

OUR PRACTICE

Exempt Organizations – Health Care

From small, community-based nonprofits to vast city hospitals and world-renowned academic medical centers, tax-exempt organizations play a central role in the American health care system. Nonprofit health care organizations must work within all the ordinary constraints of the heavily regulated health care system, but they also face yet another level of scrutiny because of their tax-exempt status – this status involves a layer of regulatory compliance concerning everything from executive compensation and how the hospital or health care provider bills uninsured or charity patients, to how exempt providers structure an acquisition, joint venture, or other transaction. For example, under the Affordable Care Act (ACA), tax-exempt hospitals are now required to publish a periodic report documenting the benefits they provide their communities. Every three years, nonprofit hospitals must conduct a formal community health needs assessment (CHNA), publicize the CHNA, and devise an implementation strategy to meet the community health needs identified in the assessment. In addition, new provisions within the ACA (codified in IRC § 501(r)) also require tax-exempt hospitals to have a written financial assistance policy (FAP) and emergency medical care policy, a billing and collections policy requiring application of the FAP. They also limit charges billed to qualifying patients to amounts generally billed to insured patients.

Baker Donelson's health law attorneys have extensive experience handling the unique tax and regulatory challenges that tax-exempt health care organizations face in their day-to-day business and operational environment and in their evaluation of strategic, transactional, and provider alignment approaches. Our numerous exempt health care clients include local, regional and national hospitals and hospital systems; integrated delivery systems; academic medical centers and faculty practice plans; group physician practices and trade associations; and taxable entities that have strategic business relationships with exempt organizations, such as managed care organizations, joint venture structures and single specialty providers. That experience gives us the background and tools to creatively problem-solve when addressing the often complex and difficult legal questions that tax-exempt health care organizations routinely confront.

We have helped numerous clients with a full range of common tax-exempt organization- related matters, including:

- Obtaining IRS exemption for all types of exempt organizations, including faculty practice plans and integrated delivery system models.
- Obtaining IRS private letter rulings on matters such as unrelated business taxable income.
- Advising tax exempt organizations with respect to Form 990 filing matters.
- Advising exempt health care organizations with respect to matters of board governance, including conflict of interest policies, charity and community benefit policies, and operational procedures.
- Providing guidance on development and implementation of appropriate policies and procedures for compensating physicians, executives, and other insiders, including template physician employment agreements, professional services agreements, recruitment agreements, and related documentation.
- Providing advice on private inurement, private benefit and IRS intermediate sanctions as well as procedures for minimizing liability, including board conduct and interface with and evaluation of fair market value appraisers and appraisal work product.
- Acquisitions, integrated delivery models, and other transactions present particular challenges to tax-exempt health care organizations. Here, too, the wide-ranging experience of Baker Donelson's health law attorneys streamlines the process.

- We frequently counsel tax-exempt providers on tax compliance during and after transactions, including physician practice acquisitions and divestitures, physician recruitment, holding company structures and relationships with taxable affiliates (including applicable charter, articles of incorporation and bylaws provisions), and physician service line alignment strategies, in all areas of specialty including cardiology services, medical and radiation oncology services, orthopedics, cardiovascular and other surgical services, nephrology, gastroenterology, and internal medicine, pediatrics and other primary care services.
- We have represented exempt organizations in the acquisition or establishment of hospitals, ambulatory surgery centers and other specialty providers.
- We have structured whole hospital and ancillary joint ventures to allow tax-exempt organizations to participate, maintain tax exempt status, and avoid unrelated business taxable income.
- We have obtained approvals from state attorneys general regarding conversion from nonprofit to for-profit status and the transfer of assets from nonprofit to for-profit entities, as well as counseled with respect to other nonprofit state law issues.



Representative Matters

- Represented a tax exempt long term care provider regarding the restructuring of a \$20 million municipal bond issuance.
- Represented a nonprofit health system in obtaining tax exempt status for seven integrated delivery system (IDS) medical foundations involving physician-controlled board governance structures, but with sufficient reserve powers in favor of the health system corporate member to maintain exempt status.
- Represented a regional nonprofit health system in an integration transaction with respect to a large multi-specialty physician clinic with over 100 physicians.
- Represented a large multi-specialty physician clinic with more than 100 physicians in an integration transaction with a regional nonprofit health system.
- Represented a regional non-profit health system in structuring three whole-hospital joint ventures to build and operate new hospitals, including private placement syndications to contemplated physician medical staff members, with transaction values and capital investments of approximately \$100 million each.
- Represented a regional nonprofit health system in its purchases of numerous primary care and specialist physician practices and structuring fair market value wRVU-based and collections based compensation models, including physicians in family medicine, internal medicine, gastroenterology, cardiology, oncology, pulmonology, pediatrics and orthopedic surgery and a total exceeding 100 employed physicians.
- Represented a non-profit hospital in the sale of a long term acute care (LTAC) hospital to a publicly traded for-profit hospital company, with a transaction value of \$7 million.
- Represented a regional non-profit health system in the purchase of a 17-physician cardiovascular group.
- Represented regional nonprofit health system in structuring and consummating a physician joint venture to form an independent diagnostic imaging facility (IDTF), including regulatory and compliance advice with respect to meeting the conditions of participation, and a related private offering and syndication of investment units to community physicians.
- Represented a regional nonprofit health system in the purchase of three medical oncology physician practices.
- Represented nonprofit hospital in structuring and consummating a physician joint venture serve as a freestanding radiation oncology clinic.
- Represented a non-profit hospital in establishing coverage and hospitalist professional services arrangements with various specialties, including cardiovascular surgery, cardiology,

pulmonology/intensivist, neurology and telemedicine services, and structuring fair market value compensation.

- Represented a regional nonprofit health system in purchasing an ambulatory surgery center joint venture and its conversion to provider-based status.