

NPAF National Patient Advocate Foundation

The Patient's Voice | since 1996

EXECUTIVE BOARD

Nancy Davenport-Ennis
CEO, President

Patient Advocate Foundation

Edward G. Connette, Esquire

Board President

Essex Richards, PA

Christian Downs, MHA, JD

Board Vice President

Executive Director

Association of Community Cancer Centers

Leah Arnett, RN, BSN, MHCA

Board Secretary

Nursing Director

University Health Services

University of Texas at Austin

John L. Murphy

Board Financial Officer

Saguenay Capital, LLC

Bruce Avery, MD

Hematology-Oncology Knoxville

Alan J. Balch, Ph.D.

Vice President

Preventive Health Partnership

Rene Cabral-Daniels, JD, MPH

Vice President of Grant Programs

Williamsburg Community Health Foundation

Richard D. Carter, Esquire

Carter & Lay

Patient Advocate Foundation

Dennis A. Gastineau, MD

Director, Human Cell Therapy Laboratory

Divisions of Transfusion Medicine & Hematology

Mayo Clinic

Venus Ginés, MA

Founder & CEO

Dia de la Mujer Latina, Inc.

The Honorable Phil Hamilton

Virginia House of Delegates

Pearl Moore, RN, MN, FAAN

CEO (Ret.)

Oncology Nursing Society

Roy Ramthun

President

HSA Consulting Services

Sheldon Weinhaus, Esquire

Weinhaus & Potashnick

SCIENTIFIC BOARD

Lori Williams, PhD, DSN[®], RN, AOCN

Chair, PAF Scientific Board of Directors

University of Texas

MD Anderson Cancer Center

David Brizel, MD

Professor

Duke University Health System

Radiation Oncology Department

Robert M. Rifkin, MD, FACP

Director, Cellular Therapeutics

Rocky Mountain Blood & Marrow Transplant Program

Rocky Mountain Cancer Centers

F. Marc Stewart, MD

Professor of Medicine, University of Washington

Fred Hutchinson Cancer Research Center

Richard L. Theriault, DO, MBA

Professor of Medicine

MD Anderson Cancer Center

HONORARY BOARD

The Honorable Mary T. Christian

Virginia House of Delegates (Ret.)

The Honorable Patrick Dougherty

Missouri State Senate (Ret.)

Paula Trahan-Rieger, RN, MSN, ACON, FAAN

Chief Executive Officer

Oncology Nursing Society

Leo Sands

Executive VP & Chief Administrative Officer

US Oncology

Doris Simonson

May 31, 2011

Douglas H. Shulman

Commissioner

Internal Revenue Service

SE: T: EO: RA: G (Notice 2011-20)

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Notice 2011-20

Dear Commissioner Shulman:

National Patient Advocate Foundation (NPAF) would like to thank you for the opportunity to comment on whether existing guidance relating to the Internal Revenue Code (Code) provisions governing tax-exempt organizations is sufficient for those tax-exempt organizations planning to participate in the Medicare Shared Savings Program through an accountable care organization (ACO) and, if not, what additional guidance is needed. NPAF welcomes this opportunity as ACOs are designed to provide high-quality coordinated care to patients.

NPAF is a non-profit organization dedicated to improving patient access to healthcare services through both federal and state policy reform. Its mission is to be the voice for patients who have sought care after a diagnosis of a chronic, debilitating or life-threatening illness. NPAF has a fifteen year history of serving as the trusted patient voice. The advocacy activities of NPAF are informed and influenced by the experience of patients who receive direct, sustained case management services from our companion organization, Patient Advocate Foundation (PAF). In 2010, PAF resolved 82,963 cases nationally and provided information to almost 4 million online contacts.

The comments in this letter reflect NPAF's long history of addressing the impact of federal policy on patients. This experience allows us to anticipate the unintended consequences of new policies on the patient population. Thus, while comments on the sufficiency of existing Code guidance for tax-exempt organizations interested in Medicare Shared Savings Program participation may at first blush appear to be outside of the scope of the interest of a national patient advocate organization, NPAF has chosen to respond to the invitation to comment because the patient voice is often absent from such protracted deliberations and yet tax-paying patients will be directly affected by the decisions the Internal Revenue Service makes as a result of public comment. In addition, NPAF's proactive approach to policy development has resulted in a multitude of favorable outcomes for patients in the past by averting other unintended consequences.

The Affordable Care Act establishes a Medicare Shared Savings Program that promotes accountability for care of Medicare beneficiaries, improves coordination of Medicare fee-for-service items and services and encourages investment in infrastructure and redesigned care processes for high quality

and efficient service delivery.¹ NPAF recognizes that the Medicare Shared Savings Program may be in direct conflict with the Internal Revenue Code sections prohibiting tax-exempt organization's net earnings to inure to the benefit of any private shareholder or individual. We strongly encourage IRS and CMS to not consider a tax-exempt organization's participation in the Medicare Shared Savings Program through an ACO to result in inurement where:

- The terms of the tax-exempt organization's participation in the MSSP through the ACO (including its share of MSSP payments or losses and expenses) are set forth in advance in a written agreement negotiated at arm's length;
- CMS has accepted the ACO into, and has not terminated the ACO from, the MSSP;
- The tax-exempt organization's share of economic benefits derived from the ACO is proportional to the benefits or contributions the tax-exempt organization provides to the ACO;
- The tax-exempt organization's share of the ACO's losses does not exceed the share of ACO economic benefits to which the tax-exempt organization is entitled; and
- All contracts and transactions entered into by the tax-exempt organization with the ACO and the ACO's participants, and by the ACO with the ACO's participants and any other parties, are at fair market value.

Providing appropriate guidance for tax-exempt entities able to meet the above conditions will expand the number of entities interested in participating in the Medicare Shared Savings Program because they will be able to make informed decisions regarding program participation. To assure continued interest in Medicare Shared Savings Program participation, NPAF requests that Internal Revenue Service guidance on the Medicare Shared Savings Program to tax-exempt organizations be updated regularly and that the updates include information regarding the many benefits of the Medicare Shared Savings Program in supporting their charitable purpose mission. For example, the general use of revenue rulings guiding exempt organizations on the imposition of taxes on unrelated business taxable income should include a special section on exemptions for participants of the Medicare Shared Savings Program. The precedential value of revenue rulings offers considerable credibility which should be leveraged for the benefit of this program. Information on the Medicare Shared Savings Program should also be integrated into Treasury Tax regulations, revenue procedures, private letter rulings, notices and announcements whenever possible. The information need not be limited to known participants. The program may be used as an example to illustrate an important tax principle so that other eligible nonprofits might become interested.

NPAF is not only interested in increasing the quantity of participants in the Medicare Shared Savings Program but also has an interest in assuring participants have high ethical standards. Thus, any potential tax violation by participants should be immediately communicated to relevant federal agencies, such as CMS. Likewise, there should be a process for mutual exchange of information between agencies throughout the implementation of the program. This will not only protect the public purse but will bolster the credibility of the program to patient participants.

Finally, NPAF encourages IRS to leverage the expertise of the nonprofit health community by reaching out to its members for guidance in monitoring Medicare Shared Savings Program participants. The multitude of perspectives offered by this community can expand the agency's understanding of the downstream effect of its policies on tax-paying patients.

NPAF thanks you for the opportunity to comment on this rule. As noted above, this rule is an important one as it has the potential to positively transform the delivery of quality healthcare services to Medicare fee-for-service patients if many of the issues defined herein are appropriately addressed. We would be pleased to respond to any questions about our recommendations that may arise in the

¹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010).

future. We are also available to discuss, in greater detail, our suggestions regarding a role for the nonprofit community in the implementation of the rule.

Respectfully submitted,

A handwritten signature in black ink that reads "René S. Cabral-Daniels". The signature is written in a cursive style with a large initial 'R' and 'D'.

Rene Cabral-Daniels
Chief of Staff, Regulatory Analyst

CC:
Nancy Davenport-Ennis
Chief Executive Officer and President