Notice 2011-20

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LEGAL PROCESSING DIVISION
PUBLICATION & REGULATIONS
BRANCH

Allina Hospitals & Clinics
Compliance and Regulatory Affairs
PO Box 43 Mail Route 10811
Minneapolis, MN 55440-0043

ALLINA.
Hospitals & Clinics

May 31, 2011

SE:T:EO:RA:G (Notice 2011-20)
Courier's Desk
Sarah Hall Ingram
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Submitted Electronically

RE: Notice 2011-20; Request for Comments Regarding Participation by Tax-Exempt Hospitals in Accountable Care Organizations

Dear Commissioner Ingram:

On behalf of Allina Hospitals & Clinics, I appreciate the opportunity to submit comments to the Internal Revenue Service (the "Service") on the tax exemption and unrelated business income implications associated with tax exempt organization participation in the Medicare Shared Savings Program ("MSSP") established under Section 3022 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (the "Affordable Care Act") as well as similar arrangements with commercial payors in response to Notice 2011-20 issued by the Service on March 31, 2011. We are encouraged to know that the Service is working with the Centers for Medicare & Medicaid Services (CMS), the Federal Trade Commission (FTC) and other agencies to provide sensible guidance to Accountable Care Organizations (ACOs), and we commend and thank the Service for requesting the opinions and thoughts of the healthcare community about ACO tax exemption.

Allina urges the IRS to issue guidance that encourages and enables both the creation of new tax-exempt organizations to pursue ACO initiatives, and the participation by existing tax-exempt organizations in the pursuit of such initiatives, in the context of both government and private payment programs.

Allina is a family of 11 hospitals, 80 clinics and a broad range of care services that believes the most valuable asset people can have is their good health. We provide a continuum of care, from disease prevention programs, to technically advanced inpatient and outpatient care, medical transportation, retail pharmacy, home health and hospice services, as well as home oxygen and

medical equipment. Allina serves communities throughout Minnesota and western Wisconsin. Allina's size and breadth of services included over 1 million hospital patient based interactions and 3.8 million clinic-based visits in 2010. Allina is a not-for-profit organization and tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

Allina is a leader in advancing care outcomes and actively engaged in transforming its care delivery model to position itself for success in an accountable care environment through ongoing collaboration with its employed and independent providers, active patient engagement efforts and the utilization of one of the most comprehensive electronic health records in the nation.

The CMS ACO model aligns well with Allina's strategy of integrating and coordinating patient care to achieve clinical excellence, operating efficiency and optimal patient experiences across the continuum of care – from prevention and wellness to end of life care. We are focused on achieving an aim of highest quality of health (clinical outcomes, quality of life, and patient experience) at lowest appropriate cost to a growing portion of our community in collaboration with affiliated independent providers.

Allina currently serves over 45,000 FFS Medicare beneficiaries within its primary care clinics. This sizeable patient population positions Allina to positively impact patient experiences, outcomes and overall expenditures. Allina believes that the Medicare Shared Savings Plan and ACOs could provide appropriate incentives to improve the cost and quality of care for our patients.

While we may be eager to move into new payment and care delivery models, including those that involve shared risk, there is underlying anxiety that the policies of the Internal Revenue Service may create risk to retaining the tax-exempt status of hospitals and therefore, may result in very limited participation in the program.

Background on The Affordable Care Act and ACOs

The Affordable Care Act attempts to change the healthcare landscape by introducing new payment and service delivery systems, and it calls for the creation of Accountable Care Organizations (ACOs) as one means of accomplishing this change. The Act seeks to improve care for all U.S. citizens, not just Medicare patients.

ACOs provide a mechanism through which we can better coordinate and integrate health care delivery and move away from the current "siloed" approach and its associated problems. As stated by CMS Administrator, Dr. Donald Berwick, the purposes of ACOs are "... to foster change in patient care so as to accelerate progress toward a three-part aim: better care for individuals, better health for populations, and slower growth in costs through improvements in care."[1] ACOs received overwhelming Congressional support as a vehicle for reforming healthcare delivery. According to a recent letter authored by seven members of the Senate Finance Committee, including Dr. Tom Coburn, "rewarding high quality, efficient providers based on positive patient outcomes in an ACO model is a

[1] New England Journal of Medicine, March 31, 2011.

concept that sustained bipartisan support throughout the contentious health care debate of the 111th Congress." ACOs focus on more than just reducing cost and promoting efficiencies; they are intended to intelligently balance priorities such as the quality of care, patient outcomes and patient experience.

While still evolving, the concept of ACOs is gaining ground and represents a way to overcome today's challenges without rationing care or dramatically increasing taxes. ACOs are designed to closely connect groups of providers who are willing and able to take responsibility for improving the overall health status, care efficiency and experience for a defined population. We believe that this approach will support greater clinical integration and collaboration among doctors, hospitals and other care providers, and foster alignment of accountable care principles across public and private payors. Thus ACOs can overcome the fragmentation and volume orientation of our existing fee-for-service system to more appropriately incent health and wellness, rather than treatment for illnesses. Achieving these incentives will "bend the cost curve" and revolutionize how care is paid for, provided and received.

Comments on Tax-Exemption Considerations

Allina believes that significant and enthusiastic participation and leadership in the ACO movement by tax-exempt organizations is both *defensible* and *essential* to achieve the important health reform goals of the Affordable Care Act that the IRS and other agencies such as CMS and the FTC have recognized and taken important steps to support. All three components of the three-part aim of ACOs further the charitable purpose of promoting health for the benefit of the community within the meaning of Section 501(c)(3) of the Internal Revenue Code (Code). The *nature of the promotion of health and community* benefits a properly structured and operated ACO can achieve are analogous to those the IRS favorably recognized in other contexts involving the support, rather than the direct provision, of health care services, such as properly structured gainsharing programs designed to achieve cost savings without sacrificing quality, properly structured and operated regional health information organizations formed to support and encourage the adoption of electronic health records in response to the encouragement of the Bush, Clinton and Obama administrations, electronic health record donation programs.

Importantly, such meaningful community benefits can be realized from achievement of this triple aim (through improved clinical integration, coordination and accountability) in both the MSSP or performance and accountability-based payment program innovations emanating from private payors; participation in an accountable care and performance-based program sponsored by a commercial payor is no different from any of the other types of commercial insurance or HMO arrangements in which tax-exempt organizations have participated extensively for decades.

Accordingly, while the Notice implies that the IRS is inclined not to grant tax-exempt status to free-standing ACOs outside the MSSP and Medicaid ACO programs, ***Allina urges the IRS to issue guidance that adopts the contrary position and thereby encourages and enables both the creation of new tax-exempt organizations to pursue, and the participation by existing tax-exempt organizations in the pursuit of, both MSSP and non-MSSP activities.***

Once again, we appreciate this opportunity to provide comments on this issue of critical importance to Allina and other exempt health care providers, and we commend the Service for its participation in this unprecedented inter-agency collaboration that we are confident will foster the efficient and effective achievement of the important health reform goals of the Accountable Care Act.

Sincerely,

Nancy G. Payne

Nancy G. Payne, RN, MA
Director Compliance and Regulatory Affairs