

Q&A on Hospitals' Health IT Subsidy Arrangements with Medical Staff Physicians (as described in May 11, 2007 Field Memorandum)

Q1 — What if a hospital's Health IT Subsidy Arrangements with its medical staff physicians aren't entirely consistent with the conditions in the Memorandum? Would those arrangements result in impermissible private benefit or inurement?

A1 — Such arrangements will not be covered by the "safe harbor" described in the Memorandum. However, they will not necessarily generate impermissible private benefit or inurement, because the Memorandum is not meant to set forth the only permissible Health IT Subsidy Arrangement between hospitals and physicians. Rather, the facts and circumstances of any arrangement that does not meet the conditions described in the Memorandum will need to be reviewed to determine if it results in any impermissible private benefit or inurement.

Q2 -- What is meant in the Memorandum by "financial assistance" and "subsidies" to medical staff physicians to acquire and implement electronic health records ("EHR")-related software and services that would enable the physicians to connect to the hospitals' EHR systems?

A2 – Consistent with the HHS regulations referenced in the Memorandum, "financial assistance" and "subsidy" do not include cash payments from the Hospital to the physicians. Rather, they refer to arrangements in which the hospital provides the physician with EHR-related software or information technology and training services, and the physician contributes a portion of the cost.

Q3 – What if the hospital provides a Health IT Subsidy to a "disqualified person" as defined in section 4958?

A3 – Assuming that the hospital meets all the conditions described in the Memorandum, the agent will not treat such Health IT Subsidy Arrangement as an excess benefit transaction.

Q4 -- What if the agent finds inurement to a medical staff physician outside the context of the Health IT Subsidy Arrangement?

A4 -- If the agent finds that the hospital's net earnings have inured to the benefit of one or more medical staff physicians outside the context of such arrangement, then the hospital would not be covered by the safe harbor set forth in the memorandum. Although the safe harbor would not apply in this situation, a determination of whether the Health IT Subsidy Arrangement results in impermissible private benefit or inurement will depend on all the facts and circumstances.

Q5 -- What type of restrictions, if any, may a medical staff physician impose on the hospital's access to electronic medical records created by the physician using the Health IT Items and Services subsidized by the hospital?

A5 – A physician may deny a hospital access to such records if that access would violate federal and state privacy laws or the physician's contractual obligations to patients. Also, the hospital and physician may agree on reasonable conditions to the hospital's access. For example, their agreement could allow the hospital to access a patient's medical records only when that patient becomes a patient of the hospital, and could deny the hospital access to non-medical information such as billing, insurance eligibility, and referral information.

Q6 -- Does the hospital have to ensure that the Health IT Items and Services are available to all of its medical staff physicians at the same time?

A6 --The hospital may provide access to various groups of physicians at different times according to criteria related to meeting the health care needs of the community. The hospital should establish a plan for providing such access.