

**CLIENT ALERT
OCTOBER 2007**

**COMMUNITY HEALTH CENTER
SAFE HARBOR FINALLY PROMULGATED**

After years of delay, the Department of Health and Human Services issued a final rule establishing new safe harbor protection under the federal anti-kickback statute for certain support arrangements involving federally qualified health centers. The new health center safe harbor addresses a wide variety of arrangements, including those between hospitals and health centers. The rule, effective December 3, 2007, will be codified at 42 CFR §1001.952(w) and may be viewed at: <http://oig.hhs.gov/authorities/docs/07/HealthCenterSafeHarbor.pdf>

Specifically, the new health center safe harbor protects remuneration in the form of goods, services, donations, loans or a combination thereof provided by a donor entity or individual to a qualifying health center -- provided the specific safe harbor provisions are met. The health center must reasonably expect the arrangement “to contribute meaningfully to the health center’s ability to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center...” 42 CFR §1001.952(w)(3). Health centers are given some flexibility in determining whether an arrangement benefits a medically underserved population. The new rule also contains some of the same requirements as those set forth in the commonly used space and equipment rentals and personal services arrangements safe harbors.

If your organization is part of an existing support arrangement between a health center and a hospital or donor entity or individual, it is important that the contracts and agreements be reviewed for compliance with the new safe harbor. Any new arrangements should be structured with the new safe harbor in mind.