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MEMORANDUM

TO: Sheila Bush, Executive Director
Wyoming Medical Society
FROM: Nick Healey, Dray, Dyekman, Reed & Healey, P.C.
DATE: January 22, 2014
RE: Physician employment; legal definition of “full-time” vs. “part-time” employment

Sheila,

We understand that the Wyoming Medical Society (“WMS”) has recently been asked its opinion on when a physician employee should be legally classified as “full time”, as opposed to “part time”, by the employer for benefits purposes. We are providing this guidance to the Wyoming Medical Society to share with its members, in hopes that it will help WMS answer that question.

Preliminarily (and counter-intuitively), there is no one legal definition of “full time” or “part time”. Generally, these definitions are determined and applied by individual employers by internal policy. There are, however, several relevant legal definitions and principles that are useful in determining when employees should be counted as “full time” or “part time”.

I. Wyoming and federal guidance regarding “full time” and “part time”.

Several Wyoming regulations provide guidance on classifying employees as “full time” or “part time”. The Wyoming Department of Environmental Quality specifically does *not* consider an employee who works *less* than 35 hours per week as a “full time equivalent” employee. Wyo. Dep’t of Env. Quality Rules, Ch. 8, *Small Business Voluntary Disclosure Incentive*, section 2(b). The Wyoming Insurance Commissioner’s Rules, Ch. 49, Section (b)(i), implementing the Small Employer Health Insurance Availability Act, provides that “all full time employees who work at least thirty hours per week”, and meet other requirements are required to listed in the small employer’s list of eligible employees and dependents. Moreover, a Wyoming Attorney General Opinion from 1982, concerning whether state employees receiving worker’s compensation payments were eligible to receive the state’s contribution to the employee’s state group insurance programs, noted that only “‘permanent, full-time state employees...regularly work[ing]’ 20 hours per week or more” were eligible employees for group coverage purposes. While this does not define “full time employee”, it clearly indicates that the State of Wyoming believes persons working 20 hours per week can be full time employees.

From the federal perspective, the Affordable Care Act amended the Internal Revenue Code to add 26 U.S.C. §4980H, which requires employers with more than fifty (50) full time employees to fulfill certain obligations with respect to providing group-sponsored health insurance to full-time employees, or be subject to penalties. Section 4980H(c)(4) defines a “full time employee” as “an employee who is employed, on average at least 30 hours of service per week.” Final regulations for “hours of service” have not yet been issued, but the IRS’ proposed regulations indicate that “hours of service” will include “each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and (2) each hour for which an employee is paid, or entitled to payment by the employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence...”

While there is no “bright line” definition of “full time” under this guidance, an employee regularly working anywhere from 20 to 30 hours per week can be considered “full time”. These definitions put also weight on whether the employee is “permanent” as opposed to “temporary”, and “regularly scheduled”, as opposed to intermittently scheduled or seasonal. While the range of hours considered “full time” spans 20 to 35 hours per week, the federal “floor” of “full time” is 30 hours, on average, per week for which an employee is entitled to payment for performing duties for the employer. Thus, all hours in which the employee provides services directly on the employer’s behalf, which are required by the employee to be performed as a condition of employment, should be counted as an “hour of service” for these purposes.

II. Under this legal guidance, whether a physician is considered “full time” should be based on average number of hours the physician provides services on which his or her compensation is calculated.

Under these proposed rules, whether a physician is “full time” should depend on the number of hours the physician spends performing compensable employment duties. If the physician provides those services off the employer’s premises, and the employer is aware and condones the employee’s performance of those services off-site, those hours should count toward the physician’s “full time” status. It is a truism that physician’s are required to perform services above and beyond those provided in direct patient care to fully perform his or her job to the required standard of care. For example, a physician may be contracted to see patients from 8 am-12 pm, 5 days per week, for a total of 20 hours of direct patient care. The physician cannot, however, simply see patients back to back for 4 hours and leave. That would not leave any time for completing medical records, dictating referral letters, reviewing billing and coding of services, and arranging for continuity of care, to name the bare minimum of services that would be required for the 20 hours of direct patient care to meet the standard of care required. The physician could spend at least 10 hours per week performing those required administrative tasks. More tellingly, the physician’s employer would almost certainly be able to claim that the physician was not performing adequately under his or her employment agreement if the physician *failed* to perform those administrative services. The physician’s employer is likewise compensated for the work the physician performs assuming that the physician’s services meet the required standard of care. The physician is thus directly providing those administrative services on the employer’s behalf, and those hours should count toward determining whether the physician is “full time”.

Likewise, a physician compensated on a wRVU basis is compensated for performing specific tasks that are factored into the wRVU payment, time spent on the direct patient care aspect of the service being only one of the services for which the wRVU compensates. Those services are not performed solely in the clinic setting, while the physician is providing direct patient care, yet are required to be performed to justify payment of the whole wRVU payment. Therefore, all time required to generate the wRVU's for which the physician is compensated should be counted as "hours of service" for the physician, since those hours are hours for which the physician is entitled to be paid for the performance of duties for the employer.