

Hinshaw's Health Care Reform Task Force

Best Governance Practices for Nonprofit Hospitals

Is your tax-exempt status at risk?

The Patient Protection and Affordable Care Act (PPACA) imposes new requirements on hospitals to maintain their 501(c)(3) tax-exempt status. Effective for tax years beginning after March 23, 2010, hospitals must satisfy new requirements relating to financial assistance policies, the amounts charged to persons eligible for financial assistance, and billing and collection practices to qualify for tax exemption. Hospitals must also follow certain standards in conducting a community health needs assessment once every three years. PPACA added these new requirements to the Internal Revenue Code under new section 501(r), and Form 990 Schedule H has been significantly revised to obtain information to review compliance with section 501(r). Organizations failing to comply risk losing their tax-exempt status and incurring financial penalties. Notably, every hospital in a health system must separately satisfy the new requirements.

How Hinshaw Can Help

The attorneys of Hinshaw's Health Care Reform Task Force work with hospitals and hospital systems of various sizes to address 501(r) compliance issues. We provide counsel on best governance practices, help organizations integrate the community needs assessment requirements, and guide clients in implementing and reporting community benefit programs and strategies responsive to the health needs identified. We provide the legal insight and advice needed to address these issues before they become problems.

Demonstrated Experience Providing Real Solutions

We undertake a comprehensive 501(r) compliance review to identify specific areas of concern and recommend changes as needed. New policies and practices may be needed to comply and report on a facility-by-facility basis. Below are select examples of our work in this area:

Financial Assistance Policies. We analyze financial assistance policies to help ensure they comply with the new 501(r) requirements. We help clients revise and implement policies that incorporate the new criteria and standards required.

Billing and Collection Policies. We counsel clients on the restrictions imposed on billing and collection actions, as well as the adoption of business office practices required to determine a person's eligibility for financial assistance before initiating collection procedures otherwise prohibited.

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Community Health Needs Assessment. We work with hospitals, health care consultants and local public health agencies in reviewing proposals for community health needs assessments. Our approach is designed to help clients build an appropriate assessment infrastructure, coordinate community resources, and plan and implement a needs assessment that identifies priority health needs that can be effectively addressed. We help clients understand the legal standards for conducting a 501(r) assessment, what programs may be counted and reported as community benefits, and how the evaluation of the resulting health programs must be an extension of program planning. We are skilled in providing legal analysis and direction throughout the needs assessment, program implementation, and evaluation process.

Why Choose Hinshaw?

Hinshaw's Health Care Reform Task Force is an interdisciplinary team of lawyers with nationwide experience providing legal advice and solutions related to health care reform initiatives, and in particular helping organizations maintain tax-exempt status. Hospitals are required to make their 501(r) financial assistance policies and community needs assessments widely available to the public, potentially putting them in delicate public relations situations. We have the experience and solutions to lead clients through the comprehensive new standards to continue operating as tax-exempt organizations.

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Community Health Centers and Federally Qualified Health Centers

Are your unique issues being addressed?

Federally Qualified Health Centers (FQHCs) and community health centers will be funded under the Patient Protection and Affordable Care Act (PPACA). This funding may expand the reach of FQHCs, as well as make existing FQHCs eligible for additional grants, which may further result in the expansion of programs and services, and hours of operations. None of this, however, can be accomplished without an understanding of the PPACA provisions affecting FQHCs.

How Hinshaw Can Help

Hinshaw's Health Care Reform Task Force has the experience and resources to help your organization leverage the opportunities offered by Health Care Reform and to protect your interests and advance your objectives, from structuring affiliations and collaboration arrangements to maximizing efficiencies and regulatory compliance related to governance and operations.

Demonstrated Experience Providing Real Solutions

We work with many types of community health centers and FQHCs. Below are select examples of the solutions we provide in this area:

Development and Certification. We provide assistance with the grant application and certification process for FQHCs or FQHC look-alikes, including community health centers, migrant health centers, health care for the homeless programs or public housing primary care programs. We guide our clients through the development process, ensuring that location and other requirements for grant funding are met.

Affiliations and Collaboration. We work with all types of federally qualified health centers, community health centers and rural health centers on affiliations and collaborative opportunities with hospitals and health systems—including teaching hospitals and medical residency programs—as well as partnerships with local health departments and integration of behavioral health and primary care through affiliations. Issues addressed include governance, financial and operational matters and the agreements and organizational documents these issues entail, as well as advising on compliance, tax exemption, risk management and information technology and privacy issues.

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Governance and Operations. Our attorneys give guidance to FQHCs in meeting the Bureau of Primary Health Care's Health Center Program Expectations and assist with the development and implementation of quality assurance programs. We create provider agreements that meet the requirements for FQHCs and counsel on the composition requirements for FQHCs' governing board of directors. We help FQHCs meet new claims submission requirements and tap into new funding made available by PPACA.

Why Choose Hinshaw?

Hinshaw's Health Care Reform Task Force is an interdisciplinary team of lawyers with nationwide experience providing legal advice and solutions related to health care reform initiatives, and with health centers in particular. Having protected the interests of many different types of healthcare providers and entities, we are able to leverage our experience with different provider perspectives and challenges to the benefit of our clients. As such, Hinshaw's Health Care Reform Task Force lawyers are familiar with how these legal issues and business opportunities affect FQHCs and community health centers in both the short and long terms.

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Fraud & Abuse Program Integrity

Risk Management Strategies for Overpayment Issues

The Patient Protection and Affordable Care Act (PPACA), combined with the current regulatory climate and government enforcement activities, have resulted in increased scrutiny on providers with regard to overpayments and self-disclosure. Discovery of Medicare and Medicaid overpayments can result from internal audits, Medicare contractor audits, employee or whistleblower claims, Stark-prohibited referrals and Anti-Kickback Statute violations. All providers and suppliers faced with any of these overpayment situations must assess their obligations for self-reporting and repayment under the PPACA and the False Claims Act.

How Hinshaw Can Help

The attorneys of Hinshaw's Health Care Reform Task Force work with all types of healthcare entities and physicians to assess and investigate overpayment issues to determine if the overpayment must be reported and repaid. We also determine if the False Claims Act is implicated and provide legal advice and guidance to the client on what it should do.

Demonstrated Experience Providing Real Solutions

We have a strong track record of helping clients through the challenges associated with issues related to fraud and abuse program integrity, and bring this experience to bear as enforcement efforts continue to increase. Below are examples of Hinshaw's demonstrated experience:

Physician Practices. We help physician practices structure the appropriate arrangements to capture revenue streams that traditionally have been paid to other providers, including diagnostic testing services for patients. These arrangements have attracted scrutiny from government agencies, lawmakers, and payers who have expressed concern about financial incentives to order unnecessary tests and from the traditional providers who may have professional, business, or quality of care concerns. We understand these concerns and help physician practices structure such arrangements to help ensure compliance with applicable law.

Overpayment/Disclosure. We assist healthcare systems with identifying if overpayments have occurred and whether repayment and self-disclosure is required, as well as training staff to document in a manner to demonstrate medical necessity. We make recommendations on delicate issues such as self-reporting, repayment, and discipline all under the protection of attorney-client privilege. We also represent clients in various *qui tam* litigated matters and have a track record of successful case resolution through motion practice.

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Recovery Audit Contractor (RAC) Payment Concerns. We assist hospital systems and physician practices throughout the continuum of the recovery audit process. We tailor our approach to the development of policies and procedures related to RAC to the needs and resources of each entity serviced. Following the implementation of the policies and procedures required respond to the RAC inquiries in the appropriate manner, we assist our clients with the compliance aspect of the process when necessary, and upon receipt of the results we can help determine whether appeals should be made regarding the findings. When necessary, we assist clients through the entire RAC appeals process, from the initial appeal to a court hearing.

Compliance Programs. We have established compliance programs and sit on compliance committees for health systems, hospitals, billing companies and physician practices. We advise on policies and procedures to help ensure program integrity abuses do not occur, monitor and audit risk areas to either mitigate or resolve potential fraud and abuse risks, and implement policies and procedures to correct any program issues that arise. By participating in the committee process, we are able to proactively alert clients to potential issues, helping to prevent problems from occurring.

Why Choose Hinshaw?

Hinshaw's Health Care Reform Task Force is an interdisciplinary team of lawyers with nationwide experience providing legal advice and solutions related to health care reform initiatives, and fraud and abuse program issues in particular. Our ability to provide comprehensive representation on these issues—with white collar crime attorneys with significant healthcare backgrounds—makes Hinshaw a unique firm to help health care organizations meet their compliance objectives.

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Health Information Technology

Maximizing Opportunities and Maintaining Compliance

The Patient Protection and Affordable Care Act (PPACA), the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health (HITECH) Act converge on many issues affecting healthcare providers to form a Bermuda Triangle of compliance challenges. Navigating through this regulatory environment requires experience and familiarity with the fast-changing nature of health information technology.

How Hinshaw Can Help

Whether you have a transaction or project that deals with electronic health records, are struggling with meaningful-use requirements, or are a physician practice looking to take advantage of related incentives, Hinshaw's Health Care Reform Task Force has the experience and resources to help you protect your interests and advance your objectives.

Demonstrated Experience Providing Real Solutions

We work with all types of healthcare entities dealing with health information technology issues, including those that arise from recent reform. Below are select examples of the solutions we provide in this area:

Acquisition and Implementation of Electronic Health Records (EHR).

- **Negotiation of EHR Contract.** We can assist on all aspects of the acquisition and implementation of an electronic health records system, including initial negotiations concerning the purchase and installation of such system. We have experience in reviewing and providing legal analyses of agreements proposed by third-party EHR vendors, highlighting to our clients the business risks associated therewith, and counseling our clients as to key terms for negotiation.
- **Mergers and Acquisitions.** We work with our clients to negotiate the transfer of EHR from one platform to another pursuant to various M&A transactions, and help our clients adopt HIPAA-compliant methods to transfer medical records from one database to another. We are also experienced in negotiating the assignment and assumption of EHR licenses, and in negotiating the capital investments necessary to transition acquired entities onto the purchasing entity's existing EHR system.
- **Training Documents.** We work with our clients in negotiating and drafting agreements whereby our clients contract with physicians to undergo training on the EHR system and then undertake leadership roles in the training of other physicians and medical personnel.

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- **Medical Staff Documents.** We have experience in amending Medical Staff documents, such as Medical Staff Bylaws, Rules & Regulations and policies designed to prevent abuses of implemented EHR systems. We have also worked with our clients to develop discipline policies for physicians that misuse the system.

Meaningful Use. Hinshaw attorneys have worked with health systems, hospitals and physician providers to establish programs to facilitate those providers in meeting the core set and menu set of meaningful-use requirements necessary to qualify for enhanced reimbursement. Meeting the meaningful-use certification requirements may involve millions of dollars of enhanced reimbursement for larger institutions, and also can be financially significant for eligible professionals. The firm's attorneys have worked with providers of all sizes to set up systems for them to meet the core set of meaningful use objectives, and in selecting and meeting the appropriate requirements from the menu of discretionary requirements.

Physician Practices. We have assisted physician practice groups with health information technology issues and implementation for their practices. This representation includes working with physicians regarding incentive programs related to physician quality and reporting initiatives (PQRI) and the pre-existing condition insurance plan (PCIP) created by PPACA. We continue to work with physicians regarding EHR implementation, reimbursement, and contract issues, and have worked with physician practice groups to ensure HIPAA and HITECH regulatory compliance.

Why Choose Hinshaw?

Hinshaw's Health Care Reform Task Force is an interdisciplinary team of lawyers with nationwide experience providing legal advice and solutions related to health care reform initiatives, and health information technology in particular. Health Care Reform Task Force members work routinely with members of Hinshaw's Information Technology Law Group to ensure clients receive appropriate health care as well as intellectual property counseling. Furthermore, the firm's Intellectual Property Practice Group, assisted by members of the Task Force, counsels health care clients on EHR risk management issues.

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Integrated Delivery Systems

Are your interests protected?

The current economic and regulatory climate is creating unique challenges coupled with time-sensitive opportunities for healthcare systems, hospitals, and providers across the country. The collaboration between providers and organizations brings a range of potential business and legal issues to the forefront, including those related to legal structure and governance, clinical and financial integration, data sharing and information privacy and security, insurance regulation and assumption of risk, tax-exemption maintenance, and Stark and Medicare/Medicaid fraud compliance, among others.

How Hinshaw Can Help

Whether you are interested in developing an Accountable Care Organization (ACO), investigating a clinical co-management arrangement, or participating in a patient-centered medical home, Hinshaw's Health Care Reform Task Force has the experience and resources to help you protect your interests and advance your objectives.

Demonstrated Experience Providing Real Solutions

We work with all types of healthcare entities embarking on strategic alliances and integrated delivery systems that promote operational efficiency and improved patient-care outcomes. Below are select examples of the solutions we provide in this area:

Creation of New Legal Organizations. Drawing on past experience establishing PHOs and IPAs, we counsel on the development and structuring of tax-exempt integrated delivery systems, as well as joint-venture provider entities. Our work on these transactional matters includes addressing governance, financial and operational matters and the agreements and organizational documents these issues entail, as well as advising on compliance, tax exemption, risk management and information technology and privacy issues.

Governance and Training. In addition to developing the initial governing structure, we provide training workshops for boards and management so they may understand their fiduciary duties, improve and maintain quality, and meet the organization's objectives.

Compliance. We help address antitrust issues involving participation and pricing, as well as Stark, fraud and abuse, civil monetary penalty and tax-exemption compliance.

Information Management. We help clients comply with the federal regulations regarding implementing integrated electronic health records systems for clinical use and for medical staff members, as well as qualifying for meaningful-use payments.

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Why Choose Hinshaw?

Hinshaw's Health Care Reform Task Force is an interdisciplinary team of lawyers with nationwide experience providing legal advice and solutions related to health care reform initiatives, and integrated delivery systems in particular. Having protected the interests of many different types of healthcare providers and entities in these types of arrangements, we are able to leverage our experience on different sides of the transaction to the benefit of our clients. As such, Hinshaw's Health Care Reform Task Force lawyers are familiar with how these myriad legal issues and business opportunities affect large institutional providers, systems, community providers and both large and small physician groups.

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Reform-Driven Payment Models

Helping to Align Interests and Reduce Costs

The passage of the Patient Protection and Affordable Care Act (PPACA) was designed in part to address the cost and quality problems existing in the current healthcare delivery system. Many commentators believe that these two issues are directly linked to the way in which healthcare services are paid, and changes are already underway. This presents both challenges and opportunities for providers.

How Hinshaw Can Help

Hinshaw's Health Care Reform Task Force attorneys have worked with providers of all categories to develop payment systems involving bundled payments, payments based on performance—both value and quality measurement—and payments based on reducing cost to healthcare delivery systems. These have involved structuring appropriate incentives as well as aligning the interests of multiple categories of providers in order to reduce costs.

Demonstrated Experience Providing Real Solutions

We work with all types of healthcare entities exploring alternative payment models. Below are select examples of the solutions we provide in this area:

Hospital Bundled Payments. We assist hospitals in preparing for new programs that bundle payment for episodes of hospital services and other post-acute care, including the Medicare pilot mandated by the PPACA and other private payer initiatives. For example, we counsel hospitals on how to better align the financial incentives of physicians and hospitals participating in bundled payment programs without running afoul of fraud and abuse regulations or the Civil Monetary Penalty Statute.

Payment for Performance: Quality, Value, and Utilization. We work with clients to evaluate evolving reimbursement incentives and assess our clients' existing practices to determine how best to maximize compensation received for providing better healthcare to patients. Recently, Hinshaw health care attorneys have collaborated with clients to form several performance-based co-management agreements that include incentives to physician groups and other providers for increasing performance with respect to quality metrics, including lowered infection or readmission rates, and efficient use of limited supplies and resources at various hospitals.

Physician Shared Services. We represent physician practice groups in the negotiation and implementation of shared services with other healthcare providers, working with physicians to develop new forms of collaboration based upon value and quality in conjunction with the PPACA requirements. These value-based payment programs include shared services and focus on clinical and operational efficiencies.

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Why Choose Hinshaw?

Hinshaw's Health Care Reform Task Force is an interdisciplinary team of lawyers with nationwide experience providing legal advice and solutions related to health care reform initiatives, and reform-driven payment models in particular. These and other projects we undertake coincide with the trend of third-party and government payers' demands for increasing quality from providers, while simultaneously pushing for maximum efficiency and value in services rendered to patients. Our breadth of experience allows a comprehensive approach suited to advising all healthcare providers on the newest payment models.

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Reform-Prompted Integration Activities

Helping You Leverage the Changing Environment

Recent health care reform initiatives have prompted hospitals, health systems, physician groups and other health care providers to consider new options for merger, acquisition, network development and affiliation. Substantial changes to reimbursement methodology focused on coordinated care, quality and outcome measurement have become a driving force behind such consolidation, integration, and other collaborative efforts. Responding to these challenges and opportunities requires careful analysis of legal and business matters, including those surrounding governance and organization, risk management, antitrust issues, and compliance with Stark, fraud and abuse laws, and other state and federal regulations.

How Hinshaw Can Help

Hinshaw's Health Care Reform Task Force attorneys works with providers of all categories to manage integration activities and related issues. These have involved structuring appropriate arrangements, identifying and evaluating opportunities, and all aspects of transactional activity.

Demonstrated Experience Providing Real Solutions

Below are select examples of the solutions we provide in this area:

Mergers & Acquisitions. Hinshaw assists providers in all aspects of merger and acquisition transactions, including identifying affiliation structures, navigating antitrust issues, obtaining consents from governmental authorities, negotiating purchase prices and adjustments, and identifying and mitigating exposure to legal and business risks. Our experience includes representation of hospital systems in the acquisition of independent hospitals, and representation of acute-care hospitals in the acquisition of single- and multi-specialty physician practices and ancillary services. We also assist in mergers of ambulatory surgery centers and the affiliation of multiple physician practices, and represent physicians in the sale of their practices to hospitals.

Affiliations and Networks of Hospitals and Health Systems. We work with all types of hospitals and health systems—including teaching hospitals and medical residency programs—on affiliations and networks, as well as other opportunities to collaborate. Issues addressed include governance, financial and operational matters, as well as advising on compliance, tax exemption, risk management and information technology and privacy issues.

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Affiliations and Networks of Physician Groups. We counsel physician groups on strategically positioning their organizations to respond to reform and, in particular, to alternative reimbursement models such as bundled episodic payments and value-based purchasing. Based on our experience assisting physicians groups with affiliation through IPAs, other joint ventures, and merger opportunities, we help physicians to analyze and implement the options most suitable to their organizations.

Hospital-Created Physician Networks. We have worked with hospitals and health care systems to develop hospital/physician networks and to create compensation programs for system-employed physicians. These compensation programs have made it attractive for physicians to have appropriate incentives to grow their particular practice, while at the same time monitoring the expenses incurred by that practice. Development of these networks also helps systems to ensure the right mix of service providers to benefit patients in the system's community.

Why Choose Hinshaw?

Hinshaw's Health Care Reform Task Force is an interdisciplinary team of lawyers with nationwide experience providing legal advice and solutions related to health care reform initiatives, and reform-prompted integration activities in particular. Our breadth of experience allows a comprehensive approach suited to advising all healthcare providers on the newest integration models.

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