

2008 Year-End Wrap-Up

Legal Alert
December 17, 2008

Garvey Schubert Barer Legal Update, December 17, 2008.

For most of us December is a very busy month. Unfortunately changes in the laws affecting healthcare providers may require you to make changes in your business practices before year end or in the first few weeks of 2009. This Alert is a reminder of some key deadlines.

CHAMPUS B&O Tax Refunds for 2004

Earlier this year, in a case we handled (*Whidbey General Hosp. v. State*, 143 Wn. App. 620 (2008)), the Court of Appeals published a decision holding that monies received by a social health and welfare organization, which by definition includes most non-profit healthcare entities, or by municipal corporations or political subdivisions, qualify for the B&O tax deduction available to RCW 82.04.4297.

In light of the Court's decision in *Whidbey*, if you qualify for the deduction and have paid the tax in prior years, you may file a refund request. The four-year tax refund claim period includes the four years prior to the year of payment.

Refund requests for taxes paid in 2004 are due by December 31, 2008.

Update your Family Medical Leave Policies

On November 17, 2008, the Department of Labor issued new Final Regulations implementing the Family and Medical Leave Act of 1993 (FMLA). Among other areas, these regulations change the requirements concerning notice and certification of FMLA leave, the definition of a "serious health condition," and will require alteration in your customary leave policies and procedures. They also enact new regulations implementing recent FMLA amendments to care for injured military service members and to provide certain support to reserve or retired military service members who have been called to active duty in support of military or emergency operations. These changes are effective on January 16, 2009.

Amendments to Purchase-Resale Arrangements With Mobile Diagnostic Testing Providers

Recently CMS published changes to Medicare regulations affecting enrollment of Independent Diagnostic Testing Facilities (IDTFs).

Initially, CMS proposed that all providers of diagnostic imaging services (including individual physicians) would be required to enroll as an IDTF. The new rules drop the individual physician enrollment requirement; however, Chapter 1, Section 30.2.9 of the Medicare Claims Processing

Manual, in effect, requires certain types of providers to enroll as an IDTF and to meet certain standards if the organization provides services to Medicare patients. Because many healthcare providers buy diagnostic testing services from other providers, the new IDTF rules may require significant changes to these purchase-resale arrangements:

First, the new rules require an IDTF to bill Medicare directly for services provided in the IDTF's mobile facilities.

Second, the new rules provide that an IDTF enrolled in the Medicare program must certify in its enrollment application that it –

Enrolled in the Medicare program for any diagnostic imaging services that it furnishes to a Medicare beneficiary, regardless of whether the service is furnished in a mobile or fixed base location,

Bills for all mobile diagnostic services that are furnished to a Medicare beneficiary, unless the mobile diagnostic service is part of a hospital service provided under arrangement with that hospital. [Caveat: This may be a drafting error, because CMS's comments indicate that the billing requirement only applies to mobile diagnostic imaging services.]

See amended Regulation 42 CFR 410.33(g)(16) and (17) (emphasis added).

Arrangements between providers of mobile diagnostic services and entities that purchase and re-bill for those services should be reviewed. Please note that yesterday CMS published guidance (i.e. a Frequently Asked Question and Answer) on the IDTF enrollment. See, CMS Web site: www.cms.gov, click "Questions" (in the blue navigation bar), enter 9511 in the box labeled "Enter a Search Term" and click search, then review the document ID 9511, updated December 16, 2008.

The new rules are effective on January 1, 2009.