The Tax Implications of Telehealth Services
Tax Issues Surrounding Telemedicine Practitioners

Crowe® Healthcare Webinar Series
The information provided herein is educational in nature and is based on authorities that are subject to change. You should contact your tax adviser regarding application of the information provided to your specific facts and circumstances.
Overview

- What is telemedicine?
- Why is understanding telemedicine important to tax-exempt hospitals?
- Historical tax principles govern evolving healthcare services
- Key to tax analysis—who is a “patient”?
- Unrelated Business Taxable Income (UBTI) factors and analysis for telemedicine services
- What’s next?
What is Telemedicine?

- Telemedicine seeks to improve a patient’s health by providing two-way, real-time interactive communication between the patient and a physician at a distant site.

- As the number of newly insured Americans is predicted to increase as a result of the passage of the Affordable Care Act (ACA), so will the demand for available physicians and other healthcare providers. The use of telemedicine and other innovative healthcare technology will be essential to expanding access to healthcare providers, while lessening the dependence on traditional in-person methods of receiving medical treatment.

Telemedicine is Expected to Evolve and Expand

- More than $120 million in federal funds have been awarded to telemedicine programs nationwide.
- The Center for Medicare and Medicaid Innovation is providing a financial incentive for the continuous development of new innovative telehealth systems.
- Roadblocks include regulatory hurdles, reimbursement limitations and licensure.

Historic Tax Principles Governing Healthcare Services

- IRC § 513(a)(2) – a trade or business carried on by a section 501(c)(3) organization “primarily for the convenience of its… patients” is not considered an unrelated trade or business.

- Traditional examples include:
  - Cafeteria and coffee shop for employees
  - Parking lot for patients and visitors
  - Gift shop patronized by patients and visitors
  - Sale of drugs, services, equipment to patients
Polling Question #1

In your institution:

A. Substantial telemedicine services are being provided.
B. Minimal telemedicine services are being provided.
C. The provision of telemedicine services is being contemplated.
D. There is no current interest in providing telemedicine services.
Who is a “Patient”? 

- Sets forth examples of relationships that determine whether a person is a “patient” of a hospital for purposes of section 513(a)(2)
  - Person admitted to hospital as inpatient
  - Person receiving outpatient health services
  - Person directly referred to outpatient facilities by private physician for treatment
  - Person refilling prescription written during treatment as hospital patient
  - Person receiving medical services as part of a hospital-administered home care program
  - Person receiving medical care and services in a hospital-affiliated extended care facility
Who is a “Patient”?

- Rev. Rul. 85-109, 1985-2 C.B. 165 – income from a tax-exempt hospital’s performance of laboratory testing upon specimens obtained from private office patients of the hospital’s staff physicians who are not patients of the hospital is UBTI
- Whether the “patient” is also a patient of an unrelated entity versus a related entity is also a factor
Exceptions

Exceptions to the UBTI rules may apply when services are provided to non-patients, including:

- Casual sales
- Services for a charitable class
- Shortage of services in the community
- Services that contribute to medical education
- Services to small hospitals at or below cost
Polling Question #2

What other situations have you encountered where the concept of “who is a patient” was an issue?

A. Occupational health services provided off-site.
B. Laboratory services provided to unrelated entities.
C. Pharmacy sales to patients of private physicians.
D. Two or more of the above.
Telemedicine Delivery Models

- Synchronous – models that connect people and providers in real-time
- Asynchronous – models that deliver care to people without requiring real-time interaction
- Physician-patient relationship
- Provider-to-provider consulting relationship
Unrelated Business Income (UBI) Factors and Analysis for Telemedicine Services

- Factors relevant in determining whether an individual is a patient of the hospital:
  - Direct interaction with patient
  - Physician licensure
  - Medical staff admission and credentialing
  - Billing responsibility
  - Treatment consent
  - Medical record
  - Malpractice liability reach / insurance coverage

- Documentation is important and should be consistent with tax treatment!!
Polling Question #3

The IRS Colleges and Universities Compliance Project Report and related audit activity seems to have signaled a renewed focus on unrelated business activities by the IRS. In response to the issuance of that report, has your organization:

A. Examined its general ledger and trial balance to ensure proper characterization of revenue accounts?
B. Examined its expense allocation methodologies?
C. Reviewed net operating losses and the number of consecutive years in which losses have been incurred?
D. Two or more of the above.
E. None of the above.
UBI Analysis

- UBI – Four Step Analysis
  - Characterization of income/activities
    - Maintain written support as to whether the activity furthers exempt purposes of the organization
  - Expense allocations
    - Four primary components are people, places, equipment, overhead
  - Regularly carried on
    - Frequency and continuity pursued in a manner similar to comparable commercial activities
  - Trade or business – is the activity profitable?
    - Pattern of repeated losses?
Changing Healthcare Landscape Contributing to Telemedicine Growth

- A recent Towers Watson study concluded that U.S. employers could save up to $6 billion per year if their employees routinely engaged in remote consults for appropriate medical problems instead of visiting emergency rooms, urgent care centers, and physicians’ offices.

- Expected growth in telehealth services—such as vital sign monitors, fetal and neonatal monitors, cardiac output monitoring devices, and blood pressure monitors.
Polling Question #4

What are the biggest obstacles to expansion of telemedicine services in your institution?

A. Reimbursement for telemedicine services.
B. Taxation of income from telemedicine services.
C. State laws (such as licensing).
D. The cost of technology.
Your Questions
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