

## *Changes to Safe Harbor not Offered in Health Care Reform Markup*

Two previously planned amendments that would have affected tax-exempt hospitals and other exempt organizations were not offered by Senator Charles Grassley for a vote as part of the Senate Finance Committee's markup of The America's Healthy Future Act.<sup>1</sup> These amendments had been filed for consideration in anticipation of the bill's markup, but Senator Grassley's office stated that with so many other amendments being considered, now might not be the appropriate time to offer them.<sup>2</sup>

The first amendment would have eliminated the rule detailed in HCC Topics' March 2009 issue ("[IRS Issues Report on Not-for-Profit Executive Compensation](#)") that a tax-exempt organization can create a "rebuttable presumption" of the reasonableness of their executive compensation packages by properly following particular procedures and documentation.<sup>3</sup> This amendment, while repealing the rebuttable presumption safe harbor, would have kept the due diligence procedure and documentation requirements.<sup>4</sup> The amendment would have also required exempt organizations to disclose a summary of comparables used in determining the executive's compensation.<sup>5</sup> The IRS had expressed concern in a study released in February of 2009 that despite widespread compliance with the "rebuttable presumption" rule, too wide of a discrepancy existed between executive compensation at different sized non-profit hospitals.<sup>6</sup>

The second amendment would have given the IRS explicit authority to scrutinize and oversee the management and governance of exempt organizations.<sup>7</sup> This amendment was not intended to add any items to the list of information requested by the IRS, but instead would have created statutory authority to support those information requests, eliminating any doubt of the IRS's authority to ask them.<sup>8</sup> The effect of such a measure

would be to preempt any potential legal challenges to that authority, something that Senator Grassley has expressed concern about based on the public statements and indications of some in the industry.<sup>9</sup>

The Senator's office stated that he is leaving the option open to include these amendments in a different bill at a later date.<sup>10</sup> Executive compensation in non-profits has been a subject of continued scrutiny, and the increasing profile of this issue indicates it will continue to remain a key issue for regulators in the future.

<sup>1</sup> "Exempt Organizations: Changes to Compensation Safe Harbor Not Offered in Health Care Reform Markup" by Diane Freda. 18 Health Law Reporter 1344. Bureau of National Affairs. Oct. 8, 2009.

<sup>2</sup> "Baucus Bill Omits Charity Care Minimums, But Grassley Proposal Raises New Concerns" by Diane Freda and Peyton Sturges. 18 Health Law Reporter 1247. Bureau of National Affairs. Sept. 24, 2009.

<sup>3</sup> "Baucus Bill Omits Charity Care Minimums, But Grassley Proposal Raises New Concerns" by Diane Freda and Peyton Sturges. 18 Health Law Reporter 1247. Bureau of National Affairs. Sept. 24, 2009.

<sup>4</sup> "Grassley Amendment #F-9" by Sen. Charles Grassley. Senate Finance Committee.

<http://finance.senate.gov/sitepages/leg/LEG%202009/091909%20AHFA%20Financing%20Amendments.pdf>. pp. 30. (Accessed 10/12/09).

<sup>5</sup> "Baucus Bill Omits Charity Care Minimums, But Grassley Proposal Raises New Concerns" by Diane Freda and Peyton Sturges. 18 Health Law Reporter 1247. Bureau of National Affairs. Sept. 24, 2009.

<sup>6</sup> "IRS Exempt Organizations Hospital Compliance Project Final Report," Internal Revenue Service, February 13, 2009, pp. 9-10, 169-170.

<sup>7</sup> "Baucus Bill Omits Charity Care Minimums, But Grassley Proposal Raises New Concerns" by Diane Freda and Peyton Sturges. 18 Health Law Reporter 1247. Bureau of National Affairs. Sept. 24, 2009.

<sup>8</sup> "Grassley Amendment #F-7" by Sen. Charles Grassley. Senate Finance Committee.

<http://finance.senate.gov/sitepages/leg/LEG%202009/091909%20AHFA%20Financing%20Amendments.pdf>. pp. 29. (Accessed 10/12/09).

<sup>9</sup> "Grassley Amendment #F-7" by Sen. Charles Grassley. Senate Finance Committee.

<http://finance.senate.gov/sitepages/leg/LEG%202009/091909%20AHFA%20Financing%20Amendments.pdf>. pp. 29. (Accessed 10/12/09).

<sup>10</sup> "Exempt Organizations: Changes to Compensation Safe Harbor Not Offered in Health Care Reform Markup" by Diane Freda. 18 Health Law Reporter 1344. Bureau of National Affairs. Oct. 8, 2009.



(800) FYI - VALU

*Providing Solutions  
in the Era of  
Healthcare Reform*

Founded in 1993, HCC is a  
nationally recognized healthcare  
economic financial consulting firm

- [HCC Home](#)
- [Firm Profile](#)
- [HCC Services](#)
- [HCC Experts](#)
- [Clients Projects](#)
- [HCC News](#)
- [Upcoming Events](#)
- [Contact Us](#)
- [Email Us](#)

**HEALTH CAPITAL CONSULTANTS (HCC)** is an established, nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, Missouri, with regional personnel nationwide. Founded in 1993, HCC has served clients in over 45 states, in providing services including: valuation in all healthcare sectors; financial analysis, including the development of forecasts, budgets and income distribution plans; healthcare provider related intermediary services, including integration, affiliation, acquisition and divestiture; Certificate of Need (CON) and regulatory consulting; litigation support and expert witness services; and, industry research services for healthcare providers and their advisors. HCC's accredited professionals are supported by an experienced research and library support staff to maintain a thorough and extensive knowledge of the healthcare reimbursement, regulatory, technological and competitive environment.



**Robert James Cimasi**, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as President of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books], *“An Exciting Insight into the Healthcare Industry and Medical Practice Valuation”* [2002 – AICPA], and *“A Guide to Consulting Services for Emerging Healthcare Organizations”* [1999 John Wiley and Sons].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.



**Todd A. Zigrang**, MBA, MHA, ASA, FACHE, is the Senior Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser's Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



**Anne P. Sharamitaro**, Esq., is the Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the *Journal of Health Law*, published by the American Health Lawyers Association. She has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in *“Healthcare Organizations: Financial Management Strategies,”* published in 2008.