

NONPROFIT MATTERS

Inside this issue:

Changes in Charitable Fundraising Laws	2
Updates from the IRS	2
New Laws Affecting Your Clients	3
About COLAP	6

Message from PLC's Executive Director

This issue pays particular attention to health care related issues facing nonprofits and their clients. Unfortunately, for many of our clients, health care access is a dream and not a reality. The new California laws explained on page three attempt to address some of the short-comings in our current health care system.

Additionally, we hope the article on HIPAA will be of special help to nonprofit community clinics and other nonprofit medical care providers who are working diligently in the community to address health and wellness needs of low-income individuals and families.

- Ken Babcock

Nothing in this newsletter should be construed as legal advice. For more information about complying with the various laws mentioned in this newsletter, please consult a legal or tax professional.

HIPAA Compliance For Nonprofits

By Deborah Coel*

If your nonprofit organization is involved with healthcare or the management of medical records, you may be required to comply with the federal regulations regarding the privacy and security of patient information. Under the Healthcare Portability and Accountability Act of 1996, also known as HIPAA, hospitals, physicians, and others that create or receive individual health information must be very careful disclosing their patient's information to others without the authorization or consent of the patient. Disclosing protected health

information (PHI) without following the procedures of HIPAA could lead civil fines or criminal penalties.

What is HIPAA?

HIPAA regulations provide standards for how healthcare providers and health plans are to maintain patient confidentiality. Under HIPAA, covered entities (to be explained further) may not disclose Protected Health Information (PHI) unless the individual patient gives permission. Doctors, health insurance companies, clinics and others who keep medical records should obtain written "consent" from

the individual patient before disclosing any personal information that might be identifiable to the individual with regard to treatment and billing. If the information is to be used for purposes other than treatment, payment, or healthcare, then the business must obtain a separate authorization before making any disclosures of the individual's information.

Am I covered by HIPAA? Covered Entities vs. Business Associates

Covered entities include institutional and individual health care

Continued on page 4

Updates on the Pension Protection Act of 2006

As mentioned in our last issue of *Nonprofit Matters*, the federal [Pension Protection Act of 2006](#), also known as H.R. 4, contains numerous provisions affecting charitable giving and nonprofit governance. For instance, one of the most important provisions of the new act provides that small organizations previously exempt from filing each year will need to annually notify the

IRS of their existence and operations. Additionally, any organization that fails to comply with annual federal filings for 3 years will have their exemption automatically revoked.

Another significant change is that a taxpayer who claims a charitable



deduction of any amount must retain a bank record or a writing from the charity documenting the donation. Previously, only donations over \$250 had to be substantiated.

Many of the law's provisions require additional compliance guidance from the IRS. The IRS has created a [web-site](#) with updates about the law and IRS

Continued on page 5

Changes in State Charitable Fundraising Laws

Charitable Gaming Activities Update

[AB 839](#) is very similar to the state's charitable raffle law in that it requires registration and restricts fundraising activities by requiring at least 90 percent of revenue from gaming fundraisers to be used for charitable purposes.



Under this new California law, as of January 1, 2007, nonprofits who have been in existence for at least 3 years may be eligible to hold casino nights and gambling

fundraisers. One fundraiser may be held per year; however, organizations with multiple chapters may hold one event per chapter.

The new law imposes a number of important limitations, including:

- ◆ The nonprofit must register

annually with the [Attorney General's office and Division of Gambling Control](#).

- ◆ The event receives approval from the Attorney General's office.
- ◆ The fundraiser may be no longer than 5 consecutive hours in length.
- ◆ Participants must be 21 years of age or older.
- ◆ No cash prizes may be awarded and winners may only receive donated prizes at a maximum cash value of \$500.
- ◆ The maximum cash value of all prizes awarded cannot exceed \$5,000.
- ◆ At least 90 percent of the gross revenue must go towards the mission of the nonprofit; only 10 percent can be used for other costs and compensation to entities or persons holding the fundraiser (not including venue costs). However, similar to the [charitable raffle](#)

[rules](#), other funds (provided they are not otherwise restricted) can be used to perform the fundraiser.

- ◆ No facility may be used for gambling fundraisers more than 4 times per calendar year (except in rural counties).
- ◆ Slot machines are not permitted.
- ◆ Organizations must maintain highly detailed records of each gambling fundraiser.

In addition to the requirements of AB 839, organizations should also be aware of other legal issues, such as the regulation of Unrelated Business Income Tax and withholding of income tax from prizes paid. [IRS Publication 3079](#) is a helpful resource on these issues.

Alliance for Justice has added a publication about obtaining 501(c)(3) status to its list of available Spanish-language resource guides. Visit [Alliance for Justice's website](#) for more

Updates from the IRS

The IRS issued [guidance](#) on the Tax Increase Prevention & Reconciliation Act of 2005 (TIPRA), which includes new excise taxes and disclosure rules targeting tax-shelter transactions to which an exempt organization is a party.

The IRS held that the operation of a mobile home park by a public charity was in furtherance of charitable purposes because it satisfied the IRS's facts and circumstances test with respect to low-income housing (Rev Proc 96-32).

The IRS has created a new [chart](#) illustrating the exemption determination process. It shows what happens to an application once it is submitted and demonstrates how the IRS makes its determinations on new

applications (Form 1023s). The IRS understands that in many cases organizations wait a significant time to hear about their application, so the agency has created a [website](#) explaining the process for checking on the status of an application.

In Private Letter Ruling 2006-02042, the IRS offered increased guidance on political campaign activity intervention and specifically held that public charity use of fundraising letters bearing signatures of members of Congress did not constitute participation in political campaigns. The IRS's Political Activity Compliance Initiative was once again very active during the 2006 election cycle. For more information about complying with the 501(c)(3) lobbying and political

campaign intervention restrictions, visit this new IRS [website](#).

The IRS and Congress have been revising rules and regulations that apply to tax-exempt credit counseling organizations in light of their proliferation as a result of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which required credit counseling for individuals seeking bankruptcy. The IRS has posted [resources](#) for consumers about the credit counseling industry and has [explained](#) the provisions in the new Pension Protection Act that affect credit counseling organizations by attempting to prevent harm to low-income consumers and ensuring that these organizations are in fact tax-exempt.

New Laws Affecting Your Clients

AB 2384, the Healthy Food Purchase Program, recently enacted by Governor Schwarzenegger, requires the State Department of Health Services to create incentives in order to increase the purchase of fresh foods in low-income neighborhoods. The bill specifically targets the food stamp population by making fresh fruit and vegetables more affordable. In addition, the DHS will also obtain federal funding to allow the use of Food Stamp Electronic Benefits Cards.



AB 2226 requires the California Department of Education to develop an information sheet regarding Type 2 diabetes by July 1, 2010, which must be provided to the parent or guardian of 7th grade students.

AB 2911 will provide up to 40% savings on brand name and up to 60% savings on generic prescription drugs to uninsured Californians with incomes below 300% of the federal poverty level. The program has been designed to be easy to sign up for and will cost \$10 annually. Enrollment will be available at local pharmacies, doctors' offices, clinics, the Internet, and a call center.



AB 2877 establishes the California Rx Prescription Drug Website Program. The bill requires the Department of Health Services to provide a website by 2008 that informs California residents about options for obtaining prescription drugs at affordable prices. The bill would include price comparisons of prescription drugs on the website and authorize the department to assess a fee on international pharmacies that could be included on the website. Additionally, the website will provide links to various state, federal, and pharmaceutical

manufacturer programs.

AB 774, which was recently enacted, requires hospitals, as a condition of licensure, to create and maintain written policies about discount payment and charity care for financially qualified patients. Among other requirements, each hospital will be responsible for informing patients about the hospital's discount payment and charity care eligibility policies and the potential availability of private or public health insurance coverage.

AB 1835 increases the minimum wage for all industries by \$1.25. Currently, the minimum wage is \$6.75 an hour. The increase in the minimum wage will be phased in, with an increase of 75 cents on January 1, 2007, and an increase of 50 cents on January 1, 2008.



SB 1062 extends the Safe at Home Project, run by the Secretary of State, until 2013. This program allows victims of domestic violence to use a designated address with the Secretary of State as a substitute for their official address. In 1999, this program was created to prevent abusers and stalkers from using public information to track down victims.

AB 2060 will help provide and develop naturalization services for California's immigrants. The new law makes the state's Naturalization Services Program (NSP) permanent and guarantees services for thousands of immigrants eligible to naturalize in California. It encourages regional collaboration among grantees and promotes the development of a referral system to ensure immigrants are informed about adult education, English literacy and citizenship services in their region.

SB 1569 ensures that immigrant victims of human trafficking, domestic violence, and other serious crimes have access to state and local services. Victims will be treated as refugees for purposes of determining eligibility for services such as medical care, mental health and assistance to obtain food, housing and supportive services. To receive the benefits, non-citizens have to be otherwise eligible for the programs and working to meet federal eligibility requirements.

AB 2634 requires local governments to address the housing needs of "extremely low income" households when developing the required housing component of their general plan. These 5-year plans are key to the assessment of needs and inventory of land that can be used for development.

AB 1169 doubles the current notice requirement for terminating a lease through a no-fault eviction. Landlords must now give 60 days notice to tenants who reside in a dwelling for one year or more. For tenants who have lived in a dwelling for less than one year, a 30 day notice is required. This bill will remain in effect until 2010.



In *People v. Neidinger* (2006), the California Supreme Court clarified the burden of proof that a non-custodial parent who picks up his or her children in violation of a custody order must show to defend a prosecution for violating the custody order. The Court held that the non-custodial parent must establish (by the reasonable doubt standard) that the action is necessary to protect children from immediate bodily injury or emotional harm. Additionally, the parent must follow the procedure in [Penal Code Section 278.7\(c\)](#), which requires the parent to start a custody proceeding and to notify the district attorney's office.

“HIPAA” cont. from pg. 1

providers, health care clearinghouses, and health plans. Covered entities are responsible for adhering to all of HIPAA’s regulations. All covered entities must have business associates sign business associate agreements, which are contracts requiring the associate to comply with the same standards that the covered entity must comply with under HIPAA. Below are descriptions of two covered entities and business associates.

Health plans: This may be an individual or group plan that provides for, or pays the cost of, medical care.

Healthcare Providers: This is any person or organization, regardless of size who furnishes, bills, or is paid for health care and who electronically transmits health information in connection with financial or administrative, and billing. Examples of healthcare providers are physicians, dentists, clinics, and pharmacists.

Business Associates: a person or organization that performs or assists in the function or activity of a covered entity involving the use or disclosure of individually identifiable health information. The function of business associates includes: claims processing or administration; data analysis, processing or administration; quality assurance; and practice management.

Privacy Rule: Consent, Authorization, Compliance

What is Protected Health Information?

Protected Health Information (PHI) is defined under the statute as any individually identifiable health information that is transmitted or maintained in any form or medium. PHI includes information in any form relating to

an individual’s physical or mental health, treatment, or health-related payments. Typically, healthcare providers, health plans, or employers create these records which are usually related to the past, present, or future physical or mental health or condition of an individual patient. If the information would not identify an individual patient or be used to identify the individual, then the medical record is not considered “individually identifiable health information” under HIPAA. Remember, information that is not identifiable to the individual is not regulated under HIPAA. Before disclosing information about an individual, it is best to remove all information that may allow a unauthorized person to see the record and identify the individual.

Consent: A Consent is a basic form that the entity holding the patient information must use. In order to comply with HIPAA’s Privacy Rule, a covered entity must obtain a written consent from the patient that allows the entity to disclose PHI for the purposes of treatment, payment, or healthcare. If you are a covered entity or business associate and your business wishes to disclose PHI for other reasons, you must obtain an “authorization.”

Authorization: An authorization is a specific form in which the entity states in plain language that PHI will be disclosed for purposes other than routine treatment, payment or healthcare operations. You may only disclose this type of patient information after the patient reads, understands, and signs a HIPAA compliant authorization form. The patient to which the authorization pertains must sign the form unless he or she is legally incompetent. The authorization must be written clearly and in plain language. For liability purposes, it is very important that the patient and your business keep a copy of the authorization for not less than six years from the date of the

authorization. Last, you must give the patient a copy of the signed authorization form.

Are There Situations Where I Do Not Need to Obtain an Authorization?

There are times you may disclose PHI without violating HIPAA. In these situations, you do not need to inform the individual that you will be disclosing their PHI. First, you may disclose PHI where it is required by law. For instance, disclosure does not violate HIPAA where the government requests information to conduct public health activities. Second, you may disclose PHI about an individual to the appropriate government authority if you believe that the individual is a victim of abuse or neglect. Third, disclosure is valid when your business needs to disclose PHI to a health oversight agency that is authorized by law, including for audits, investigations or inspections. There are other situations in which disclosure without authorization is valid. Ask your HIPAA privacy officer if the type of disclosure requires a patient authorization.

Privacy Notices for Covered Entities: If you run a health clinic that provides medical services, you must give an individual adequate notice of your organization’s policies and procedures related to PHI. You should distribute a Notice of Privacy Practices, which should inform the patient of his or her rights with respect to PHI as well as your responsibilities with regard to their PHI. A proper statement should say: “This Notice describes how medical information about you may be used and disclosed and how you can get access to this information. Please review it carefully.”

Additional Requirements: Covered entities must designate a privacy official who is responsible for developing and implementing their privacy

Continued on page 5

“HIPAA” cont. from pg. 4

notices. This individual must provide training to all members of their workplace who are likely to obtain access to PHI. You should also have procedures in place to ensure that employees are not improperly using PHI and that PHI is not being used by employees who are not authorized to access PHI. Additionally, make sure to keep record of all disclosures outside your business because individuals may request an accounting of those disclosures. Individuals also have a right to access their own PHI by inspecting and copying information and requesting corrections.

Business Associate Agreements:

The compliance requirements cover not only doctors, hospitals and insurance companies, but they also cover social workers, nursing homes, and other facilities providing healthcare services. If your organization contracts with healthcare organizations, you may need to enter into a “business associate agreement” that requires

you to comply with the entity’s patient information protections. A business associate agreement is a contract that requires a business associate to maintain the confidentiality of the information by adhering to the same protections required of the larger healthcare organization. Remember, a business associate is a person or organization who provides services for a covered entity.

As an Employer, What Information May I Ask for About My Employee?

In addition to properly following HIPAA for the protection of your patients, there are other federal regulations that may apply to your business. For instance, federal employment laws that permit employers to collect medical information require that those employers keep all this information confidential. Under the Rehabilitation Act of 1973 and the Family Leave Act, employers may ask for medical information from their employees. In addition, employers may create medical



information through a variety of tests, including pre-employment/post offer physicals, fitness-for-duty and return-to-work exams, requests for reasonable accommodations, requests for leaves of absence, and examinations triggered by specific events. If you do choose to keep employee medical information, you must separate this information from other employment files and maintain confidentiality. You may only disclose this type of information as necessary for the safety of the employee or to assist supervisors in making necessary job accommodations. Confidentiality of employee information is not governed by HIPAA, but by employment laws and regulations. On the other hand, disclosures of an employee’s medical information by a healthcare provider to an employer is generally prohibited under HIPAA without the patient’s authorization. To learn more about these compliance issues, you should consult an employment attorney.

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“Pension” cont. from pg. 1

guidance related to it. Since the law’s passage in August, the IRS has issued two new notices and one new announcement that clarify provisions of the law:

- ◆ [Notice 2006-96](#) provides guidance regarding new appraisal requirements for non-cash charitable contributions valued at over \$5,000, such as expensive works of art.
- ◆ [Notice 2006-110](#) provides guidance on new recordkeeping requirements for charitable contributions made through payroll deductions.
- ◆ [Announcement 2006-93](#) establishes an expedited process for supporting organizations to change their public charity

classification. If they can, some supporting organizations may want to be re-classified as a 509(a)(1) or 509(a)(2) publicly supported organization because the IRA giving incentives of the new law do not apply to organizations classified under Section 509(a)(3). Additionally, the law adds new restrictions about private foundation distributions to certain supporting organizations.

In response to the sweeping changes of this important piece of legislation, law firms and nonprofit technical assistance providers have published guidance. Good resources include: McDermott Will & Emery’s September 2006 [publication](#) on the charity-related provisions; Faegre &

Benson’s [article](#) titled “Is Your Organization Affected by the New Federal Charitable Reform Legislation?,” which helps to identify the types of organizations affected by the new provisions; Steptoe & Johnson’s Exempt Organizations [Advisory](#) of August 2006; Public Counsel’s [Legislative Alert](#) on the Pension Protection Act; and the House Committee on Ways and Means’s [Detailed Summary](#) of Charitable Provisions in the Pension Protection Act. While you should be informed of the provisions affecting them, you should refrain from turning into a tax lawyer or accountant for your donors! A good resource to refer donors to is this [article](#) from Guidestar.org.





PROVIDING ACCESS TO JUSTICE
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The Public Law Center, Orange County's pro bono law firm, is committed to providing access to justice for low income residents. Through volunteers and staff, the Public Law Center provides free civil legal services, including counseling, individual representation, community education, and strategic litigation and advocacy to challenge societal injustices. Now in its 25th year, PLC is sponsored by the Orange County Bar Association and is supported by lawyers throughout the county.

PLC may be able to assist your clients who are low-income Orange County residents and have certain types of immigration, family law and civil legal problems, including: landlord-tenant, homeownership, collection, bankruptcies, consumer, estate-planning, discrimination, employment, adoptions, guardianships, custody matters, divorces involving children or domestic violence, and immigration work that does not involve naturalization or work visas. To determine whether your clients are eligible for services, they may contact the [Legal Aid Society of Orange County](#), which regularly refers cases to PLC, or attend one of PLC's clinics at various [homeless shelters](#) and [community organizations](#) around Orange County.

About COLAP

PLC's Community Organizations Legal Assistance Project (COLAP), through staff and pro bono volunteer attorneys, provides free transactional legal assistance to local non-profit organizations that face a variety of business law issues in areas such as contract law, employment law, fundraising law, corporate governance law, and real estate law. For instance, COLAP can match organizations with attorneys to review and draft bylaws, employment handbooks, service provider contracts, and commercial leases. COLAP also provides free legal assistance to those interested in starting new nonprofit organizations designed to benefit Orange County's low-income population.



business law related issues, COLAP assists organizations through a legal check-up program. Through this program, volunteer attorneys and law students conduct legal checkups of organizations to make sure they are complying with various state and federal laws. The service allows organizations to address legal issues before they become a problem. If nonprofits do not comply with legal requirements, they may be subject to administrative fines or they can even lose their tax-exempt status. This project helps organizations avoid these consequences.

COLAP is sponsored by the law firm of Buchalter Nemer and is a part of Equal Justice Works' Pro Bono Legal Corps.

For more information on COLAP services, please visit our [webpage](#), or contact [Shannon Anderson](#).

Upcoming Workshops

To Be or Not to Be a 501(c)(3)
April, tba

How to Start a Nonprofit
May, tba

Upcoming Legal Clinic

Legal Clinic for Nonprofits
March 20, 9 a.m.-12 p.m.

For more information about these events, contact [Shannon Anderson](#). These events are made possible through a partnership with the Volunteer Center of Orange County.

In addition to providing direct representation on a number of