

Health Care Employee Benefits & Executive Compensation

Seyfarth Shaw LLP combines its nationally recognized health law practice with its employee benefits & executive compensation practice, which is one of the largest and most experienced in the U.S., to help health care providers design and implement compensation and benefit packages that comply with today's complex regulatory requirements, attract and retain quality medical staff, and maintain fiscal and fiduciary responsibility. We also closely monitor developments in health care reform in order to keep our clients apprised of how they will be impacted.

Health and Welfare Benefit Plans for Health Care Providers

We assist health care companies in:

- designing health and welfare benefit programs
- drafting and reviewing plan documents and preparing plan communications such as open enrollment material and Summary Plan Descriptions
- negotiating third-party administration agreements, insurance contracts, direct-contracting arrangements, and other provider agreements
- preparing government reports such as Form 5500

We provide guidance on employer responsibilities, state-based changes, retiree medical benefits, taxes and fees, reporting requirements and employee communications, and payroll implications as these topics relate to employer-sponsored group health plans. For our health care provider clients, we counsel on issues relating to reimbursement, consolidation, compliance and ethics programs, and disclosure, as well as issues that are specific to different provider types.

Executive Compensation for Health Care Providers

Our health care-focused services include:

- working with hospitals and health systems regarding physician compensation matters

- advising boards and their non-legal advisors to craft appropriate employment and separation agreements for each client's particular situation
- assisting our not-for-profit clients in structuring arrangements with their executives to avoid the perception of conflicts of interest and equally aiding in responding to governmental inquiries
- assisting tax-exempt organizations in establishing procedures for monitoring of executive arrangements from year to year

Executive Deferred Compensation Plans for Health Care Providers

Our team regularly assists health care providers, particularly hospital systems, in designing nonqualified deferred compensation programs, particularly excess benefit plans and/or supplemental executive retirement plans. Because these types of plans are subject to Code Section 457(f), they create their own unique challenges in requiring they be subject to a substantial risk of forfeiture in order for such amounts to remain tax-deferred for the executives.

We have worked with hospital systems on the restructuring of their forms of executive separation agreements and the severance provisions of executive employment agreements to address the onerous compliance provisions of IRC 409A and 457(f) simultaneously.

Employee Competition and Solicitation Issues for Health Care Providers

Our attorneys counsel organizations regarding general hiring procedures, appropriate questions for employment applications and interviews, and how to avoid exposure to liability from the candidate's previously binding agreements. We work closely with our clients' in-house counsel and HR professionals to:

- perform due diligence checks on prospective employees to determine whether they are bound by restrictive covenants or non-compete agreements with former employers
- determine if candidates possess trade secrets from their previous employers that might preclude their hiring and develop strategies to contain the improper use of confidential information
- ensure that new hires sign appropriate restrictive covenants, non-compete agreements, intellectual property assignment agreements and/or confidentiality agreements controlling post-employment restrictions and obligations
- educate new employees about how to protect confidential information and trade secrets

Severance Plans for Health Care Providers

Our attorneys regularly assist multi-state organizations with voluntary and involuntary severance plans and arrangements, early retirement offers and other employment reorganization projects. We understand the federal and state-specific considerations, such as the various WARN Act and age discrimination requirements. Our attorneys often assist in preparing communication materials to deliver the relevant information clearly with due consideration to employee concerns. We also maintain the most current waiver and release agreements to keep up with ever changing state discrimination laws.

Retirement Plans—403(b) for Health Care Organizations

Seyfarth has many years of experience in the design, operation, and fiduciary issues associated with all types of defined contribution plans, including 403(b) plans. We understand that 403(b) plans have become the driving tool for providing retirement income to employees. Moreover, our team's wide-ranging experience with 403(b) plans stands out among its competitors. The following list highlights some of the key areas of our expertise with 403(b) plans:

- We work with our health care clients in the design and implementation of plan features constructed to reduce administrative burdens and costs, coordinate with other existing or terminating retirement arrangements, increase participation and contribution rates, address non-discrimination testing risks and to comply with new legislative and regulatory requirements, including the Pension Protection Act of 2006, the HEART Act and recent Code Section 415 regulations.
- We have assisted many hospital systems in addressing 403(b) issues arising from merger, acquisition, divestiture, and other corporate transactions. This type of work may include plan mergers, terminations and spin-offs.
- We have assisted many tax-exempt organizations in utilizing the new provision available under the final 403(b) regulations which permit an organization to finally terminate an inactive 403(b) plan.
- We also have assisted clients in the design and implementation of informative participant communication programs for their 403(b) plans with more "user friendly" disclosures and processes. This helps streamline delivery and reduce confusion among participants.