

2015 Nursing and Residential Care Facility Update

January 15, 2015

TODAY'S AGENDA AND OBJECTIVES

- Tax Update – For Profit and Not-For-Profit
Jason Favreau and Joe Byrne
- Top 10 Technology Trends Leadership Should be Thinking About
Dan Vogt
- Changes to the NF Principles of Reimbursement
Tammy Brunetti
- Regulatory and Legislative Update
Tammy Brunetti
- Accounting and Financial Issues
Kevin Ware
- Trends in the Industry – A Look Inside the Numbers – BerryDunn's Databases
Kevin Ware

FOR-PROFIT TAX UPDATE: TANGIBLE EXAMPLES AND POTENTIAL ACTIONS

TODAY'S OBJECTIVE

Help you understand the implications of recent tax developments including the “tax extenders” and tangible property regulations.

We'll
cover



Bonus Depreciation & §179 Expensing

Commercial Energy Efficient Property – §179D

Empowerment Zone Benefits

Repairs, Capitalization & Disposition Regulations

FIXED ASSET LIFECYCLE



GENERAL FRAMEWORK



DEDUCTION OPTION: DE MINIMIS RULE

- Applies to property < **\$5,000** with applicable F/S
- Applies to property < **\$500** without applicable F/S

COSTS TO IMPROVE TANGIBLE PROPERTY

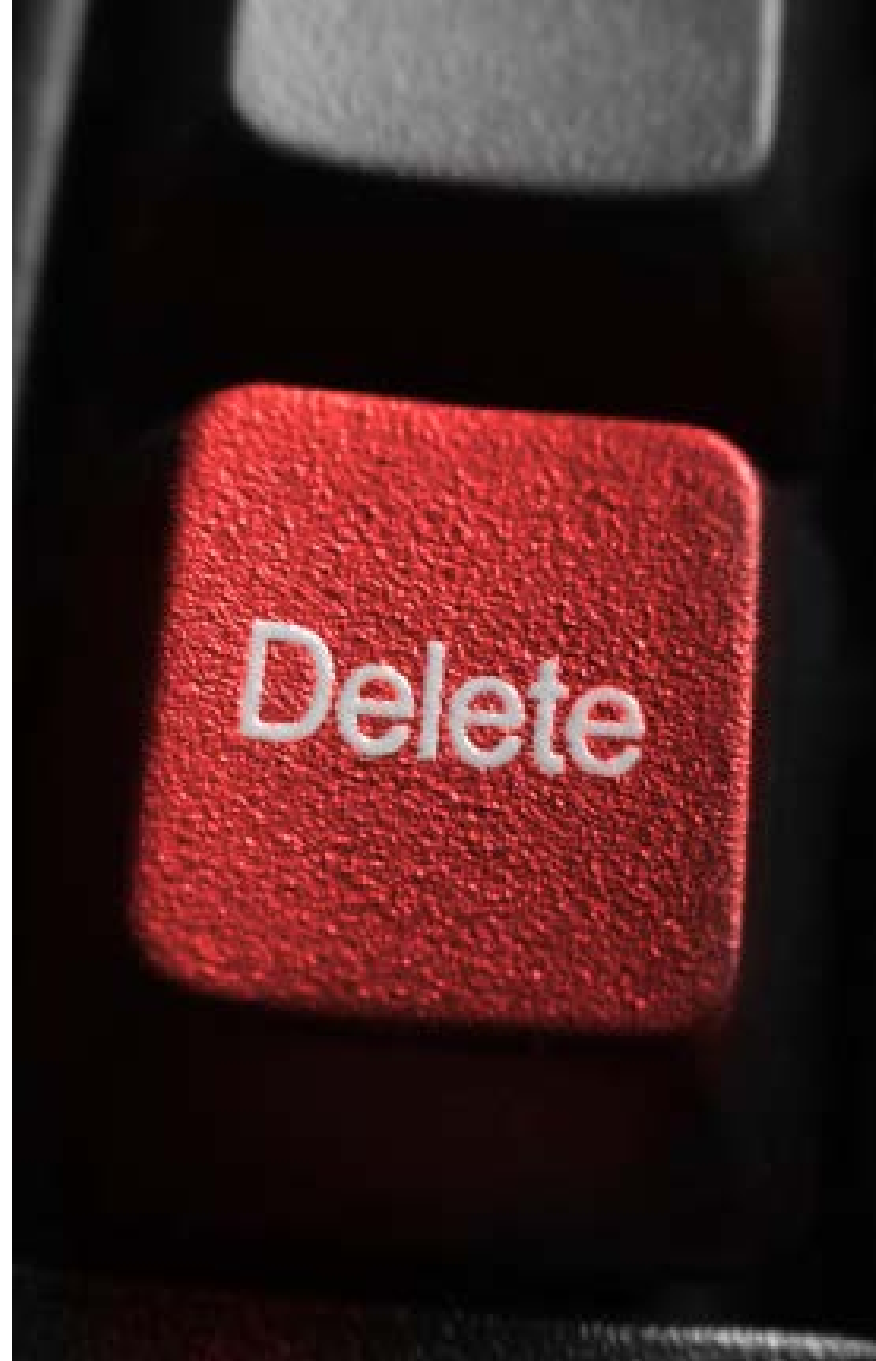
- Identify unit of property
- Apply improvement standards
- Routine maintenance safe harbor



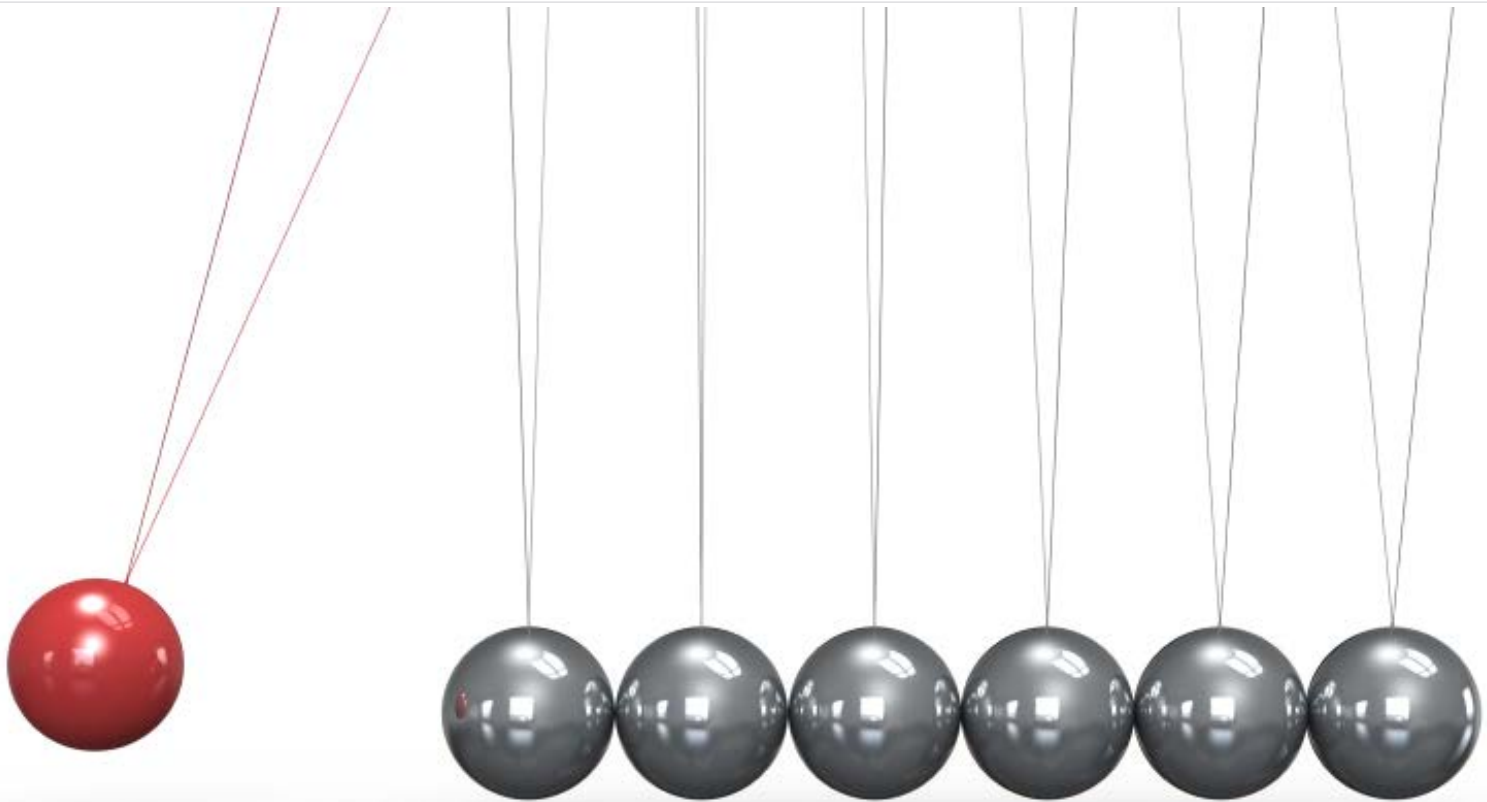
DISPOSITIONS

New final regulations will affect **ALL** taxpayers who dispose of MACRS property

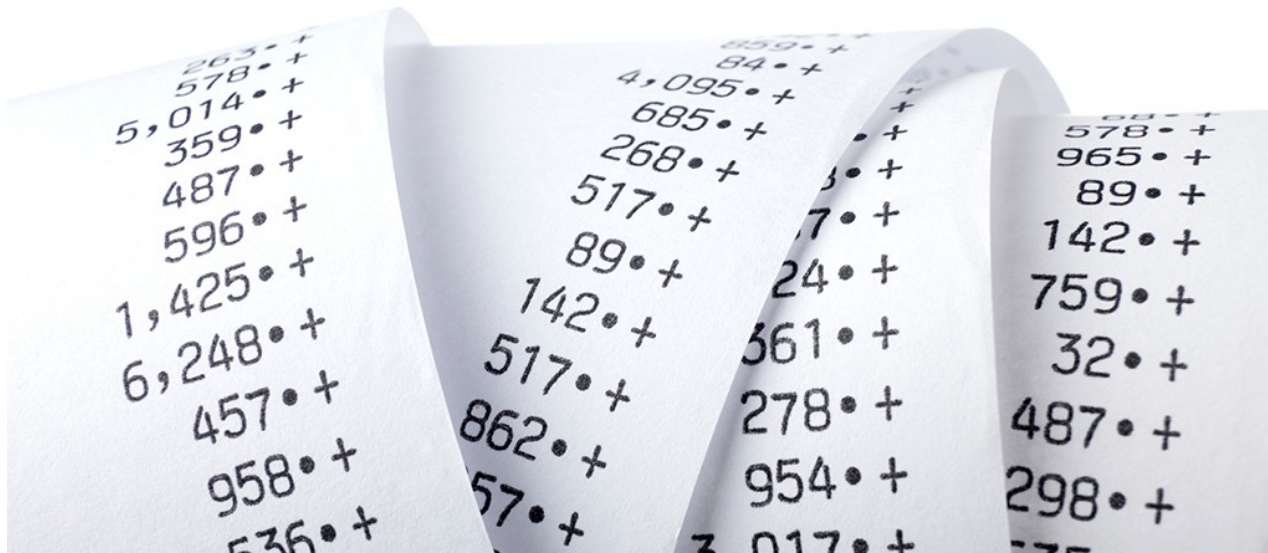
Partial disposition election allows taxpayers to claim a loss on a component without having identified the component before the disposition.



TAKE ACTION TO GET THINGS MOVING CORRECTLY FOR YOUR BUSINESS



NOT-FOR-PROFIT TAX UPDATE



CHANGES TO THE 2014 FORM 990

Compensation Reporting (990, Part VII)

- Reportable compensation (W-2, Box 5) should not be treated as deferred if deferred from the calendar year ending with or within the tax year to a date that is not more than 2 ½ months after the end of the calendar year ending with or within the tax year.

Schedule A

- Additional questions have been added to Schedule A which need to be addressed if the filing organization is a supporting organization (Type I, Type II or Type III). Even more additional disclosures and questions if the organization is a Type III.

Form 1023-EZ – Gross Receipts < \$50,000, Total assets < or = to \$250,000, plus other restrictions.

No other major changes

SCHEDULE A



SCHEDULE A
(Form 990 or 990-EZ)

Public Charity Status and Public Support

OMB No. 1545-0047

2014

Open to Public Inspection

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.
▶ Attach to Form 990 or Form 990-EZ.

Department of the Treasury
Internal Revenue Service

▶ Information about Schedule A (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

Name of the organization

Employer identification number

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 11, check only one box.)

- 1 A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i).**
- 2 A school described in **section 170(b)(1)(A)(ii).** (Attach Schedule E.)
- 3 A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii).**
- 4 A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii).** Enter the hospital's name, city, and state:
- 5 An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv).** (Complete Part II.)
- 6 A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v).**
- 7 An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi).** (Complete Part II.)
- 8 A community trust described in **section 170(b)(1)(A)(vii).** (Complete Part II.)
- 9 An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2).** (Complete Part III.)
- 10 An organization organized and operated exclusively to test for public safety. See **section 509(a)(4).**

- 11 An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2).** See **section 509(a)(3).** Check the box in lines 11a through 11d that describes the type of supporting organization and complete lines 11e, 11f, and 11g.
 - a **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**
 - b **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**
 - c **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**
 - d **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**
 - e Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.
 - f Enter the number of supported organizations
 - g Provide the following information about the supported organization(s).

	(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1-9 above or IRC section (see instructions))	(iv) Is the organization listed in your governing document?		(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
				Yes	No		
(A)							
(B)							
(C)							
(D)							
(E)							
Total							

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or 990-EZ.

Cat. No. 11265F

Schedule A (Form 990 or 990-EZ) 2014

SUPPORTING ORGANIZATION TYPES

Refers to Schedule A, Part I, Box 11 Organizations

Type I 509(a)(1)

- Must be operated, supervised, or controlled by one or more of its supported organizations.

Type II 509(a)(2)

- Must be supervised or controlled in connection with its supported organization(s). There must be common supervision or control by the persons supervising or controlling both organizations in order to ensure the supporting organization is responsive to the needs of the supported organization.

Type III 509(a)(3)

- Must supply annually a written notice to each supported organization the amount and description of the support provided.

IRS WORK PLAN – NO NEW WORK PLAN SINCE 2013!

Hot Button Issues:

UBI

- Gross UBI but no tax
- UBI activities with NOL's – NOL's can & will be disallowed if the IRS determines no for-profit motive
- Improper Expense Allocation
- Underreporting of UBI
- Commonly missed UBI: Fitness centers, advertising, facility rentals

Compensation

- Reasonable Compensation – Are organizations meeting rebuttable presumption requirements (i.e., comparability data, etc.)?

Hospitals – 501(r) regulations are now finalized. FYI for any organizations affiliated with a hospital.

UNRELATED BUSINESS INCOME

An organization may be subject to tax if it is carrying on an activity that is:

- Trade or business (Implicitly implies a for-profit motive. Profitability is not a prerequisite.)
- Regularly carried on (frequent & continuous – facts and circumstances driven).
- Not Substantially Related to Exempt Purpose (facts & circumstances driven).

All 3 must be met before the activity is subject to tax.

COMPENSATION

Common 990 Reporting Errors

- Must be reported on a calendar year end basis. For fiscal year filers, you should be using the calendar year that falls within your fiscal year. (Ex: A FYE 9/30/14 filer would report 2013 calendar year end compensation, since 12/31/13 falls within the fiscal year 10/1/13-9/30/14.)

All items of compensation must be included. Items such as:

- Deferred Compensation – Employer match portion needs to be reported.
- Non-taxable Benefits – Employer paid benefits as well as EE paid pre-tax benefits need to be included (these are not included in the EE's Form W-2 for the year).
- Certain W-2 items may require additional disclosure (auto allowance, housing allowance, etc.).

COMPENSATION - CONTINUED

Rebuttable Presumption

Reasonableness of compensation established by organization

- Independent governing body (conflict policies)
- Decisions in advance
- Based on comparable data (minimum of 3 comps)
 - IRS may take issue with comparability data. Make sure you check comparable organizations, similar demographics, size, etc.

Decision-making process must be contemporaneously documented (written)

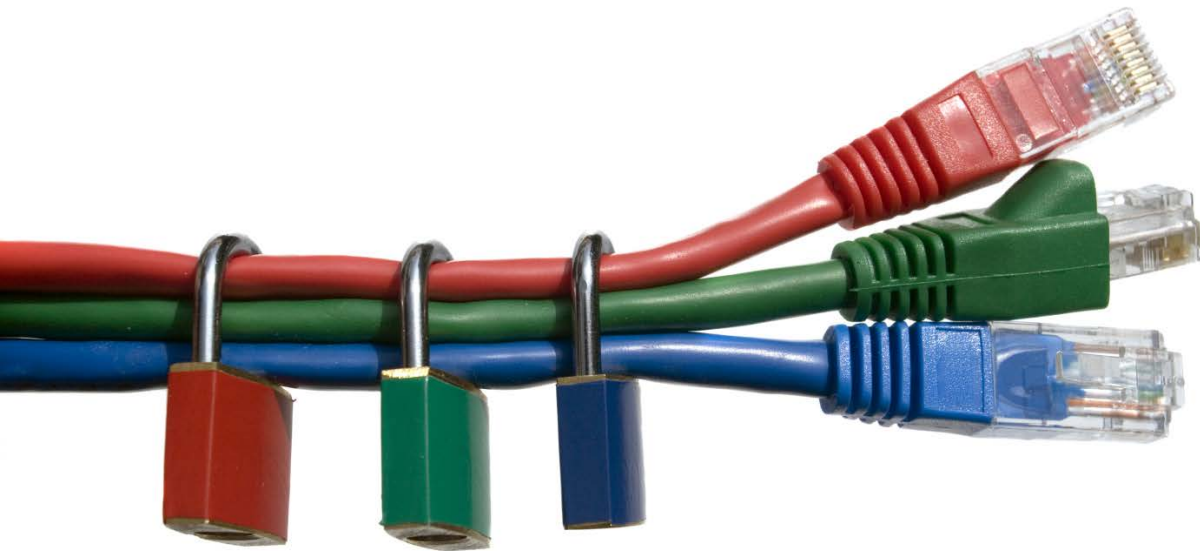
If established, burden of proof shifted to IRS

BOARD GOVERNANCE – 990, PAGE 6

Below items are considered “best practices” by the IRS:

- Written Conflict of Interest Policy (Board conflicts should be reviewed at least annually, or more often as needed)
- Written Whistleblower Policy
- Compensation Setting Procedures in Place (Rebuttable Presumption)
- Receipt of the 990 by the Board (Not the same as Review or Approval!)

Top 10 Technology Trends Leadership Should Be Thinking About



AGENDA



Introductions



Top Technology Trends



Wrap Up, Questions and Discussion

DAN VOGT, BS, CPEHR, PMP

Senior Manager in BerryDunn's
Management and IT Consulting
Practice

Certified Professional in Electronic
Health Records (CPEHR)

Project Management Professional
(PMP)

Technical advisor to the Maine Health
Care Association's EHR Work Group

HIMSS Advocate for Maine

Lehigh University Alumni

Dad of a 15 month old daughter





**Electronic
Health
Records**



Health Information Exchange



Telehealth and Remote Monitoring

Patient and Family Engagement



Data and Analytics





Workforce Management Software

Mobility and BYOD



IT Security and Compliance





Cloud and Outsourced Solutions

Business Continuity



Wrap Up, Questions, and Discussion



LD 1776 AND CHANGES TO THE NF PRINCIPLES OF REIMBURSEMENT



LD 1776

An Act To Implement the Recommendations of the Commission to Study Long-Term Care Facilities



- Sen. Craven
- Rep. Malaby
- Brenda Gallant
- Sen. Burns
- Diane Barnes
- John Watson
- Rep. Stuckey
- Phil Cyr
- Kenneth Albert
- Rep. Farnsworth
- Rick Erb



**CHANGES TO THE
PRINCIPLES OF
REIMBURSEMENT**

RATE COMPONENTS



RESULTS

Direct Median		
	Before	After
Peer Group		
1	\$ 52.84	\$ 73.11
2	57.87	78.49
3	63.56	86.32
Routine Median		
	Before	After
Peer Group		
1	\$ 58.21	\$ 73.48
2	55.86	73.65
3	103.34	101.04

Prospective Rate (excluding fixed, including add-ons)		
	Before	After
Average	\$122.75	\$135.43
Median	121.26	134.69
High	202.59	206.11
Low	100.01	106.03

...AND MORE

UNANTICIPATED
AND/OR RESIDUAL
IMPACT



CHANGES TO THE COST REPORT

- Schedule A – Added MaineCare Utilization settlement
- Schedule C – Added calculation of average prospective routine rate per day
- Schedule D - Eliminated NF Administrative and Management ceiling
- Schedule E – Added MaineCare Utilization allowance and settlement calculation
- Schedules F and R – Description for Central Office costs changed from “central office overhead” to “central office and clerical”
- Schedule W – remove old/dated return on equity wording





PLANNING
AHEAD

RECOMMENDATIONS FROM THE COMMISSION TO **CONTINUE** TO STUDY OF LONG-TERM CARE FACILITIES

- Lower the threshold for **occupancy adjustments**
- Initiate a Maine focused time study to reflect staff time with patients with **dementia**
- Develop a **critical access** nursing facility designation
- Develop a procedure when **beds are relocated**
- Review recommendations in the **Center for Long-Term Care Reform** report
- Support the **Maine Aging Initiative**
- Support DHHS's comprehensive planning for the **continuum of care**
- Adjust **personal needs allowance**
- Committee Members:
 - Sen. Craven
 - Sen. Burns
 - Rep. Stuckey
 - Rep. Farnsworth
 - Rep. Turner
 - James Martin
 - Diane Barnes
 - Phil Cyr
 - Rick Erb
 - Brenda Gallant
 - John Watson

RECOMMENDATIONS FROM THE COMMISSION TO **CONTINUE** TO STUDY OF LONG-TERM CARE FACILITIES - CONTINUED

- Convene a technical work group to **examine rate setting**
- Develop a policy for **complex needs patients**
- Convene a work group to develop **pay for performance** models with new money
- Provide a **financial picture** of the nursing home industry
- Provide a history of the combination of the health care **provider tax** and general fund contributions to MaineCare seed money
- Improve options for pursuing **unpaid cost of care**
- **Restore crossover payments** to nursing facilities
- Include **continuing education** for direct care staff in direct care costs

REGULATORY AND LEGISLATIVE UPDATE



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ADDITIONAL
REPORTING FOR
OPERATORS OF
FACILITIES WITH
HUD INSURED
FINANCING



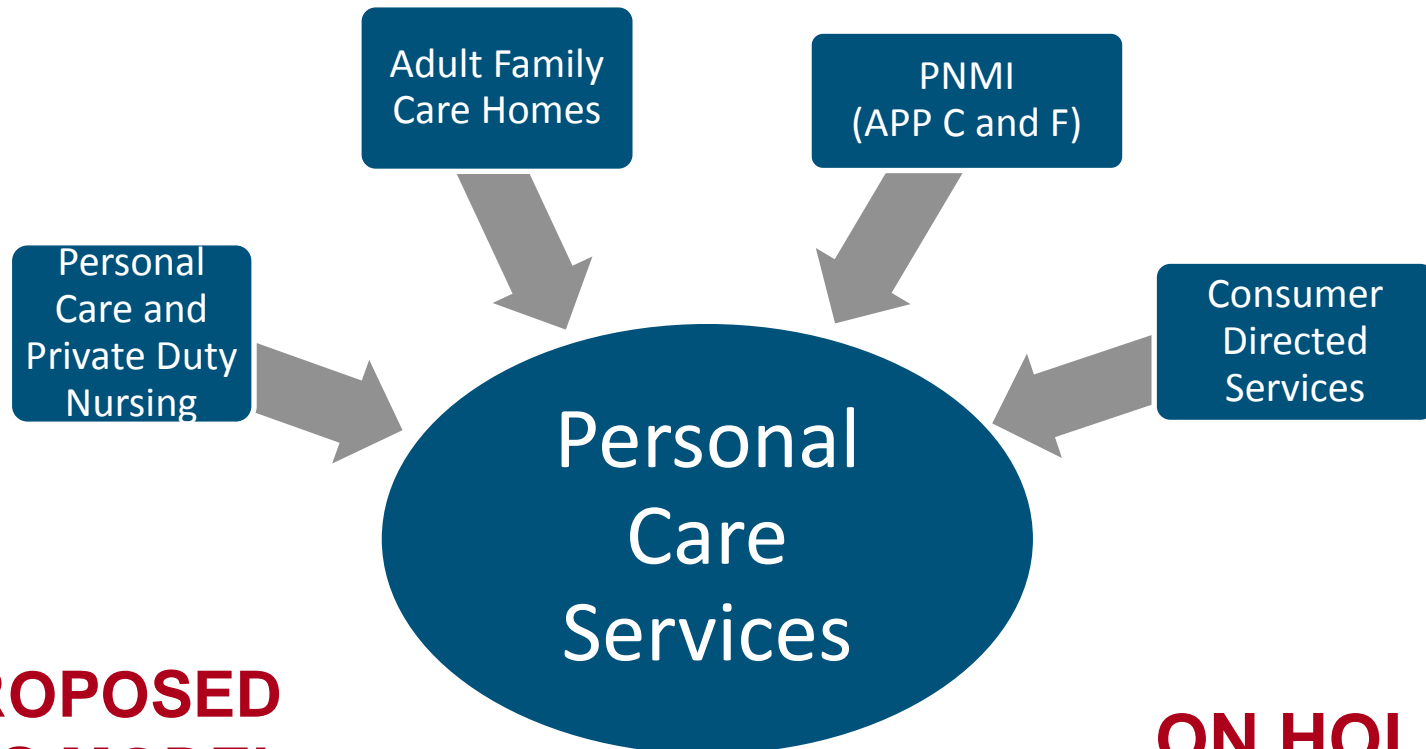
LD 538 - AN ACT TO ALIGN COSTS RECOGNIZED FOR TRANSFER OF NURSING FACILITIES AND RESIDENTIAL CARE FACILITIES WITH ORDINARY COMMERCIAL AND GOVERNMENT CONTRACTING STANDARDS (DEPRECIATION RECAPTURE)



WHAT IS THE
DEFINITION OF
“HOME”?



RESIDENTIAL CARE PAYMENT REFORM??



**PROPOSED
PCS MODEL**

ON HOLD

LEGISLATIVE AGENDA

- Cost of living adjustment for MaineCare Assisted Living (PNMI)
- Bills from Commission
 - QMB Payment
 - Decrease occupancy adjustment threshold
 - Address dementia
 - Education costs as allowable direct care
- Duties of powers of attorney

CMP ANALYTIC TOOL

- CMS issued a CMP Analytic Tool Users Guide to all state survey agencies and survey offices
- Software available for state agencies to use when a CMP is required
- 35% “discount” if facilities waive appeal rights
- 50% discount in self reported situation and waiving appeal rights



ACCOUNTABLE CARE ORGANIZATIONS (ACOs)

- Medicare Shared Savings Program (MSSP) now includes 405 ACOs in 47 states – 89 new in December 2014
- First year results
 - 58 held spending below benchmarks by a total of \$705 million and earned payments of \$315 million
 - 60 ACOs had expenditures below benchmarks but not by enough to earn shared savings payments
- CMS seeking comment to improve the program



OIG WORKPLAN – NURSING FACILITIES

- Part A erroneous billing
- Part B questionable billing patterns
- National background checks for employees and contractors with direct access to patients
- Re-hospitalizations for “manageable or preventable” conditions
- Rates and reasons for emergency room transfers as an indicator of poor quality
- State agency verification of deficiency corrections



CHANGES TO THE RAC PROGRAM

- Will not receive their contingency fee until after the second level of appeal is exhausted
- Broaden review to all claim/provider types
- Must maintain a first level of appeal overturn rate of less than 10%
- CMS will consider developing a provider satisfaction survey
- CMS will establish additional documentation requests

AUDIT

THE GOVERNOR'S PROPOSED BUDGET



ACCOUNTING AND FINANCIAL ISSUES



EMERGING ISSUES

Financial

- Not-for-Profit Financial Reporting Projects
- Financial Accounting Standards Board (FASB) Proposal, *Leases*
- Accounting Standards Update (ASU) No. 2012-05, *Not-for-Profit Entities – Statement of Cash Flows – Classification of Sale Proceeds of Donated Financial Assets*
- Accounting Standards Update (ASU) No. 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern*
- Accounting Standards Update (ASU) No. 2014-18, *Business Combinations: Accounting for Identifiable Intangible Assets in a Business Combination*

EMERGING ISSUES

Tax Related

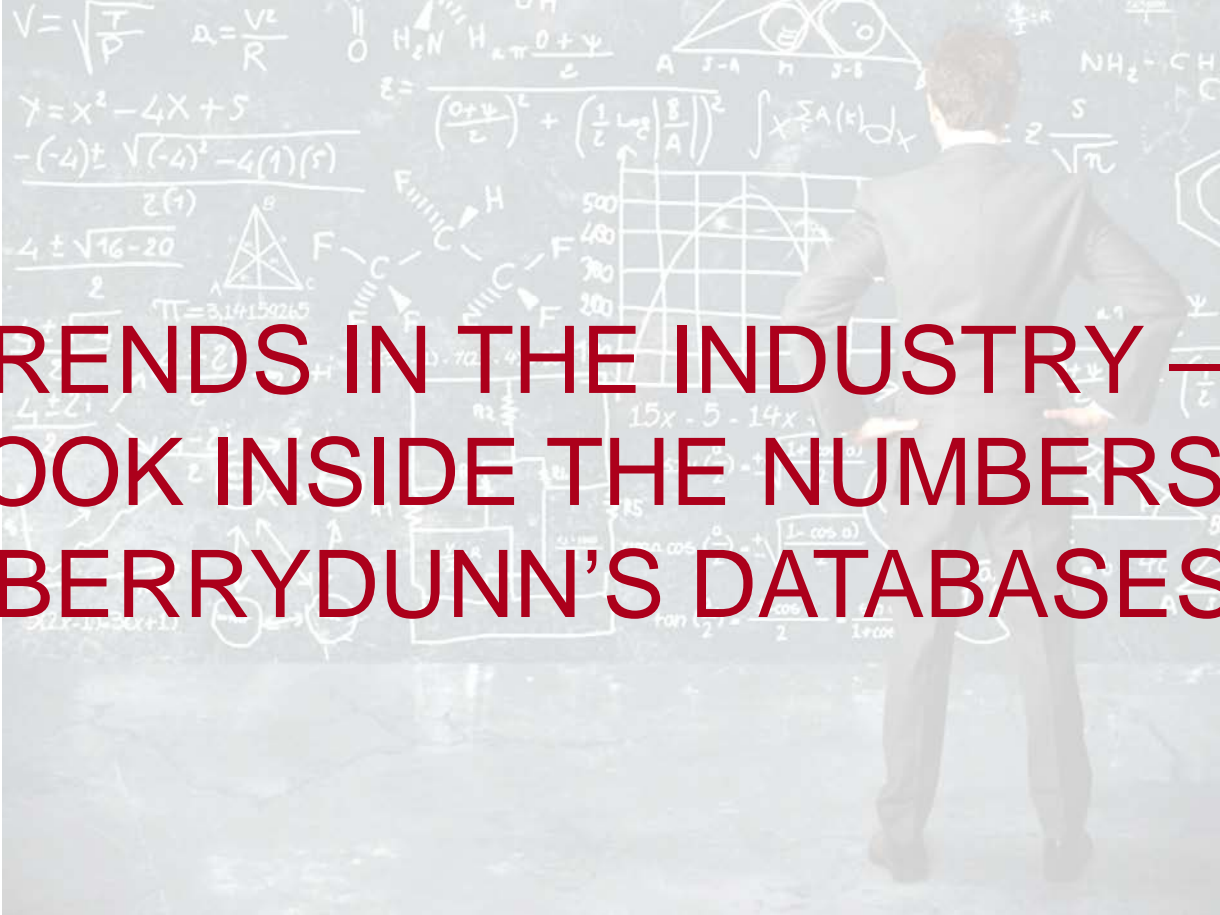
- Form W-9 Revised
- Compensation Setting Procedures – Not Just the CEO
- Unrelated Business Income
- Unclaimed Property



ACCOUNTING ISSUES AND BEST PRACTICES

- Modeling - Third Party Estimates
- Overpayments
- Bad Debts
 - QMB's
- Capitalization vs. Expense





**TRENDS IN THE INDUSTRY – A
LOOK INSIDE THE NUMBERS –
BERRYDUNN'S DATABASES**

KEY FINANCIAL RATIOS

Ratio	2011	2012	2013
Current Ratio	1.54	1.57	1.51
Days in Accounts Receivable	38	41	44
Days Cash on Hand, Non-Restricted Sources	33	32	32
Debt to Equity	88%	79%	102%
Debt Service Coverage	8	9	5
Total Margin	3.56%	3.13%	(.92)%

INDUSTRY COST DATA

NF Census and Occupancy Percentages

	2011		2012		2013	
	Days	%	Days	%	Days	%
Census						
Medicare	340,919	15%	322,369	14%	322,972	14%
MaineCare	1,535,292	67%	1,547,928	68%	1,524,102	68%
Self Pay	398,979	18%	397,428	18%	395,730	18%
Occupancy		92%		92%		91%

RCF Census and Occupancy Percentages

	2011		2012		2013	
	Days	%	Days	%	Days	%
Census						
MaineCare	502,038	81%	485,171	78%	477,698	78%
Self Pay	95,136	15%	109,413	18%	108,216	18%
Other	24,403	4%	28,065	4%	27,484	4%
Occupancy		84%		84%		84%

INDUSTRY COST DATA

Hours Per Patient Day (HPPD)			
	2011	2012	2013
RN	.78	.77	.79
LPN	.34	.36	.34
CNA	2.84	2.85	2.79
CMT	.05	.08	.10
Ward Clerk	<u>.07</u>	<u>.05</u>	<u>.05</u>
	<u>4.08</u>	<u>4.11</u>	<u>4.07</u>

Note – Excludes contract nursing.

Minimum staffing is 2.9 (based on current shift staffing methodology).

INDUSTRY COST DATA

MaineCare NF Average Allowable Cost Vs. Paid Per Day			
	Direct	Routine	Total
2013			
Paid	\$ 93.16	\$ 58.37	\$ 151.53
Allowable cost	<u>107.17</u>	<u>66.96</u>	<u>174.13</u>
Over (under) funding	\$ <u>(14.01)</u>	\$ <u>(8.59)</u>	\$ <u>(22.60)</u>
2012			
Paid	\$ 93.53	\$ 58.13	\$ 151.66
Allowable cost	<u>105.09</u>	<u>63.81</u>	<u>168.90</u>
Over (under) funding	\$ <u>(11.56)</u>	\$ <u>(5.68)</u>	\$ <u>(17.24)</u>
2011			
Paid	\$ 91.53	\$ 57.18	\$ 148.71
Allowable cost	<u>103.97</u>	<u>63.83</u>	<u>167.80</u>
Over (under) funding	\$ <u>(12.44)</u>	\$ <u>(6.65)</u>	\$ <u>(19.09)</u>

INDUSTRY COST DATA

MaineCare NF Shortfall						
	2011		2012		2013	
	Total	Average Per Facility	Total	Average Per Facility	Total	Average Per Facility
Region 1	\$(12,734,002)	\$(363,829)	\$(11,359,756)	\$(334,110)	\$(14,752,759)	\$(433,905)
Region 2	(9,065,383)	(283,293)	(8,363,206)	(261,350)	(10,177,572)	(318,049)
Region 3	(5,398,985)	(199,962)	(4,670,933)	(172,998)	(6,360,997)	(244,654)
Region 4	<u>(2,211,407)</u>	(201,037)	<u>(2,290,895)</u>	(208,263)	<u>(2,624,268)</u>	(238,570)
Total	<u>\$(29,409,777)</u>		<u>\$(26,684,790)</u>		<u>\$(33,915,596)</u>	

Note – Based on 2011, 2012 and 2013 cost data. Shortfall represents difference between allowable costs per day and reimbursement per day.

INDUSTRY COST DATA

MaineCare RCF Average PNMI Direct Allowable Cost vs. Paid Per Day

	NF Based		
	2011	2012	2013
Paid	\$ 68.80	\$ 71.05	\$ 70.12
Allowable cost	<u>65.29</u>	<u>66.59</u>	<u>65.66</u>
Over (under) funding	\$ <u>3.51</u>	\$ <u>4.46</u>	\$ <u>4.46</u>
	Freestanding		
	2011	2012	2013
Paid	\$ 74.51	\$ 76.56	\$ 76.53
Allowable cost	<u>62.87</u>	<u>63.00</u>	<u>64.07</u>
Over (under) funding	\$ <u>11.64</u>	\$ <u>13.56</u>	\$ <u>12.46</u>

INDUSTRY COST DATA

MaineCare RCF Average Allowable Cost vs. Paid Per Day

	NF Based		
	2011	2012	2013
Paid	\$ 98.61	\$101.52	\$ 99.98
Allowable cost	<u>112.64</u>	<u>115.79</u>	<u>114.48</u>
Over (under) funding	\$ <u>(14.03)</u>	\$ <u>(14.27)</u>	\$ <u>(14.50)</u>
	Freestanding		
	2011	2012	2013
Paid	\$ 102.98	\$ 104.76	\$ 105.74
Allowable cost	<u>108.65</u>	<u>109.93</u>	<u>112.64</u>
Over (under) funding	\$ <u>(5.67)</u>	\$ <u>(5.17)</u>	\$ <u>(6.90)</u>

INDUSTRY COST DATA

MaineCare RCF Shortfall			
	2011	2012	2013
NF Based	\$ (4,878,400)	\$ (4,928,678)	\$ (5,239,036)
Freestanding	<u>368,570</u>	<u>411,705</u>	<u>808,819</u>
Total over (under) paid	\$ <u>(4,509,830)</u>	\$ <u>(4,516,973)</u>	\$ <u>(4,430,217)</u>

Note – Based on 2011, 2012 and 2013 cost data. Shortfall represents difference between allowable costs per day and reimbursement per day.

QUESTIONS?

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