IRS may ask follow-up questions. The IRS does not come on-site, does not issue subpoenas for records, and does not interview individuals.

A compliance check is not an audit, although the answers may cause the IRS to commence an audit.

3. Is it the same as an audit? No. It specifically is not an audit, although the answers may cause the IRS to commence an audit.

4. What is the nature of the executive compensation initiative? Its goal is to learn how organizations determine and manage executive compensation, to gauge effectiveness of board controls, to learn how such compensation is reported, to address questionable practices, and to increase awareness of executive compensation issues. The questionnaire focuses on process, conflicts, and reasonableness.

5. Who received the executive compensation questionnaire and how were they selected? Approximately 1,800 exempt organizations (of all types, not just hospitals) received this questionnaire. The IRS has described certain triggers for their selection of organizations to receive this questionnaire. The triggers relate to responses on the Form 990.

6. What will happen as a result of this executive compensation initiative?

a. The IRS will gain a better understanding of how exempt organizations compensate their executives.

b. About 200 follow-up letters have been sent seeking more information. Some will likely lead to audits.

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c. The IRS has announced it will issue a report on the results of this initiative in the Fall of 2006.

d. The IRS may cause a change in industry practices just by virtue of this process and the questions being asked.

7. What is the nature of the compliance check for hospitals?

This is a 9-page, 82-question form directed solely at hospitals.

The questionnaire can be accessed at http://www.irs.ustreas.gov/pub/irs-tege/eo_hospital_questionnaire_sample.pdf

Its goal is “to determine how hospitals determine and pay executive compensation as well as how they meet the community benefit standards for purposes of Section 501(c)(3).” It seeks a variety of information about community benefit including ER operations, patients served, community board issues, medical staff, conflicts of interest, medical research, education, billing and collection practices, and community outreach. The compensation questions also request information about compensation (salary and benefits) of all “disqualified persons” and the process used for setting such compensation.

8. Who received the compliance check for hospitals?

The IRS has indicated that it sent out 544 questionnaires using a random process.

9. What will happen as a result of this questionnaire?

a. The IRS will gain a better understanding of how hospitals meet the requirements for exemption.

b. The IRS will compare responses on the questionnaire with responses on the most recent Form 990.

c. The IRS may commence audits based on responses.

d. The IRS may revise the Form 990.

e. The IRS may cause a change in hospital practices just by virtue of this process and the questions being asked.

John R. Holdenried

It's Not Too Late to Give Your Opinion

You may have already received a brief electronic survey regarding Baird Holm publications, particularly the Health Law section newsletters, advisories and alerts.

If you haven't, it's not too late...

We are seeking your opinion now to evaluate various aspects of the publications and to further explore your content interests.

We believe that our publications are an important way to communicate vital legal information and to keep in touch with you. We would be grateful if you would spend the few minutes necessary to complete the survey when it comes your way.

Always feel free to contact any member of the Health Law section to express your views or to request particular articles or services from us.

If you didn't receive a survey, please click on the following link:

<http://www.surveymonkey.com/s.asp?u=256112284235>

Thanks for your help. We will report the results of the survey in the next edition.

The IRS will issue a report on the results of the [Executive Compensation] initiative in the Fall of 2006.

Upcoming Speaking Engagements

Members of the Health Law Section will be speaking at these upcoming programs:

July 12, 2006, Heartland Family Service Omaha, Nebraska, Julie Knutson, “Ethical Practice Standards for Mental Health and Substance Abuse Professionals”

September 18-19, 2006, Tax Issues for Healthcare Organizations, sponsored by the American Health Lawyers Association Washington, D.C., John Holdenried, “Physician Compensation and Physician Recruitment—New Developments and Compliance Strategies”

October 26, 2006, Iowa Healthcare Financial Management Association Fall Meeting Des Moines, Iowa, Kelly Clarke and John Holdenried, “Approaches to Physician and Executive Compensation Issues in the Face of Heightened Agency Scrutiny”

BAIRD HOLM LLP
ATTORNEYS AT LAW

HEALTH CARE GROUP

Vickie J. Brady

402.636.8230

vbrady@bairdholm.com

Alex (Kelly) M. Clarke

402.636.8204

kclarke@bairdholm.com

John R. Holdenried

402.636.8201

jholdenried@bairdholm.com

Julie A. Knutson

402.636.8327

jknutson@bairdholm.com

Barbara E. Person

402.636.8224

bperson@bairdholm.com

David W. Tomlinson *

402.636.8330

dtomlinson@bairdholm.com

All attorneys are admitted to practice in Nebraska and Iowa unless otherwise noted.

**Admitted to practice in Oregon and Nebraska.*

MEMBER
LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

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BAIRD HOLM

1500 Woodmen Tower

Omaha, NE 68102

402.344.0500

402.344.0588

www.bairdholm.com

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