TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **200944053**
Release Date: 10/30/09
Date: July 21, 2009

UIL Code:
501.00-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose,* and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: May 6, 2009

Contact Person:

Identification Number:

UIL Code:
501.03-08
501.03-21
501.03-24
501.03-30

Contact Number:

FAX Number:

Employer Identification Number:

Dear

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3). The basis for our conclusion is set forth below.

Facts

You were formed in **** as a nonprofit corporation under state law. Your Articles of Incorporation state that your purposes include:

> To improve the quality of health care available to consumers by initiating breakthrough improvements in safety and the value of health care and to provide tools, information and support to patients and other purchasers of health care services.

You were founded by ** large corporations and ** large healthcare insurance companies. The ** large corporations made initial capital contributions totaling $***,***, and the ** healthcare insurance companies made initial capital contributions totaling $*.* million.

Your Certificate of Incorporation states that you are managed by a Governance Committee. The rules by which the Governance Committee operates are included in your Bylaws. Currently, your Governance Committee consists of ** persons,**of whom are appointed by your participating large corporations ("Employer Members") and your participating large healthcare insurance companies ("Health Plan Members") (collectively, "Members").

In your application for exemption, you state that your primary goals are to:

(1) Adopt from existing sources, a set of standardized performance measures of quality and efficiency for hospitals and physicians;

(2) Aggregate available data to produce detailed provider performance data to measure quality and efficiency at the hospital and patient level;

(3) Make provider performance data available to employees and members of participating employers and health plans and to the general public; and

(4) Support efforts to create a patient-driven market for open and accessible information about hospital and physician performance.

Your first priority is to promote the adoption of standardized performance measures of healthcare quality and efficiency. Your focus is on transparency, so that healthcare recipients can easily access information on quality and cost needed to compare and select doctors, hospitals and treatment options. You will consolidate, manage and process healthcare data collected from your Employer Members and your Health Plan Members. Once processed, the resulting aggregate data may be used to rank the quality and efficiency of healthcare providers.

You state that your Members will submit claims data on approximately ** million individuals. You will aggregate and manipulate the data in a "data warehouse," a repository from which provider performance will be measured.

You state that your Members may make the health care provider performance data available to individual consumers, although you do not and cannot require your Members to do so. The Health Plan Members will decide how to use the data to develop new health plan products, networks, services and provider performance enhancement programs. You state that your Health Plan Members may make the data broadly available to all their interested enrollees and clients. You state that the data will be used to develop better healthcare and better standards for measurement. You state that you expect to collect data on up to 80 percent of the physicians and 90 percent of the hospitals in the United States. You state that as your programs develop, you will make information regarding your approach to improving the cost and efficiency of health care more widely available to the general public.

You have contracted with various vendors to purchase information technology services, metrics for data analysis, project management, data aggregation and oversight, and strategy.

You receive all your revenues from your Employer Members and your Health Plan Members, consisting of two components: (1) initial membership dues, and (2) monthly support payments. You have entered into agreements ("Data Use and Confidentiality Agreements") with your Employer Members, under which each Employer Member will pay annual membership dues of $*,*** per year ($*,*** per year for Employer Members who join in ****). You have also entered into agreements ("Funding Agreements") with Health Plan Members, under which each Health Plan Member will pay a one-time membership fee of $***,***. Additionally, Employer Members and Health Plan Members will make monthly support payments, the amount of which is based on a series of formulas that take into account the number of covered lives each Member contributes to your database.

Currently, you have ** Employer Members and ** Health Plan Members. The annual membership dues and monthly support payments your Members have made and are expected to make are:

	Actual	Actual	Estimated
	****	****	****
Employer Members	$ ***,***	$ *,***,***	$ ***,***
Health Plan Members	$ *,***,***	$ *,***,***	$ *,***,***
Total	$ *,***,***	$ *,***,***	$ *,***,***

Your Members receive similar benefits, which include the opportunity to:

- Participate in a focused public policy message supporting the concepts of data release and provider performance transparency;
- Participate in quarterly membership updates and annual meetings; and
- Network with the other Employer Members and Health Plan Members; and
- Provide input into your activities and participate on your committees.

Your Employer Members receive summary-level results from the data aggregation process and your Health Plan Members receive detailed line-item claims data, which they can use to perform in-depth analysis of the results.

You state that you plan to provide the results of your findings to: (1) your Employer Members, which will provide these results to their respective employees, (2) your Health Plan Members, which will provide these results to their respective enrollees; and (3) the general public through a website and/or publications.

You state that once you obtain a sufficient level of data aggregation and achieve the requisite credibility threshold, you plan to release these data to the public on a website, either directly or in partnership with another tax-exempt organization active in the health care provider environment. You state that your Governance Board has approved the development of a website through which the results of your provider performance data will be made available to the general public. In addition, you expect, but cannot require, your Health Plan Members to use the results to educate physicians and hospitals about the quality and efficiency of their performance. You state that you have not yet reached the stage where your data meets the high threshold of credibility that you require prior to a broad release of your results.

Law

Section 501(c)(3) of the Code provides that for an organization to be described in section 501(c)(3) it must be organized and operated exclusively for exempt purposes, including charitable, scientific and educational purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations ("regulations") states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for one or more tax-exempt purposes unless it serves a public rather than a private interest. To meet this requirement, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations states, in part, that the term "charitable" in section 501(c)(3) of the Code includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations states that the term "educational" in section 501(c)(3) of the Code includes the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(5) of the regulations states that a "scientific" organization must be organized and operated in the public interest. Research is not synonymous with "scientific;" and the nature of particular research depends on the purpose which it serves. Scientific research does not include activities incidental to commercial or industrial operations. Scientific research is treated as being carried on in the public interest if, among other things, the results of such research are made available to the pubic on a nondiscriminatory basis.

Rev. Rul. 69–545, 1969–2 C.B. 117, holds that a non-profit hospital that benefits a broad cross section of its community by having an open medical staff and a board of trustees broadly representative of the community, operating a full-time emergency room open to all regardless of ability to pay, and otherwise admitting all patients able to pay (either themselves, or through third party payers such as private health insurance or government programs such as Medicare) may qualify as an organization described in section 501(c)(3) of the Code.

Rev. Rul. 74-614, 1974-2 C.B. 164, describes an organization that was created and controlled by tax-exempt colleges and universities. The organization devised and operated a regional computer network to enable its member institutions, including faculties and students, to benefit from research and scientific information developed by other member institutions and the federal government. It conducts an information clearinghouse responsive to the research needs of its member-users. The computer network is not used for administrative matters such as class scheduling, billing, or processing applications. The organization is supported by governmental grants, contributions, and membership dues. The ruling concluded that the organization is advancing education.

Rev. Rul. 76-455, 1976-2 C.B. 150, involves a nonprofit that was organized to encourage and assist in the establishment of nonprofit regional health data systems; to conduct scientific studies with regard to quality, utilization, and effectiveness of health care agencies; to educate those involved in health care as to the deficiencies in the quality, utilization, and effectiveness of health care and health care agencies; and to make proposals to remedy such deficiencies. It provided all services to health care institutions, government bodies and the general public without charge. The ruling concludes that the research and study are carried on to provide educational and scientific benefits to the general public and therefore it qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 77-69, 1977-1 C.B. 143, describes an agency that was organized and operated pursuant to federal statute to establish and maintain a system of health planning and resource development aimed at providing adequate health care for a specified geographic area. It was funded by federal grants and managed by government officials and members of the public. The organization gathered and analyzed health data, established health system plans and goals, coordinated activities with professional standards review organizations, reviewed and approved grant applications for federal funds, and assisted states in reviewing health services capital expenditures. The organization promoted the health of the residents of the area in which it functioned, and met the requirements of lessening the burdens of government, and therefore operated for charitable purposes under section 501(c)(3) of the Code.

Rev. Rul. 80-287, 1980-2 C.B. 185, provides that a nonprofit lawyer referral service does not qualify for exemption under section 501(c)(3) of the Code. The organization aided persons who did not have an attorney by helping them select one, in exchange for a nominal service charge. Any attorney who was a member of a local bar association could apply for placement on the referral list, in exchange for an application fee. Because a substantial purpose of the organization was aiding the legal profession, the organization was not organized or operated exclusively for charitable purposes, even though its lawyer referral service did provide some public benefit.

Rev. Rul. 81-29, 1981-1 C.B. 329, describes an organization that otherwise qualified for exemption under section 501(c)(3) of the Code. It assists academic research libraries and agencies and other library organizations in exchanging bibliographic information through a computer network. The organization did not provide other services, such as routine administrative services, to its member libraries. Its members include historical societies and libraries of colleges and universities, which are exempt under section 501(c)(3), and libraries of state and federal governmental agencies, as well as non-exempt libraries of business entities. The organization derives its income from each of its member libraries for the cost of computer time used plus service charges. This ruling concluded that, by making bibliographic information available to researchers, the organization advances education within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(2) of the regulations. The fact that the information is furnished to non-exempt libraries does not detract from the educational value of the information itself.

Rev. Rul. 81-276, 1981-2 C.B. 128, describes a professional standards review organization ("PSRO") established pursuant to a federal statute to review health care practitioners' and institutions' provision of health care services and items for which payment is made under Medicare and Medicaid, and determine whether the quality of services met professionally recognized standards of care. No payments under Medicare or Medicaid could be made before the services were reviewed and approved by the organization. By taking on the government's burden of reviewing the quality of services provided under Medicare and Medicaid, the organization lessened the burdens of government and promoted health in a charitable manner. Any benefit to members of the medical profession from such activities was incidental to the benefit the organization provided in promoting health and lessening the burdens of government. Therefore, the organization qualified for exemption under section 501(c)(3) of the Code.

In Rev. Rul. 85-110, a section 501(c)(3) hospital performed diagnostic laboratory testing upon specimens from the private office patients of the hospital's staff physicians and upon specimens from patients of medical clinics not connected with the hospital. This revenue ruling concluded that there is no substantial causal relationship, as required in section 1.513-1(d)(2) of the regulations, between the achievement of the hospital's exempt purposes and its provision of diagnostic laboratory testing services on specimens from persons who are not its patients. Therefore, this activity constituted an unrelated trade or business under section 513(a) of the Code.

In Better Business Bureau of Washington D.C., Inc. v. U.S., 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that a trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university, and therefore, the association did not qualify for exemption.

American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), cert. denied, 372 U.S. 976 (1963), described an organization that had a stated aim of teaching and disseminating economic knowledge, published two semi-monthly periodicals available for subscription, and provided investment advice services for a fee. The court held that this organization did not qualify for exemption under section 501(c)(3) of the Code, because its commercial purpose of selling investment advice was primary and not incidental to its educational purpose.

In B.S.W. Group, Incorporated v. Commissioner, 70 T.C. 352 (1978), the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of an organization formed to provide consulting services for a fee to nonprofit and tax exempt organizations in the areas of health and health delivery systems, housing, vocational skills, and cooperative management. In concluding that the organization did not qualify for exemption, the court noted that:

> [T]he critical inquiry is whether petitioner's primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the

> nonexempt one of operating a commercial business producing net profits for petitioner. . . . Factors such as the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits are relevant evidence of a forbidden predominant purpose.

In Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979), aff'd, 625 F.2d 804 (8th Cir. 1980), the court held that, while selling prescription pharmaceuticals to elderly persons at a discount promotes health, the pharmacy did not qualify for recognition of exemption under section 501(c)(3) of the Code on that basis alone. Because the pharmacy operated for a substantial commercial purpose, it did not qualify for exemption under section 501(c)(3).

In Washington Research Foundation v. Commissioner, T.C. Memo 1985-570 (1985), the Tax Court held that an organization that facilitates transfer of technology from nonprofit organizations' labs for public use through licensing arrangements with private industry did not qualify for exemption under section 501(c)(3) of the Code, because the immediate benefit of its activities redounds to private industry and the nonprofit research institutions, and only indirectly to the general public, and because these activities are commercial in nature and not in direct furtherance of exempt purposes.

Living Faith, Inc. v. Commissioner, 950 F.2d. 365 (7th Cir. 1991), involved an organization established by the Seventh Day Adventist Church to carry out its "health ministry" through operation of two vegetarian restaurants and health food stores. The court sustained the IRS's denial of tax exemption under section 501(c)(3) of the Code because the organization was operated for a substantial non-exempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In IIT Research Institute v. United States, 9 Cl. Ct. 13, 21 (1985), the Claims Court determined that 11 contracts between an organization and various federal government agencies or federal government contractors constituted "scientific research" within the meaning of section 1.501(c)(3)-1(d)(5) of the regulations because they:

1) Involved the use of observation or experimentation to formulate or verify facts or natural laws;

2) Could only have been performed by an individual with advanced scientific or technical expertise;

3) Added to knowledge within a particular scientific field;

4) Involved the application of mathematical reasoning; and/or

5) Involved attempts to systemize or classify a body of scientific knowledge by collecting information and presenting it in a useful form.

The Claims Court also concluded that the term "research," as used in section 1.501(c)(3)-1(d)(5) of the regulations, ". . . was intended to include not only fundamental research but also applied research such as testing and experimental construction and production." 9 Cl. Ct. at 31.

American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), concerned a school that trains individuals for careers as political campaign professionals. The court held that the organization did not exclusively serve purposes described in section 501(c)(3) of the Code because it operated on a partisan basis thereby serving private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with a particular political party and that most of the organization's graduates worked in campaigns for that party's candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting the party's candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferring benefits on disinterested persons who are not members of a charitable class may serve a private interest within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

In Geisinger Health Plan v. Commissioner, 985 F.2d 1210 (3rd Cir. 1993), the court held that a pre-paid health care organization that arranges for the provision of health care services only for its members, benefits its members, not the community as a whole. Under the community benefit standard, the organization must benefit the community as a whole to be recognized as promoting health in the charitable sense of 501(c)(3).

In Housing Pioneers, Inc. v. Commissioner, T.C. 1993-120, *aff'd,* 49 F.3d 1395 (9th Cir. 1995), *amended by* 58 F. 3d 401 (9th Cir. 1995), the Court of Appeals upheld the two grounds on which the Tax Court decided that an applicant for exempt status as a charitable provider of affordable housing, was not qualified for exempt status. First, the applicant's proposed activities included a substantial nonexempt purpose to provide the benefit of state and federal tax credits to for-profit partners. Second, the benefits inured in part to private individuals, who were in one case closely related to those who organized Pioneers.

Redlands Surgical Services, 113 T.C. 47, 92-93 (1999), *aff'd* 242 F.3d 904 (9th Cir. 2001), provides that a nonprofit organization may form partnerships, or enter into contracts, with private parties to further its charitable purposes on mutually beneficial terms, "so long as the nonprofit organization does not thereby impermissibly serve private interests." The Tax Court held that the operational standard is not satisfied merely by establishing "whatever charitable benefits [the partnership] may produce," finding that the nonprofit partner lacked "formal or informal control sufficient to ensure furtherance of charitable purposes." Affirming the Tax Court, the Ninth Circuit held that ceding "effective control" of partnership activities to the for-profit partners impermissibly serves private interests. 242 F.3d at 904.

IHC Health Plans, Inc. v. Commissioner, 325 F.3d 1188 (10th Cir. 2003), involved an operator of health maintenance organizations that served approximately one-quarter of Utah's residents and approximately one-half of its Medicaid population. The court held that the organization failed to meet the community benefit standard to qualify for exemption under section 501(c)(3) of the Code because its sole activity was arranging for health care services for its members, in exchange for a fee. The court said that providing health-care products or services to all in the community is necessary but not sufficient to meet the community benefit standard. Rather, the organization must provide some additional benefit that likely would not be provided in the community but for the tax exemption, and that this public benefit must be the primary purpose for which the organization operates.

Analysis

We have concluded that you are not operated exclusively to promote health under section 501(c)(3) of the Code, or to further any other tax-exempt purpose within the meaning of section 501(c)(3) and section 1.501(c)(3)-1(d) of the regulations. Rather, you are operated primarily for a non-exempt purpose, i.e., to operate a commercial business and a cooperative enterprise primarily for the benefit of your Members. Any public purposes for which you may operate are only incidental to this primary non-exempt purpose. In addition, you are operated primarily to provide substantial private benefit to your Members, which is prohibited by section 1.501(c)(3)-1(d)(1)(ii). Therefore, we cannot recognize you as an exempt organization under section 501(c)(3) of the Code.

Tax-Exempt Purpose

Promotion of Health

The promotion of health has long been recognized as a charitable purpose under common law. *See Restatement (Second) of Trusts*, §§ 368, 372 (1959); 4A Austin W. Scott and William F. Fratcher, *The Law of Trusts* §§ 368, 372 (4th ed. 1989). However, not every activity that generally promotes health furthers exclusively charitable purposes under section 501(c)(3) of the Code. For example, selling prescription pharmaceuticals promotes health, but pharmacies cannot qualify for recognition of exemption under section 501(c)(3) on that basis alone. Federation Pharmacy Services, Inc, supra. Nor does a hospital primarily further a charitable purpose solely by offering health care services to the public in exchange for a fee. See Rev. Rul. 69-545, supra. Rather, a hospital must be organized and operated primarily for the benefit of the community, as evidenced by such factors as a board that represents the community, operation of an emergency room, provision of charity care, medical training, or medical research. For example, a health maintenance organization that is operated primarily for the purpose of benefiting its paying subscribers does not qualify for exemption solely because the community also derives health benefits from its activities. See Geisinger Health Plan, supra; and IHC Health Plans, Inc., supra.

You do not provide healthcare services directly to patients, unlike the hospital in Rev. Rul. 69-545. Your activities consist of gathering healthcare data from your funding Members, analyzing this data, and making the results of your analysis, healthcare provider performance

data, available to your Members. In essence, you are providing information to your Employer Members and to your Health Plan Members, so that the Employer Members can reduce their costs of providing employee health benefits to their employees, and your Health Plan Members can improve their health insurance products for their clients with the expectation of helping them to reduce their costs.

Furthermore, these services directly and substantially benefit your Members. To the extent the general public benefits from your activities, these benefits are based on and derived from the manner in which your Members choose to use the data they receive from you. The healthcare provider performance data are merely information that your Members may use to reduce the cost of providing healthcare benefits. To the extent the community may realize benefits from these data, in the form of reduced healthcare costs, this would be similar to the benefits a community derives when healthcare providers use more effective and efficient medical supplies, equipment, and current health information to diagnose illnesses and diseases and treat their patients. The provision of such tools to healthcare providers generally does not serve exclusively tax-exempt purposes. As the court noted in IHC Health Plans, Inc., supra at 1197:

> In giving form to the community-benefit standard, we stress that 'not every activity that promotes health supports tax exemption under § 501(c)(3). For example, selling prescription pharmaceuticals certainly promotes health, but pharmacies cannot qualify for . . . exemption under § 501(c)(3) on that basis alone.' Rev. Rul. 98-15. In other words, engaging in an activity that promotes health, *standing alone*, offers an insufficient indicium of an organization's purpose. Numerous for-profit enterprises offer products or services that promote health.

In several revenue rulings, the Internal Revenue Service concluded that an organization was promoting health within the meaning of section 501(c)(3) of the Code even though it was not directly providing medical care to patients because it improved the effectiveness of health care provided by others. See Rev Rul. 77-69, supra; and Rev. Rul. 81-276, supra. However, the organizations in these revenue rulings were created pursuant to federal statutes and worked closely with the government to support its health care responsibilities. You were not established pursuant to any federal statute and no government agency supports your activities.

You state that you intend to make the results of your analysis, healthcare provider performance data, available to the general public through a website. However, you have provided no details nor explained how you intend to operate this program.

You also state that you expect your Employer Members will make this information available to their employees to assist them in becoming better consumers of healthcare services. You have no authority to dictate how your Members may or may not use this information. In any event, the ultimate goal of your activities is to provide healthcare data to your Members. How your Members may use this information has no bearing on whether your

activities primarily further a chartable purpose within the meaning of section 501(c)(3) of the Code.

Therefore, although your activities may indirectly promote health in a general sense, they do not primarily promote health in a charitable manner within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(2) of the regulations.

Education

Furthering education is an exempt purpose within the meaning of section 501(c)(3) of the Code. See section 1.501(c)(3)-1(d)(3) of the regulations. The regulations explain that the term "educational" in section 501(c)(3) of the Code includes the instruction of the public on subjects useful to the individual and beneficial to the community. See section 1.501(c)(3)-1(d)(3)(i). of the regulations.

You will be giving healthcare provider performance data exclusively to your funding Members. You will not be providing educational services to individuals or to the community. You will not be informing individuals or the public on a topic to develop their capabilities within the meaning of section 501(c)(3)-1(d)(3) of the regulations. In addition, your activities will not constitute instructing the public on subjects that are beneficial to the community within the meaning of section 501(c)(3)-1(d)(3) of the regulations.

You are unlike the organization in Rev. Rul. 74-614, supra, because you are not controlled by tax-exempt educational organizations and you do not operate as a regional computer network which these organizations and their students and faculties can use to share research and scientific information. You also differ from the organization described in Rev. Rul. 81-29, supra, because none of the recipients of your healthcare provider performance data will be tax-exempt or governmental academic research libraries and agencies or other library organizations. Rather, you will give these data only to your funding Members.

You state that you intend to make the results of your analysis, healthcare provider performance data, available to the general public through a website. However, you have provided no details nor explained how you intend to operate this program.

Therefore, your primary activities do not further education within the meaning of section 1.501(c)(3)-1(d)(3) of the regulations.

Scientific Research

The advancement of science is an exempt purpose within the meaning of section 501(c)(3) of the Code. See section 1.501(c)(3)-1(d)(5) of the regulations. The term "scientific," as used in section 501(c)(3) of the Code, includes the carrying on of scientific research in the public interest. Not all research or study is "scientific," for purposes of section 1.501(c)(3)-1(d)(5) of the regulations. Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations.

Although you expect to develop a very large database of health data, and will analyze these data extensively to develop healthcare provider performance data that you will distribute to your Members, these activities are not scientific in nature. You will not be conducting any scientific studies similar to those conducted in Rev. Rul. 76-455, supra, where one of the organization's principal activities was to conduct scientific studies with regard to the quality, utilization, and effectiveness of health care agencies. In this ruling, the organization studied existing health care facilities, determined methods and practices that would provide better medical services to the general public and disseminated the results of such studies to the general public. Unlike the organization in Rev. Rul. 76-455, supra, your activities involve the analysis of large amounts of healthcare data to evaluate healthcare provider performance. Your activities do not resemble any of the characteristics of "scientific research" articulated in IIT Research Institute v. United States, supra. Rather, your activities are beyond the testing or demonstration phase. Furthermore, you will distribute the healthcare provider performance data to your Members, but you have not established that you will disseminate these data to the general public.

Accordingly, your activities do not constitute "scientific research" within the meaning of section 1.501(c)(3)-1(d)(5) of the regulations, and in any event, research is not your primary purpose.

Substantial Non-Exempt Purpose

An organization is operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. See section 1.501(c)(3)-1(c)(1) of the regulations.

Providing services of an ordinary commercial nature, regardless of whether the undertaking is conducted on a nonprofit basis and is beneficial to the community, does not further a charitable purpose, unless the service directly accomplishes a tax-exempt purpose. See Rev. Rul. 80-287, supra. The sale of health-related goods and services (*e.g.,* laboratory services, pharmaceuticals, HMO services, consulting services) does not exclusively further charitable purposes because such activities serve a substantial non-exempt, commercial purpose. See, *e.g.,* Federation Pharmacy Services, supra (sale of pharmaceuticals to senior citizens was presumptively commercial, because such activity was normally pursued by commercial enterprises); Rev. Rul. 85-110, supra (exempt hospital's provision of laboratory testing services to non-patients served non-charitable purposes); Washington Research Foundation, supra (facilitating transfer of technology from nonprofit organizations to the public through licensing arrangements with for-profit companies is commercial in nature); and American Institute for Economic Research, supra (primary purpose of securities analysis publication was commercial).

You were founded and initially funded by ** large corporations and ** large healthcare insurance companies, all of which made large initial capital contributions. These and other large corporations and healthcare insurance companies comprise your current Members, which

consist of ** Employer Members and ** Health Plan Members. You are managed by a Governance Committee, most of whom are appointed by your Employer Members and Health Plan Members. You receive all your operating revenues from your Members, who pay monthly support payments based on the number of covered lives each contributes to your database. Your Employer Members will use this data to improve the healthcare insurance benefits they provide to their employees and to lower their costs of providing these benefits. You expect, but cannot require, your Employer Members to share this data with their respective employees. You also expect that your Health Plan Members will use this data to improve the efficiency of their operations and to reduce the pricing of their health insurance products, thereby resulting in cost savings to the Health Plan Members' employer clients and their respective employees. You state that you plan to share the results of your analysis of healthcare provider performance data with the general public by means of a public website. However, you have provided virtually no information relating to this endeavor.

Thus, your activities are not inherently charitable but are more like activities carried on by for-profit businesses, a factor that supports the commercial nature of your activities. See, e.g., Living Faith, Inc., supra (organization's health food stores and restaurants were in competition with for-profit organizations); and IHC Health Plans, supra (health plans resembled and competed with commercial insurance providers).

Further, you will receive part of the funding for your operations from monthly support payments from your Employer Members and Health Plan Members, the amount of which is based on a series of formulas that take into account the number of covered lives each Member contributes to your database. This funding mechanism is essentially a fee-for-service structure similar to the manner in which for-profit businesses charge their clients in proportion to the services they receive. This fee structure also suggests that you have a non-exempt commercial purpose. See, e.g., B.S.W. Group, Inc., supra; and Living Faith, supra.

Thus, your primary activities are operating healthcare data analysis and data distribution services for the benefit of your for-profit Members. This is a commercial business and is a cooperative enterprise that primarily benefits your Members. Therefore, your activities serve a substantial non-exempt purpose under section 1.501(c)(3)-1(c)(1) of the regulations.

The provision of commercial services may serve primarily charitable purposes when those services are provided exclusively to tax-exempt organizations, are an essential function of such organizations, and are provided for a fee that is substantially below cost. See Rev. Rul. 71-529, supra; and Rev. Rul. 72-369, supra. However, you are not providing services exclusively to exempt organizations, but solely to non-exempt organizations.

Any charitable or educational benefits the public may derive from your healthcare data analysis and data distribution services are merely incidental to your principal purpose of benefiting your Members. Thus, your activities do not primarily further an exempt purpose. Therefore, you are not "operated exclusively" for one more exempt purpose under section 501(c)(3) of the Code. See section 1.501(c)(3)-1(c)(1) of the regulations (an organization will not be regarded as "operated exclusively" for one or more exempt purposes under section

501(c)(3) of the Code if more than an insubstantial part of its activities is not in furtherance of an exempt purpose). Better Business Bureau of Washington D.C., Inc., supra.

Substantial Private Benefit

An exempt organization must be organized and operated exclusively for exempt purposes pursuant to section 1.501(c)(3)-1(a) of the regulations. An entity that is organized or operated to serve private rather than public interests cannot be recognized as operating exclusively for exempt purposes. See section 1.501(c)(3)-1(d)(1)(ii) and American Campaign Academy, supra. The Tax Court explained that prohibited private benefits may include an "advantage, profit, fruit, privilege, gain, or interest." See American Campaign Academy, at 1065. The structure of an organization may also help convey the advantage or gain. In Housing Pioneers, supra, the court found private benefit in a partnership that was structured to secure tax benefits for the for-profit partners. In Redlands Surgical Services, supra, the court found that the for-profit partners used the partnership to restrict competition from the exempt hospital partner.

In determining whether an organization's activities confer an impermissible private benefit, the court in American Campaign Academy, supra, looked to whether the beneficiaries of the organization's activities are also the parties who founded, fund, and direct the organization.

You are, in effect, a cooperative enterprise consisting of large employers and large insurance companies that gathers healthcare data from your Members, analyzes the data, and provides the results of your analysis, healthcare provider performance data, to your Members, who will use these data in their respective businesses. Your Health Plan Members will use these data in an effort to reduce their costs of providing health insurance to their clients. Your Employer Members will use these data in an effort to reduce the costs of providing healthcare benefits to their respective employees. Like the partnerships in Housing Pioneers, supra, and Redlands Surgical Services, supra, your goal is to confer economic benefits on your for-profit Members. Thus, you are organized and operated primarily for their private benefit rather than primarily for public purposes.

You state that your Employer Members and Health Plan Members may give their respective employees and enrollees healthcare provider performance data, and you plan to make this data available to the general public, which information may help these individuals selecting healthcare providers. However, based on the information submitted, the extent of this benefit to the general public is likely to be remote, uncertain and incidental, whereas the economic benefit to your Members' private economic interests is likely to be primary and substantial.

Therefore, because you are organized and operated primarily to provide substantial private benefits to your Members, contrary to the prohibition in section 1.501(c)(3)-1(d)(1)(ii) of the regulations, you are not organized and operated exclusively for exempt purposes under section 501(c)(3) of the Code.

Conclusion

You are not operated exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d) of the regulations. Rather, you are operated primarily for a non-exempt purpose, i.e., to operate a commercial business and a cooperative enterprise primarily for the benefit of your Members. Any public purposes for which you may operate are only incidental to this primary non-exempt purpose. In addition, your are operated primarily to provide substantial private benefit to your Members, which is prohibited by section 1.501(c)(3)-1(d)(1)(ii). Therefore, you do not qualify for recognition of exemption under section 501(a) of the Code as an organization described in section 501(c)(3).

Accordingly, contributions to you are not deductible under section 170 of the Code, and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative,* if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney.* All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
****
****
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements