



CLIENT ADVISORY

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The Internal Revenue Service (“IRS”) issued a memorandum regarding the handling of examinations and exemption applications involving hospitals that provide staff physicians with financial assistance to acquire and implement software that is used for creating, maintaining, transmitting, or receiving electronic health records for their patients.

In August 2006, the Department of Health and Human Services issued final regulations (“HHS EHR Regulations”) that allow hospitals to provide EHR software and technical support services to its medical staff physicians without violating federal anti-kickback law and physician self-referral law.

In accordance with these HHS EHR Regulations, the IRS ruled that the benefits a hospital provides to its medical staff physicians will not be treated as an 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.

To ensure compliance, a hospital will enter into a Health IT Subsidy agreement with its medical staff physicians for the provision of Health IT Items and Services at a discount (“Health IT Subsidy Arrangement”) which requires both the hospital and physician to comply with the HHS EHR Regulations on a continuing basis. The Health IT Subsidy Arrangement allows a hospital to access the electronic medical records created by a physician using the Health IT Items and Services subsidized by the hospital. In addition, the hospital ensures that the Health IT Items and Services are available to all of its medical staff physicians. The hospital controls the level of subsidy to its medical staff physicians by applying criteria based on the healthcare needs of the community.