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NEW YORK ATTORNEY GENERAL ADOPTS DOCTOR RANKING MODEL CODE

There is a growing nationwide trend among insurance companies and other payors to prepare and distribute doctor ranking programs to their members. Many physicians fear that these ranking programs, which also go by the name of “profiling” or “tiering” programs, will be thinly disguised attempts by payors to steer patients to physicians solely on the basis of cost and will not adequately reflect more appropriate measurements of quality.

Over the last few months, New York State Attorney General Andrew Cuomo has issued a Doctor Ranking Model Code and has arranged with seven insurance companies to adopt the provisions thereof. The Model Code was created in consultation with a number of physician and consumer advocacy groups including the American Medical Association and the Medical Society of the State of New York.

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PRIVATE FOUNDATIONS: NOT JUST FOR THE FORDS OR ROCKEFELLERS

It is impossible to live in the tri-state area without being aware of the impact private foundations (also known as “family foundations”) have on your favorite charities. Take a look at the annual report for your church, temple, college, local hospital or school board and you will see foundations littered among the list of donors. Most people assume that only ultra wealthy families create these entities, but the reality is that the amount you contribute to fund a foundation is less important than your interest in philanthropy and desire to share your values with your children.

The private foundation can create a permanent legacy for your family and provide the opportunity to involve you and your children (and even grandchildren) in charitable endeavors. You and your children would work together to impact one particular charitable sector, such as religion, education or animal rights, or support a variety of causes at once. Since you and your family have complete control over the investment as well as the distribution of the foundation's assets (subject, of course, to fiduciary requirements and certain statutory restrictions),

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THE NUTS AND BOLTS OF ESOP ADMINISTRATION

Once an employee stock ownership plan ("ESOP") is established, the company sponsoring the plan needs an experienced third party administrator ("TPA") to handle plan administration and recordkeeping. Some of the primary tasks performed by the TPA each year include (1) determining the eligible employee group; (2) calculating the total amount deductible by the company as a contribution to the plan; (3) determining the number of shares of stock to be released from the ESOP's suspense account for allocation to participant accounts; (4) determining the number of shares of stock to be allocated to each individual participant's account; (5) preparing the annual Form 5500 for filing with the IRS; and (6) ensuring that the ESOP satisfies all of the Internal Revenue Code limitations and tests that apply to qualified plans generally and to ESOPs in particular. The third party administrator is also responsible for preparing annual employee statements that are distributed to all participants.

Determining Eligibility

Compiling an accurate and complete employee census is the first step in proper ESOP administration. The TPA uses the census to determine which employees are eligible to participate in the ESOP based on

the eligibility criteria set forth in the plan document. Typically, but not in all cases, the ESOP requires a minimum of 1,000 hours of service during the year and attainment of age 21 before an employee can participate in the plan.

Release and Allocation of Shares

In most cases, an ESOP purchases stock with borrowed money. In such cases, the company shares that are purchased by the ESOP are initially held by the ESOP in a suspense account and are gradually allocated to participant accounts as the ESOP loan is paid off. One of the functions of the TPA is to determine the number of shares owned by the ESOP that are released from the suspense account each year. This is based on a calculation which generally takes into account the total principal and interest paid on the indebtedness for the relevant year as a percentage of the total principal and interest payable over the life of the loan. Once the number of released shares is determined, the TPA allocates those shares to the accounts of the participants, generally based on relative compensation.

Diversification

Participants who have ten years of participation in the

plan and who are age 55 or older are eligible to make annual elections to diversify 25% of their company stock account balances (on a cumulative basis) over a period of five years. Diversification is achieved by offering the participant other non-employer stock investment options or a distribution. It is the responsibility of the TPA to determine which participants are entitled to diversify and to calculate the amount subject to diversification.

Testing and Annual Statements

There are a number of tests that the TPA must perform to ensure that the ESOP is in compliance with IRS regulations. These include coverage, discrimination and top-heavy tests, individual account limitations under Code Section 415 and, if the sponsoring corporation is an S corporation, compliance with the anti-abuse rules of Code Section 409(p). If the company sponsors any other qualified plans, much of the testing is done on a combined basis.

The TPA also prepares the annual statements for participants reflecting the total number of shares allocated to their accounts, their vested percentage and the per share price as of the most recent end of year valuation. Finally, as partici-

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THE NUTS AND BOLTS OF ESOP ADMINISTRATION

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pants retire or otherwise separate from service, the TPA determines the amount to be distributed to the departing employees.

Danziger & Markhoff LLP currently administers over twenty ESOPs. Our actuaries and plan administrators are experienced in all aspects of ESOP administration and compliance and enjoy the technical support of

the attorneys who are members of our ESOP team.

If you have any questions about ESOP administration, please call Stanley E. Bulua, Esq., Jay Fenster, Esq. or Timothy O'Connell, ASA, EA.

NEW YORK ATTORNEY GENERAL ADOPTS DOCTOR RANKING MODEL CODE

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Among the most significant provisions of the Model Code are the following:

1. Physician rankings may not be based solely on cost and must clearly indicate the extent to which ranking programs are based on cost.
2. Ranking programs must use recognized national standards to measure quality and cost efficiency, including measures endorsed by the National Quality Forum.
3. Insurers must employ a number of measures to guarantee more useful physician comparisons, including risk adjustment and valid sampling methodologies.
4. Insurers must disclose to consumers how their ranking programs are designed
5. Insurers must disclose to physicians how their ranking programs are designed and provide a mechanism for physicians to appeal their ratings.
6. All insurers adopting ranking programs must retain an oversight monitor, known as a Ratings Examiner, to oversee compliance with all of the above-referenced standards and report the insurers' compliance with such standards to the Attorney General every six months. The selection by an insurance company of a Ratings Examiner is subject to the approval of the Attorney General and the oversight monitor must be a "national standard setting organization."

and the method by which doctors are ranked, and provide a method for consumers to file complaints about the system.

Insurance companies that have adopted the Model Code to date are CIGNA Healthcare, Aetna, Empire Blue Cross/Blue Shield, UnitedHealthcare, GHI/HIP, MVP Health Care/Preferred Care and Independent Health Association. Aetna, UnitedHealthcare and Empire's parent, WellPoint, have also stated that they will adopt the provisions of the Model Code on a nationwide basis.

New York State legislative leaders have recently announced plans to adopt legislation which will codify the Doctor Ranking Model Code.

For more information about this topic, please contact Joshua S. Levine, Esq.

PRIVATE FOUNDATIONS: NOT JUST FOR THE FORDS OR ROCKEFELLERS

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you and your family can adapt your activities to specific areas in which you are interested. The foundation would also serve as an educational tool through which your children and grandchildren would learn about management and investment techniques. Providing your heirs with this unique opportunity will not only imbue them with a sense of philanthropy and social responsibility, but will also prepare them to operate the foundation and carry out your charitable goals after your death.

Initially you would make a contribution to the foundation. The general rule of thumb to make this technique worthwhile is to contribute a minimum of \$100,000. This contribution is fully deductible for federal and New York State income tax purposes (subject to certain limitations). You would elect a board of directors (you and your children or other family members) and each year, the board

of directors would give away an amount equal to at least 5% of the foundation's assets to other charitable organizations.

Putting tax advantages aside, many people find the philanthropic aspect of the foundation to be the most rewarding. First, they find great pride and interest in supporting charitable endeavors. We have clients who fund scholarships at their alma maters and enjoy meeting the students and becoming involved in their academic endeavors. Others use their foundations to fund programs at the local library and help a fundraising drive for a new addition to the elementary school. Second, since this 5% minimum distribution is mandatory (the IRS does not want people to create foundations and receive a large deduction for making a contribution without ever helping charities), your children are forced to communicate with each other each year to decide exactly how much to distribute

and for what purposes. With children spread across the country, many parents simply want to ensure that their children will talk to each other after the parents are gone. As basic as it may sound, the foundation acts as a unifying vehicle and keeps the lines of communication open for your descendants while helping others.

For those individuals with serious charitable interests, the private foundation is an excellent vehicle to address society's most pressing concerns and to create a perpetual legacy for your family that continues for generations to come.

We have established family foundations for many of our clients. If you would like more information about this important topic, please call Michael Markhoff, Esq.

IN OUR FIRM

Expanding Our Trusts and Estates Department

We are delighted to announce that Karen C. Hunter, Esq. has joined our firm in the trusts and estates department. Karen has an LL.M. in Taxation and most recently practiced law at the New York City law firm of Seward & Kissel LLP, where she concentrated in transfer tax planning for high net worth families, including succession planning for family owned businesses. We are happy to welcome Karen to our firm.

Let us know if you would like to receive future issues of our newsletters by e-mail. All we need is your e-mail address. Please either fax your request to our office, attention: Paula Peck at (914) 948-1706 or e-mail Ms. Peck at Ppeck@dmlawyers.com.

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