TO: Hospital Clients

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RE: Gifts and Incidental Benefits to Medical Staff Physicians

DATE: December 4, 2012

Most hospitals provide, for any number of reasons, gifts and incidental benefits to the physicians on their medical staff. These gifts and benefits may include free services, travel, parking, meals or entertainment; courtesy discounts; payment of continuing medical education fees; country or fitness club memberships and expenses; cell phones or pagers; and office supplies.

Unfortunately, if the hospital provides gifts or benefits to a referring physician, such gift(s) and benefit(s) could implicate the federal “Stark” Law. Provision of gifts, favors, or other nonmonetary items that exceed $373 in the aggregate for calendar year 2012 ($380 for calendar year 2013), or any medical staff incidental benefit used on the hospital campus which exceeds $31 in value ($32 for 2013) with respect to each occurrence, will fall outside the Stark exceptions for gifts and incidental benefits and thus violate the statute (unless another exception is applicable). Upon violation of Stark the physician would be precluded from referring certain patients and business to the hospital, the hospital would be precluded from billing such referrals to Medicare or Medicaid, the hospital may be required to refund reimbursement for prior referrals, and the hospital may be subject to civil monetary penalties. Moreover, the Department of Health and Human Services (“HHS”) reserves the authority to exclude hospitals that violate the Stark Law from participation in federal health care reimbursement programs, and serial violations could trigger treble damages and other liabilities under the federal False Claims Act and applicable Alabama law. Remember that the Stark Law is a “strict liability” statute; that is, the statutory penalties apply regardless of whether the hospital provided the gift or benefit to encourage referrals from the physician.

Providing a gift or incidental benefit to a referring physician may also subject a hospital to civil monetary and criminal sanctions, under the so-called “Anti-Kickback” statute and/or its Alabama counterparts, if the hospital provides the gift or benefit to induce referrals or other business from the physician, even if such purpose is not the primary purpose of the gift or benefit. Violations of the Anti-Kickback law may, under certain circumstances, also trigger HHS' exclusion authority and the False Claims Act.

In order to avoid running afoul of these and other health care laws, hospitals should develop policies and procedures that require the hospital to identify and value all non-monetary gifts and incidental benefits it provides to physicians. Properly written and implemented policies and procedures can help to mitigate or eliminate the risk that such gifts and benefits will violate the Anti-Kickback laws, the Stark Law and applicable tax laws. If you think your hospital needs to prepare, review, revise or update its policies and procedures relating to medical staff gifts or incidental medical staff benefits, we would be glad to assist you.

PLEASE BE ADVISED: This Client – Alert intended only to provide an overview of the matters addressed herein and does not constitute legal advice. If you have questions regarding a specific arrangement, please seek appropriate legal counsel.