



Department of the Treasury
Internal Revenue Service
Independent Office of Appeals

Date: **DEC 14 2021**

Person to contact:

Number: **202210023**
Release Date: 3/11/2022

Employer ID number:

Uniform issue list (UIL):
501.34-00

Certified Mail

Dear _____ :

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code"), Section 501(a) as an organization described in Section 501(c)(4) of the Code.

We made the adverse determination for the following reasons:

You are not organized and operated for the purposes of promoting the social welfare and providing a community benefit.

You're required to file federal income tax returns on Forms 1120. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Section 6110 of the Code after deleting certain identifying information. We provided to you, in a separate mailing, Notice 437, Notice of Intention to Disclose. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court	US Court of Federal Claims	US District Court for the District of Columbia
400 Second Street, NW	717 Madison Place, NW	333 Constitution Avenue, NW
Washington, DC 20217	Washington, DC 20005	Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under Section 7428 of the Code.

You also have the right to contact the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have questions, contact the person at the top of this letter.

Sincerely,

Commissioner
By

Enclosures:
Publication 892
Appeals Survey
cc:



Department of the Treasury
Internal Revenue Service

P.O. Box 2508
Cincinnati, OH 45201

Date: **JAN 16 2020**

Employer ID number:

Contact person's ID number:

Contact telephone number:

Contact fax number:

Legend:

B=
C=
D=
F=
G=
H=
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K=
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M=

UIL:

501.04-00

Dear :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(4). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption from federal income tax under IRC Section 501(c)(4)? No, for the reasons stated below.

Facts

Formation

You were formed as a nonprofit corporation on B in the State of C. On D you filed restated Articles of Incorporation. Your restated Articles of Incorporation state that you were formed for the following purposes:

The Corporation is a non-profit corporation organized to promote social welfare within the meaning of Section 501 (c)(4) of the Internal Revenue Code (the "Code") including but not limited to operating an accountable care organization (an "ACO") that participates in the Medicare Shared Savings Program ("MSSP") and other similar accountable care programs.

Letter 4034 (Rev. 11-2018)
Catalog Number 47628K

Your Restated Articles of Incorporation further provide that F shall be your sole member. F is a health system recognized as exempt from federal income tax under IRC Section 501(c)(3).

Your dissolution clause provides as follows:

In the event of the dissolution of the Corporation, by lapse of time or otherwise, when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but upon such dissolution, the Member shall, after paying or making provision for the payment of all liabilities of the Corporation, transfer and set over such funds or property or rights thereto in such manner and to such organization (or organizations) which shall at such time of dissolution qualify as an organization (or organizations) exempt from federal income taxation under Section 501(a) of the Code, or corresponding provisions hereafter in effect, as an organization (or organizations) described in section 501(c)(3) of the Code, or corresponding provisions hereafter in effect, as the Member in its sole discretion shall determine.

Governance

Your bylaws describe your purposes, in part as follows:

- To own, operate and manage an Accountable Care Organization (an "ACO") in accordance with, but not limited to, the requirements of the Medicare Shared Savings Program ("MSSP"), as set forth in the Social Security Act and related regulations;
- To manage, coordinate, and promote accountability for the quality, patient safety, cost, and overall care of patients, including without limitation, Medicare beneficiaries, of the following (collectively, "Patients"): (a) F, (b) its affiliated entities and (c) patients of providers and suppliers who participate in the MSSP and other similar programs through the Corporation's ACC and/or any related or similar programs established by the Corporation from time to time;
- To receive and distribute shared savings from participation in the MSSP and other similar programs and initiatives designed to manage, coordinate, and promote accountability for the quality, patient safety, cost, and overall care of Patients;
- To repay, if any, shared losses or other monies determined to be owed to the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS");
- To establish, report, and ensure provider compliance with health care quality criteria, including quality performance standards, care protocols and efficiency measures;
- To invest in infrastructure and redesigned care processes for high quality and efficient care delivery for Patients, including without limitation, evaluating the health needs of Patients (including the Corporation's ACO assigned patient population), and establishing,

implementing and communicating clinical knowledge and evidence-based medicine to Patients;

- To fulfill other ACC functions as set forth in 42 C.F.R. Part 425 (the "MSSP Regulations"); and
- To enter arrangements with third parties for the provision of care to Patients and to receive and distribute compensation to providers and suppliers, or arrange for the repayment of shared losses, arising from such arrangements.

Board

Paragraph 3.2 provides that your board shall consist of not less than , but not more than board members. You have board members. of your board members are either officers or board members of your sole Member, F, including one who is a physician. board member is the chair of C, an entity related through F and further described below. board members are ex officio board members by virtue of their positions with F, while the remaining are elected directors.

Miscellaneous Provisions

Paragraph 2.5 enumerates transactions by you or your controlled corporations which require prior approval of F:

- 2.5.1 the merger or consolidation of the Corporation with or into any other entity;
- 2.5.2 the dissolution of the Corporation;
- 2.5.3 the creation of, or any investment in, any entity;
- 2.5.4 the purchase or acquisition of any property (real, personal, or mixed) by the Corporation, in any transaction or series of related transactions, for an aggregate consideration in excess of Dollars (\$);
- 2.5.5 the sale, gift, or other disposition of any property (real, personal, or mixed) of the Corporation in any transaction or series of related transactions, having an aggregate value in excess of Dollars (\$);
- 2.5.6 the mortgage or other encumbrance of any property (real, personal, or mixed) of the Corporation having an aggregate value in excess of Dollars (\$); and
- 2.5.7 the incurrence, on a secured or unsecured basis, or termination of any debt for borrowed money in excess of Dollars (\$), all interest rate swap and other hedge agreements, and all reimbursement and indemnity obligations (whether primary or secondary, matured or contingent) to any insurance company or bank providing credit enhancement or liquidity support for any such debt or agreement or any bond secured by the same.

Paragraph 2.6 enumerates transactions requiring notice to (but not prior approval of) F:

- 2.6.1 any amendment to or restatement or repeal of the Certificate of Formation;
- 2.6.2 any amendment to or restatement or repeal of these Bylaws;
- 2.6.3 the adoption or modification of the annual operating and capital budgets of the Corporation;
- 2.6.4 voluntarily ceasing or substantially modifying its participation in the MSSP as an ACO for any reason;
- 2.6.5 the adoption of a plan to distribute shared savings received from the Corporation's participation in the MSSP other than as set forth in the Corporation's application to CMS to participate in the MSSP as an ACO;
- 2.6.6 participating in non-MSSP ACO activities;
- 2.6.7 the adoption of a plan to distribute shared savings received from the Corporation's participation in non-MSSP ACO activities; and
- 2.6.8 the appointment and removal of the Directors of the Corporation by the Board of Directors.

Paragraph 3.2.4 of your bylaws discusses non-participation in the MSSP and provides as follows:

Non-Participation in the MSSP. Notwithstanding any provision set forth in this Section 3.2, if the Corporation ceases its participation in the MSSP as an ACO for any reason, the Member shall automatically have the sole and exclusive right to (a) appoint, remove and replace the individuals serving as Elected Directors, (b) change the number of Directors constituting the Board of Directors, and (c) provide final approval for all matters set forth in Section 2.6 of these Bylaws following approval by the Board of Directors.

Relationships with Others

You state that you are a fully-integrated subsidiary of F, an IRC 501(c)(3) health system. F provided financial support to cover your startup costs. When you began making revenue from shared services savings contracts you repaid the start-up costs.

You also have a relationship with G. G is a C non-profit corporation that is taxable for federal income tax purposes. G provides you with the physician network and case management personnel. You may share facilities and have some common officers and/or directors.

As a part of your ACO activities, F engages G to administer a program to advance evidence-based medicine, increase patient satisfaction and manage the cost of care for the hospitals, services lines of F. You state that F operates a companion program similar to the MSSP, which is dependent on your participation in the MSSP.

As a part of your ACO activities, F also engages H, _____, to provide _____ professional and administrative services, related to the _____ line of services.

As a part of your ACO activities, F engages J, an Internal Revenue Code Section 501(c)(3) healthcare corporation in which F is the sole member to provide _____, professional and administrative services related to the _____ line of services.

Activities

You describe your exempt purpose as improving the health and social welfare of vulnerable patient populations of your parent, IRC Section 501(c)(3) organization, F, and the community as a whole by developing, implementing and communicating coordinated care models that improve patient outcomes. Your activities are focused on patients with complex or chronic health conditions and who otherwise have challenges navigating the healthcare system effectively.

Transactions with Insurance Companies

You have contracts with the MSSP program and _____ other agreements to manage care for _____ different commercial insurance companies.

The MSSP contract you submitted with your application showed that _____ before the time of your application. However, you submitted a copy of _____ showing that your application to participate in the MSSP program is _____. You describe your financial transactions with them as follows:

1. You and the MSSP or one of the other insurance company payors mutually identify a particular group of patients.
2. For a given population, there are quality benchmarks that you must meet over a certain period of time.
3. If you meet these and the cost of providing care is below a specified level, then you receive a portion of the savings from the insurer.
4. An example of the transaction is as follows:
 - a. You agree to a quality benchmark that no more than _____ percent of patients in Insurer A's group are readmitted to the hospital within _____ days of discharge during 20 _____.
 - b. Insurer A expects to pay \$ _____ in claims during a given year. If Insurer A pays less than \$ _____ in total claims in the given year and you meet the less than _____ percent readmission quality benchmark, then Insurer A will pay you _____ percent of the savings.
 - c. You then use the funds you receive to pay healthcare providers who meet the standards for participating in the care coordination program.

All your insurance contracts follow this formula, although the contracts may include multiple quality benchmarks. The benchmarks vary by contract, but include both cost and quality factors.

You stated that the contracts that you have with non-MSSP insurance providers (for profit insurance providers) are contractually confidential and you did not provide copies even though we requested them.

Your application states that you will add additional Non-MSSP insurance providers in the future.

You state that you are continually seeking out ways to expand patient population covered by your programs. Your new relationship discussions typically include many factors including how the network is structured, the design of the insurer's benefit plans and assurance of accurate and timely health data communications.

MSSP Activities

The MSSP was established under the Patient Protection and Affordable Care Act. Its purpose, as you describe it, is to promote the accountability for care of Medicare beneficiaries, improve the coordination of Medicare fee for service items and services and encourage investment infrastructure and redesigned care processes for high quality and efficient service delivery.

You further explained that:

Under [MSSP], certain groups of healthcare service providers are eligible to participate as ACOs. Eligible ACOs are expected to manage and coordinate care for their assigned Medicare fee-for-service beneficiaries and are eligible to receive MSSP payments to the extent the ACO meets quality performance standards established by the Department of Health and Human Services and demonstrates that it has achieved appropriate benchmark savings.

Non-MSSP Activities

You also state that, as part of the ACO activities, F engaged G to administer a companion program, similar to the MSSP which is dependent on your and F's participation in the MSSP. F approves the funding and you approve the payments to the providers. You coordinate referrals to outside providers as part of this program. You state that because you participate in the MSSP and because it approves the metrics, this enables F to qualify for certain regulatory safe harbors available to quality initiatives that advance the purposes of MSSP. You have continuing oversight over this program to ensure consistency with MSSP purposes. You state that all payment agreements are negotiated at arm's length and the amounts paid are set using objective criteria related to the achievement of your quality metrics.

In your response to our information request letter you provided information regarding your patient attribution under various ACO payor agreements. Slightly over percent of your covered patients are attributed to your MSSP agreement. Another percent of your covered patients are covered under Medicare Advantage Plans through commercial insurers. The remaining patients, approximately percent, are attributed to agreements under commercial insurance plans.

The information included in your application stated that you will continue to add Non-MSSP providers.

Transactions/ Interactions with Healthcare Providers

To incentivize healthcare providers to participate in your activities you enter into participation agreements whereby the providers agree to adhere to the care management protocols, documentation requirements and other conditions and you agreed to make shared savings payments to those providers if the patients under their care demonstrate improved health and lower dependence on the healthcare system through reduced costs. You state the concept is analogous to the typical fee for service arrangements, but the healthcare providers are being paid here for favorable outcomes not just the number or volume of procedures they perform.

In paragraph 4.1 of your agreement with network participants (physicians and physician groups) you have authority to act as an agent for the Physicians who are a part of your network. In your capacity as agent you are authorized to contract for participating in the MSSP and other agreements.

In paragraph 4.2 of your agreement with network participants you require that the physician and physician give you certain exclusive rights to negotiate with insurance providers and that they shall not become a member of any other ACOs.

Your interactions with healthcare providers are summarized as follows:

1. Healthcare providers agree to comply with your standards and participate in care coordination programs.
2. If the provider meets the obligations under those programs, the provider will receive a portion of the shared savings payments, as determined under the relevant agreement.
3. You share care management, network support and data regarding how to improve the quality with all participating healthcare providers to encourage them to meet their obligations under the care coordination program.

The care coordination activities are performed by you and by F's personnel.

You state that your providers are required to be "clinically affiliated" with F in order to participant in your MSSP and non-MSSP agreements. You state that this means they meet FTC and DCJ guidelines for joint contracting activities and have committed in writing to clinical integration standards, care coordination and sharing of information among network providers, and a commitment to the success of the overall mission of F.

You state that percent of your members are patients "that have been seen in "an F facility or by an F affiliated tax-exempt facility". The balance is presumably being treated at unrelated facilities, which may or may not be tax-exempt facilities. You project that this number will remain consistent.

F's patients and others are identified as candidates for membership/participation in your heath coordination services based on recent hospitalizations, emergency center visits, physician referrals, payor referrals, hospital referrals and member self-referrals. However, covered patients have the ability to see whomever they wish to see and you do not have relationships with all the healthcare facilities that treat the patients.

The health management team acts as a liaison between the member's primary care physician, their specialized healthcare providers, and the member's insurer.

You conduct seven specific programs as a part of your program services.

1. Advanced Illness Management

Advanced Illness Management (AIM) —Members are assisted in reducing usage of healthcare services, while improving symptoms and quality of life. This program is focused on members with complex disease management needs and end-stage diseases such as end-stage chronic obstructive pulmonary disease (COPD), Heart Failure or Stage III/IV Chronic Kidney Disease.

2. Comprehensive Care Program

Comprehensive Care Program (CCP) — Members are assisted in decreasing or eliminating psychosocial barriers, learning self-advocacy skills and healthcare navigation skills, and communicating with their healthcare providers. The program focuses on members who have or more chronic conditions and have had or more acute inpatient hospitalizations within a month period. Behavioral health conditions and psychosocial barriers are also addressed (such as financial, housing, lack of support systems, etc.).

3. Ambulatory Collaborative Care

Ambulatory Collaborative Care (ACC) — Members are assisted in managing their health conditions, learning self-advocacy skills and healthcare navigation skills, and engaging in their own health. The program focuses on supporting those members that have had at least emergency center visits during a day period, inpatient visits in a month period, have at least one chronic condition, including but not limited to asthma, COPD, heart failure, chronic kidney disease and diabetes, open quality gap in care, or a total cost of care greater than \$.

4. Complex Care

Complex Care (CC) — Members will be managed by a Registered Nurse. In some cases, the nurse will collaborate with a condition-specific Care Navigator. Conditions managed include major trauma, oncology/cancer, spinal injuries, and organ transplant. Programs for high-risk pregnancy and high-risk pediatrics are currently under development.

5. Health Coaching

Health Coaching (HC) - Members are managed by certified health coaches and receive individualized coaching focused on leading a healthy lifestyle and improving their ability to experience a full and rewarding life. The focus is on new diagnoses and new chronic conditions, including but not limited to diabetes management, smoking cessation and weight management.

6. Wellness

Wellness — Members are encouraged to engage in their own health by completing their annual wellness visits and preventive health screenings.

7. Transitions

Transitions Members who are in the hospital are provided with services that ensure a safe and effective transition from hospital to home. A member of the health management team visits the member in the hospital prior to discharge and coordinates discharge plans with the hospital care team. The member receives a “Welcome Home” phone call to provide the following:

- Reviews and provides education regarding the discharge instructions
- Provides comprehensive medication review

- Ensures equipment has arrived in the home and ensures that post-hospitalization services such as Home Health have been initiated as ordered
- Ensures that the member has a follow-up appointment and transportation to the appointment

Community benefit

You state that patients of your participant providers who are not part of the Accountable Care Organization also receive benefits from your activities since healthcare providers in a given community in which an ACO operates tend to adopt the same sort of treatment plans, gap management and support services for a population that the ACO promotes.

Revenue

Your revenue is from contract payments from MSSP and multiple contracts with different for-profit insurance companies.

Your application was postmarked M. In your application and in response to our requests for further information, you provided data showing that per GAAP your revenue from non-MSSP contracts was just over percent of your total revenue for the K fiscal year and approximately percent of your revenue for the L fiscal year. This continued a trend over the past several years of increasing revenue from non-MSSP contracts.

You provided an estimate showing that percent of your revenue for the current year will come from your MSSP contract. However, the estimate for the current year income includes income from only of your contracts.

Expenses

Your expenses are for

- Professional Fees – payments to tax consultants for tax advice
- Contract Services Fees – payments to third party vendors for services including population health consulting, analytics and surveys
- Medical Fees and Medical Fees- Professional Services -- payments to G for service line incentive payments and MSSP and non-MSSP shared savings payments
- Program Service Expenses
- Miscellaneous Expenses

percent of your expenses are for medical fees and medical fees-professional services. Your expenses for program services are less than percent of total expenses.

Law

IRC Section 501(c)(4) provides exemption for:

- (A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is

limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Treas. Reg. §1.501(c)(4)-1 provides:

(a) Civic organizations—

(1) In general. A civic league or organization may be exempt as an organization described in section 501(c)(4) if—

- (i) It is not organized or operated for profit; and
- (ii) It is operated exclusively for the promotion of social welfare.

(2) Promotion of social welfare—

(i) In general. An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of charitable set forth in paragraph (d)(2) of Treas. Reg. § 1.501(c)(3)-1 and is not an action organization as set forth in paragraph (c)(3) of Treas. Reg. §501(c)(3)-1.

(ii) Political or social activities. The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit. See, however, section 501(c)(6) and § 1.501(c)(6)-1, relating to business leagues and similar organizations. A social welfare organization that is not, at any time after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3) may qualify under section 501(c)(4) even though it is an action organization described in § 1.501(c)(3)-1(c)(3)(ii) or (iv), if it otherwise qualifies under this section. For rules relating to an organization that is, after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3), see section 504 and § 1.504-1.

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the term “charitable” as used in IRC 501(c)(3) includes its generally accepted legal sense and includes such purposes as relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; and lessening the burdens of government. The promotion of health has long been recognized as a charitable purpose. See Restatement (Third) Trusts § 28 (2012); 6 Austin W. Scott and William F. Fratcher, *The Law of Trusts* §§ 38.1, 38.5 (5th ed. 2013); and Revenue Ruling 69-545, 1969-2 C.B. 117.

However, not every activity that promotes health supports tax exemption under § 501(c)(3). For example, selling prescription pharmaceuticals promotes health, but pharmacies cannot qualify for recognition of exemption under § 501(c)(3) on that basis alone. *Federation Pharmacy Services, Inc. v. Commissioner*, 72 T.C. 687 (1979), *aff'd*, 625 F.2d 804 (8th Cir. 1980); see also *IHC Health Plans, Inc. v. Commissioner*, 325 F.3d 1188, 1197 (10th Cir. 2003) (noting that “engaging in an activity that promotes health, standing alone, offers an insufficient indicium of an organization’s purpose,” as “[n]umerous for-profit enterprises offer products or services that promote health”).

Treas. Reg. §1.502-1(b) provides

If a subsidiary organization of a tax-exempt organization would itself be exempt on the ground that its activities are an integral part of the exempt activities of the parent organization, its exemption will not be lost because, as a matter of accounting between the two organizations, the subsidiary derives a profit from its dealings with its parent organization, for example, a subsidiary organization which is operated for the sole purpose of furnishing electric power used by its parent organization, a tax-exempt educational organization, in carrying on its educational activities. However, the subsidiary organization is not exempt from tax if it is operated for the primary purpose of carrying on a trade or business which would be an unrelated trade or business (that is, unrelated to exempt activities) if regularly carried on by the parent organization. For example, if a subsidiary organization is operated primarily for the purpose of furnishing electric power to consumers other than its parent organization (and the parent's tax-exempt subsidiary organizations), it is not exempt since such business would be an unrelated trade or business if regularly carried on by the parent organization. Similarly, if the organization is owned by several unrelated exempt organizations and is operated for the purpose of furnishing electric power to each of them, it is not exempt since such business would be an unrelated trade or business if regularly carried on by any one of the tax-exempt organizations. For purposes of this paragraph, organizations are related only if they consist of:

(1) A parent organization and one or more of its subsidiary organizations; or

(2) Subsidiary organizations having a common parent organization.

An exempt organization is not related to another exempt organization merely because they both engage in the same type of exempt activities.

In *Veterans Foundation v. U.S.*, 281 F.2d 912 (1960) the organization operated a thrift store and donated the proceeds to an alleged exempt organization. The Court found that the thrift store was a business for profit which does not further social welfare purposes.

In *Contracting Plumbers Cooperative Restoration Corp. v. United States*, 488 F. 2d 684 (2nd Cir. 1973), *cert. denied*, 419 U.S. 827, an organization whose purpose was to ensure the efficient repair of "cuts" in city streets which resulted from its members' plumbing activities did not qualify for exemption under IRC 501(c)(4). The Court concluded that there were several factors which evidenced the existence of a substantial nonexempt purpose. The factors included, but were not limited to, the members' substantial business interest in the organization's formation and the fact that each member of the cooperative enjoyed economic benefits precisely to the extent they used and paid for restoration services.

Geisinger Health Plan v. Commissioner, 985 F.2d 1210, 1220 (3rd Cir. 1983) revg. T.C. Memo 1991-649 held that the petitioner, an HMO, was not entitled to tax-exempt status, standing alone, because:

It does no more than arrange for its subscribers, many of whom are medically underserved, to receive health care services from health care providers. This is so even though it has a program designed to subsidize the subscribership of those who might not be able to afford the fees required of all other subscribers. Arranging for the provision of medical services only to those who "belong" is not necessarily charitable, particularly where, as here, the HMO has arranged to subsidize only a small number of such persons. * * *

See also, ICH Health Plans v. Commissioner, 325 F.3d 1188 (10th Cir. 2003) (Holding that an HMO which arranged healthcare services for its subscribers in exchange for a fee was not described in section 501(c)(3). The Court described the relevant test as follows, "In summary, under section 501(c)(3), a health-care provider must make its services available to all in the community plus provide additional community or public benefits. The benefit must either further the function of government-funded institutions or provide a service that would not likely be provided within the community but for the subsidy. Further, the additional public benefit conferred must be sufficient to give rise to a strong inference that the public benefit is the primary purpose for which the organization operates. In conducting this inquiry, we consider the totality of the circumstances.")

The HMO in Geisinger also argued that it was entitled to exemption under section 501(c)(3) as an integral part of its exempt parent. The Appeals Court discussed the integral part doctrine, describing it as a means by which organizations may qualify for exemption vicariously through related organizations.

as long as they are engaged in activities which would be exempt if the related organizations engaged in them, and as long as those activities are furthering the exempt purposes of the related organizations. Texas Learning Technology Group v. Commissioner, 958 F.2d 122, 126 (5th Cir.1992). The integral part doctrine has been applied in the context of several Code sections. See, e.g., Squire v. Students Book Corp., 191 F.2d 1018 (9th Cir.1951); Brundage v. Commissioner, 54 T.C. 1468 (1970), *acq.* 1970-2 C.B. xix; Rev.Rul. 81-19, 1981-1 C.B. 353; Rev.Rul. 75-282, 1975-2 C.B. 201.

On remand, the Tax Court considered the HMO's integral part arguments. In order to qualify for exemption under the integral part theory, petitioner must perform an essential service either to its affiliates or to the class of direct beneficiaries of the charitable activities of its affiliates (in petitioner's case, its patients), as required by the entities in the legal precedents in this area. Geisinger Health Plan v. Comm'r, 130 T.C. 394, 394 (1993), *aff'd*, 30 F.3d 494 (3rd Cir. 1994). If the services are provided to unrelated organizations, however, the provider does not qualify for exemption on this ground. Treas. Reg. § 1.502-1(b); Rev.Rul. 69-528, 1969-2 C.B. 127. Alternatively, an organization can qualify under the integral part theory if it performs a service on behalf of its parent directly to the class of beneficiaries of the charitable activities of its parent. For instance, in the case of universities, an organization can qualify if it performs a service to the faculty or students of the university. Squire v. Students Book Corporation, 191 F.2d 1018 (9th Cir.1951); See also Rev.Rul. 81-19; Rev.Rul. 78-41, 1978-1 C.B. 148; Rev.Rul. 75-282, 1975-2 C.B. 201; Rev.Rul. 68-26, 1968-1 C.B. 272; Rev.Rul. 67-217, 1967-2 C.B. 181; Rev.Rul. 58-194, 1958-1 C.B. 240

In the hospital context, the relevant class of beneficiaries is the patients of the related exempt health care providers. The Tax Court held "faced with the conclusion of the Court of Appeals that its activities served the

private purposes of its members, we cannot conclude that petitioner's operations were so substantially and closely related to the exempt purposes of its affiliates that those private interests may be disregarded." Geisinger 100 T.C. at 406-407.

In the affirming opinion for 100 TC 394, the 3rd Circuit elaborated that "unlike the electric company, university bookstores or law journal in the regulations and case law, the contribution that GHP makes to community health is not increased at all by the fact that GHP is a subsidiary of the System rather than being an independent organization which sends its subscribers to a variety of hospitals and clinics. To the extent it promotes health among non-GHP-subscriber patients of the System, it does so only because GHP subscribers' payments to the System help finance the provision of health care to others. An entity's mere financing of the exempt purposes of a related organization does not constitute furtherance of that organization's purpose so as to justify exemption... Thus, it is apparent that GHP merely seeks to "piggyback" off of the other entities in the System, taking on their charitable characteristics in an effort to gain exemption without demonstrating that it is rendered "more charitable" by virtue of its association with them. Geisinger Health Plan v Commissioner, 30 F. 3d 494, 502-503 (1994).

In Rev. Rul. 68-14, 1968-1 C.B. 243 an organization that helped beautify a city was exempt under § 501(c)(3) when it planted trees in public areas, cooperated with municipal authorities in tree plantings and programs to keep the city clean, and educated the public in advantages of tree planting.

In Rev. Rul. 75-286, 1975-2 C.B. 210 A nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the members' property rights, will not qualify for exemption under section 501(c)(3) of Code but may qualify under section 501(c)(4); Rev. Rul. 68-14 distinguished.

The organization was formed by the residents of a city block to preserve and beautify that block, to improve all public facilities within the block, and to prevent physical deterioration of the block. Its activities consist of paying the city government to plant trees on public property within the block, organizing residents to pick up litter and refuse in the public streets and on public sidewalks within the block, and encouraging residents to take an active part in beautifying the block by placing shrubbery in public areas within the block. Much of the public area improved by the organization is part of the public roadway lying between the sidewalk and the street in front of private property owned by members of the organization. In the instant case the organization's activities promote social welfare because they beautify and preserve public property in cooperation with the local government. Although these activities are limited to a particular block, the community as a whole benefits from them.

Rev. Rul. 81-276, 1981-2 C.B. 128, describes a professional standards review organization 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. The IRS ruled that by taking on the government's burden of reviewing the quality of services under Medicare and Medicaid, the organization lessened the burdens of government within the meaning of § 1.501(c)(3)-1(d)(2). Any benefit to members of the medical profession from such activities was incidental to the benefit the organization provided in lessening the burdens of government. Therefore, the organization qualified for exemption under § 501(c)(3).

Rev. Rul. 86-98, 1986-2 C.B. 74, holds that an individual practice association ("IPA") that provides health services through written agreements with health maintenance organizations (HMOs) does not qualify for exemption from federal income tax as a social welfare organization under § 501(c)(4). The IPA's stated purpose is to arrange for the delivery of health services through written agreements negotiated with HMOs. Membership in the IPA is limited to practicing licensed physicians who are members of a specified county medical society. The IPA's members generally maintain a private medical practice in addition to performing services for the IPA. The IPA's members are required to enter into written service contracts under which they provide services to the HMO's patients in accordance with a negotiated compensation arrangement between the HMO and an IPA. The IPA's primary activities are to serve as a "bargaining agent" for its members in dealing with HMOs and to perform the administrative claims services required by the agreements. Members agree to reimbursement by the IPA according to a fee schedule established by the IPA's board of directors. The ruling finds that the IPA is "akin to a billing and collection service, and a collective bargaining representative negotiating on behalf of its member-physicians with HMOs." In addition, the IPA does not provide medical services that would not have been available but for its establishment, or that are available at fees below what is customarily and reasonably charged by the members in their private practices. The IPA is held to operate in a manner similar to a for-profit entity, and its primary beneficiaries are its member-physicians, rather than the community as a whole.

Notice 2011-20, 2011-16 I.R.B. 652 (April 18, 2011), summarizes how the IRS expects existing IRS guidance may apply to § 501(c)(3) tax-exempt organizations (charitable organizations), such as charitable hospitals, participating in the Medicare Shared Savings Program through ACOs. The Notice concluded that, due to CMS regulation and oversight of the MSSP, participation in an MSSP contract by a tax-exempt organization through an ACO was anticipated to be a charitable activity which lessened the burdens of government.

While Notice 2011-20 did not address under what circumstances a tax-exempt organization's participation in non-MSSP activities through an ACO may further or be substantially related to an exempt purpose, it commented that "in contrast to activities conducted as part of the MSSP, many non-MSSP activities conducted through or by an ACO are unlikely to lessen the burdens of government... For example, negotiating with private health insurers on behalf of unrelated parties generally is not a charitable activity, regardless of whether the agreement negotiated involves a program aimed and achieving cost savings in health care delivery.

PLR 201615022 – Negotiating with private health insurers on behalf of unrelated healthcare providers is not a charitable activity.

Rev. Proc. 2017-5, 2017 -1 I.R.B. 230 in section 6.008(1) provides as follows regarding the effective date of exemption.

1) **In general.** A determination letter recognizing exemption of an organization described in § 501(c), other than § 501(c)(29), is usually effective as of the date of formation of an organization if: (1) its purposes and activities prior to the date of the determination letter have been consistent with the requirements for exemption; (2) it has not failed to file required Form 990 series returns or notices for three consecutive years; and (3) it has filed an application for recognition of exemption within 27 months from the end of the month in which it was organized

Section 6.08(4) further provides as follows:

When an application is not submitted within 27 months of formation. An organization that otherwise meets the requirements for tax-exempt status and the issuance of a determination letter that does not meet the requirements for recognition from date of formation will generally be recognized from the postmark date of its application or the submission date of its 1023-EZ, as applicable.

Application of law

Social Welfare/Business Activity

Your application is before us to consider whether you qualify for exemption from federal income tax under IRC Section 501(c)(4) as an organization operated exclusively for the promotion of social welfare. Treas. Reg. § 1.501(c)(4)-1 provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Treas. Reg. § 1.501(c)(4)-1(2) provides that a social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of charitable set forth in paragraph (d)(2) of Treas. Reg. § 1.501(c)(3)-1 and is not an action organization as set forth in paragraph (c)(3) of Treas. Reg. § 1.501(c)(3)-1. Thus, generally an activity that furthers a charitable purpose under IRC Section 501(c)(3) may also further social welfare under IRC Section 501(c)(4). In Notice 2011-20 we have held that an organization serving as an accountable care organization and participating in an MSSP could further the charitable purpose of lessening the burdens of government.

Section 2.3.4 of your bylaws contemplates a situation in which you may not participate in the MSSP program. At the time your application was reviewed, your MSSP contract had _____, but in response to our information request, you submitted documentation of a _____. At the time of our review, that application was _____. You stated that you plan to continue to add non-MSSP contracts in the future.

Your activities, as described above, is to coordinate the care of patient populations. You do not directly provide health care. You serve as an intermediary between the insurance companies with whom you contract and the physicians who you contract with to provide care and direct their efforts to meeting the cost and quality benchmarks put in place by the insurance companies. Your revenue is derived from the contracts with the insurance companies and then shared with the providers according to the terms of your provider agreements.

You have an agency relationship with the providers and negotiate as an agent on behalf of the providers, who you state are "clinically affiliated" with you, with the insurance companies to enter into the share savings arrangements.¹ You state that the concept is similar to the typical fee for service arrangements, but the healthcare providers are being paid here for favorable outcomes not just the number or volume of procedures they perform. The providers receive the typical fee or service revenue directly from the insurance providers.

Approximately _____ percent of the patients you serve are covered by MSSP contract. You attribute over _____ percent of your covered patient population to non-MSSP contracts.

¹ Clinical affiliation represents the fulfillment of certain government standards for joint contracting with government agencies, but does not appear to represent that the physicians or groups necessarily exclusively provide services to F patients.

In both tax year K, the current tax year at the time of your application, and L, the most recent completed tax year, revenue from non-MSSP contracts exceeded income from the MSSP contract. of your contracts are with for-profit insurance companies. You estimate that percent of your revenue for the current year will come from your MSSP contract. However, the estimate for the current year income includes income from only of your contracts.

Considering the number of contracts, number of patients served under each contract and revenue streams from each contract, we must conclude that your primary activities are those which you perform under your non-MSSP contracts.

Treas. Reg. § 1.501(c)(4)-1 further provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.” (emphasis added).

While your activities may help to promote the health of participating patients not every activity for the promotion of health serves an exempt purposes. As discussed in Notice 2011-20, negotiating with private health insurers on behalf of unrelated parties generally is not a charitable health activity, regardless of whether the agreement negotiated involves a program aimed at achieving cost savings in health care delivery, absent other mitigating facts and circumstances. Your activity of providing coordinated care services in exchange for contract fees illustrates you are conducting a business with the public, which does not further social welfare under Treas. Reg. § 1.501(c)(4)-1. The activities you conduct under the non-MSSP contracts primarily benefit the insurance companies with whom you contract. Your activities of coordinating patient care results in a savings to the insurance company and you perform these services under contractual obligation to them.

You are like the organization in Veterans Foundation v. U.S., which operated a business as an end in itself. You have confidential contracts with for-profit insurance companies and are continuing to seek out new contracts. The fact that you are controlled by an IRC Section 501(c)(3) organization does not change the character of the activities and purposes you are accomplishing. If the activity furthers private interests when conducted by an IRC Section 501(c)(3) organization, it does not suddenly become social welfare when the same activity is conducted by a related organization.

Benefit to Insurance Companies and Healthcare Providers

Further, your activities benefit the health care providers you contract with. The providers receive additional fee for service revenue from participating in your shared savings agreements. The providers are clinically affiliated with F to the extent that they meet certain government joint contracting standards, the providers may not participate in another ACO, but you have not represented that they provide services exclusively for F system patients. Although not controlling authority, we find persuasive our prior ruling in PLR 201615022 in which we held that the activity of negotiating with private health insurers on behalf of unrelated healthcare providers is not a charitable activity. We find further that the activity benefits those for whom you negotiate and does not further social welfare purposes.

You are similar to the organization described in Geisinger Health Plan v. Commissioner, 985 F.2d 1210, 1220 (3rd Cir. 1993) revg. T.C. Memo 1991-649 and Geisinger Health Plan v. Comm'r., 100 T.C. 394, 394 (1993),

aff'd, 30 F.3d 494 (3d Cir. 1994), above. Your services primarily benefit the insurance companies who pay you fees only when you meet the agreed cost and quality benchmarks. The patients you serve are insured by these companies may be referred to you by the insurance companies. Thus, you primarily benefit patient populations who are subscribers to the insurance companies you serve. An organization that serves private interests also does not further social welfare.

You are distinguished from the organization in Rev. Rul. 81-276, which qualified for exemption under the rationale of lessening the burdens of government. You are distinguished in that your significant non-MSSP activities are not operated pursuant to a federal statute to conduct reviews for federal programs. As discussed above, participation in the MSSP program is not your primary activity.

You are similar to the organization described in Rev. Rul. 86-98, above. You negotiate contracts with insurance companies and also serve as agent for the physicians who provide the services to meet the benchmark criteria set by the insurance companies. Your primary function is to broker financial transactions between insurance companies and participating physicians. Your activity is not distinguished from that of a commercial organization. You are similar to the organization in Contracting Plumbers Cooperative Restoration Corp. v. United States, above. While there may be some public benefit, the insurance companies you contract with have substantial economic interest in your formation and pay you only when the physicians whose services you coordinate meet their benchmarks.

You are distinguished from the organization in Rev. Rul. 68-14 above, in that your services do not benefit the public as a whole. You are also distinguished from the organization in Rev. Rul. 75-286, because the benefits of your organization do not primarily benefit the public. The organization in Rev. Rul. 75-286 worked together with its local government and made improvements to public roadways. Although the scope of its improvement was only one city block, the improvements it made was on public property. The services you provide are for those with whom you have entered into contracts. While we acknowledge that you may conduct some educational programs, your educational program expenses are only percent of your expenses, far less than primary. Further, it appears that you provide your services only to those who are a part of a population identified under an insurance contract – not the public at large. Any benefit that flows to the public at large is ancillary. Your alleged community benefit is that health care providers who participate in the accountable care service programs may find best practices to use on their other patients. Any benefit flowing to other patients is only incidental to your purposes of coordinating contracted services and does not rise to the level of your primary activity.

Effective Date of Exemption:

You formed nearly five years before you filed your application for recognition of tax exempt status. You requested a date of exemption effective one and a half years after your formation. Effective date of exemption is governed by the IRS' annual revenue procedure for its Exempt Organizations Rulings and Agreements Program. At the time of your application, that annual revenue procedure was Rev. Proc. 2017-5. As discussed in this letter, our position is that you do not qualify for exemption from federal income tax under IRC Section 501(c)(4). However, if you were recognized as exempt, as explained in Rev. Proc. 2017-5, 2017-1 I.R.B. 230, the earliest date you could be recognized is the postmark date of your application since you filed your application for recognition of exemption more than months from the end of the month in which you formed.

Your position

You argue that your purpose is to improve the health and social welfare of your community including high risk populations and to primarily serve the population of your IRC Section 501(c)(3) parent. You state that coordinating care, conducting programs to promote health and creating incentives for providers are your primary activities. You state that the flow of revenue between you, the insurance companies and the providers is "necessary and incidental."

The following is a summary of your arguments.

1. Most of your activities are to promote social welfare because they further IRC Section 501(c)(3) purposes of lessening the burdens of government, relieving poverty, or otherwise promoting health in furtherance of your parent's exempt purposes. You note that PLR 201615022 states that the triple aim goals of the Patient Protection and Affordable Care Act are (i) reducing the cost of health care for individuals, (ii) improving patient access to the quality of care, and (iii) improving population health and patient experience. You cite Rev. Rul. 75-197, 1975-1 C.B. 155 which approved tax exempt status under IRC Section 501(c)(3) and was formed for the purpose of operating an information retrieval system to facilitate organ donation.

You also cite IHC Health Plans, Inc. v. Comm., 91 AFTR 2d 2003-1767 (325 F.3d 1188) noting that the Court held that in addition to providing health services, an organization seeking tax exemption under IRC Section 501(c)(3) must provide some additional "plus" or externality. You further stated that "[t]his 'positive externality' includes a benefit which the society of the community may not itself choose or be able to provide or which supplements and advances the work of public institutions already supported by tax revenues."

You argue that your activities benefit all patients in the community not just those covered by agreements with insurers and providers. You state that you share this data with providers and providers generally use this data in treating patients, not just those covered by an agreement with you.

You state that the patient care improvements and costs savings that result from your activities constitute such a community benefit to the communities served by your parent, F, as well as to the patients of participating providers who are not part of F, because the providers are incentivized to adopt the population health philosophies and approaches generated through ACO participation and apply them across their patient panels. You further state that you promote healthcare improvements through physical meetings, conferences, and webinars.

2. You state that you operate as an integral part of your IRC Section 501(c)(3) parent and primarily benefit the patients of your parent. You state that you are distinguished from the organization in Geisinger Health Plan v. Comm., 74 AFTR 2d 94-5395 (90 Fed 494) in that you are subsidiary of F rather than an independent organization. You argue that you also qualify for exemption because you operate as an integral part of your IRC 501(c)(3) parent. Your parent maintains structural control over you by appointing of your board members.

You argue that your activities primarily benefit your parent by furthering the exempt purpose of the parent in particular by facilitating greater quality, lower-cost services to F patients and other patients across its community.” You state that percent of the patients you serve “have been seen” in your parent, F’s, facilities or by an F non-profit affiliate.

You state that F operates a companion program similar to the MSSP, which is dependent on your participation in the MSSP. You state that by serving as an essential part of F’s quality initiatives, you are furthering F’s exempt purposes.

3. You argue that any private benefit to physicians and insurance payors is necessary and incidental to carrying out your exempt purposes. You cited Rev. Rul. 98-15, 1998-1 C.B. 718 and claim a key distinction when reviewing whether a particular activity promotes health in a charitable (or social welfare) manner is whether the entity is privately owned and operated for the benefit of for-profit of the owners. You argue that we have determined in Notice 2011-20 that an ACO participating in MSSP will not result in inurement or impermissible private benefit to the private party ACO participants where the terms of the exempt organization’s participating in the MSSP through the ACO are set forth in advance in written agreement negotiated at arm’s length at fair market value.

You also cited Monterey Pub Parking Corp. v. United States, 481 F.2d 175 (9th Cir. 1973) for its discussion of private versus public benefit and Rev. Rul. 97-21, 1997-1 C.B. 121 regarding physician recruitment incentives.

Our response to your position

Our responses to your position are numbered to correspond to each of your arguments as numbered above.

1. You acknowledge that the organization in PLR 201615022 was held not to further purposes described in IRC Section 501(c)(3), you contend that your services could further social welfare purposes under IRC Section 501(c)(4).

For the reasons described in the application of law section above, we disagree. In addition, you are distinguished from the organization in Rev. Rul. 75-197. That organization was funded by donations and operated for the benefit of the public by providing legal forms for anyone would wanted to use them to facilitate organ donation. Unlike you, it did not charge for its services and the services were not limited to specific populations.

Your services provided under the non-MSSP contracts are provided under confidential contracts regarding a specific population and do not benefit the public at large. Your primary activity is providing contract services in exchange for a fee and serving as a broker between insurance companies and health care providers. Only percent of your expenses are spent on your programs. Even then, those programs are directed at patients who are covered by the insurance companies with which you have contracts. Your alleged community benefit is that health care providers who participate in the accountable care service programs may find best practices to use on their other patients. Thus, any benefit flowing to other patients is only incidental to your purposes of coordinating contracted services and does not rise to the level of your primary activity. Thus, you fail the standard set forth in ICH Health Plans Inc. v. Comm.

2. Your arguments that you are an integral part of F are not persuasive. Your non-MSSP activities would not be exempt if conducted by your parent and thus also not exempt when you conduct them. You acknowledge that covered patients have the ability to see whichever providers they wish, in or outside of the F parent system, and that you do not have relationships with all the healthcare facilities that treat the patients. You acknowledge that many may not be tax-exempt facilities.

While your parent has control over your board, your interactions with your parent appear to be otherwise limited. In response to our information you stated that the only financial transaction was a repaid loan for start-up costs.

Treas. Reg. §1.502-1(b) provides that

If a subsidiary organization of a tax-exempt organization would itself be exempt on the ground that its activities are an integral part of the exempt activities of the parent organization, its exemption will not be lost because, as a matter of accounting between the two organizations, the subsidiary derives a profit from its dealings with its parent organization, for example, a subsidiary organization which is operated for the sole purpose of furnishing electric power used by its parent organization, a tax-exempt educational organization, in carrying on its educational activities. However, the subsidiary organization is not exempt from tax if it is operated for the primary purpose of carrying on a trade or business which would be an unrelated trade or business (that is, unrelated to exempt activities) if regularly carried on by the parent organization.

Further, your argument that you should qualify for exemption under IRC Section 501(c)(4) as an integral part of an IRC Section 501(c)(3) organization is not persuasive. While many of the patients covered by your non-MSSP agreements with insurance companies may “be seen” in F facilities, implicit in your response is that many are not.

You argue that F’s companion program to the MSSP furthers F’s exempt purposes, however, this is only one of your activities, among others that do not further F’s exempt purposes other than in the most general sense of facilitating healthcare activities. Because a primary activity you conduct, non-MSSP contracts, does not further social welfare because it furthers the private interests of the for-profit insurance companies and private providers, the fact that you are controlled by an IRC Section 501(c)(3) organization does not change the character of the activities and purposes you are accomplishing. If the activity further private interests when conducted by an IRC Section 501(c)(3) organization, it does not suddenly become social welfare when the same activity is conducted by a related organization.

3. Our analysis, as discussed above, looks to not only who controls you but who benefits from your transactions. Rev. Rul. 98-15 stands for the proposition that control over the activities of a joint venture or subsidiary is generally required to ensure that the controlled entity does not operate in a manner contrary to an exempt parent’s purposes; however, the activities themselves must still further exempt purposes as defined under the relevant subsection of IRC section 501(c).

Notice 2011-20 concluded that participation in an MSSP program, under certain conditions, would further charitable purposes, which would in turn further social welfare, because it lessens the burdens of government. As discussed above, your primary activity is not participation in an MSSP. percent of

your covered patient population is not attributable to the MSSP contract. Less than _____ of your revenues for the most recent two tax years, K and L, were attributable to the MSSP

You have contractual duties to the insurance companies who stand to benefit in the form of substantial savings due to the services you provide. You share those savings with providers similar to a fee for service arrangement, but contingent on meeting benchmarks. We disagree that the financial benefits to the insurance companies and providers are incidental. Rather, we conclude that any public benefit is only incidental to your primary purpose of providing contract services in exchange for a fee.

Your activities with non-MSSP insurers do not lessen the burdens of government but are commercial transactions. Your activities are not designed to incentivize physicians to locate at hospitals where there is a physician shortage. Rather your activities are designed to provide cost savings to insurance companies.

The case in Monterey Pub. Parking Corp. v. United States, 481 F.2d 175, 177 (9th Cir. 1973) discusses how an organization under IRC Section 501(c)(4) does not engage in social welfare when its primary activity is carrying on a business with the general public. As discussed above, seeking contracts with for-profit insurance companies and serving as a contractual agent for providers is a commercial activity and shows that you are carrying on a business with the general public.

Conclusion

For the foregoing reasons, we conclude that you do not qualify for exemption from federal income tax under IRC Section 501(c)(4).

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration.

For an officer, director, trustee, or other official who is authorized to sign for the organization:

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

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 547, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Director, Exempt Organizations
Rulings and Agreements

cc: