
CRA GUIDANCE ON PROMOTION OF HEALTH AND CHARITABLE REGISTRATION

*By Terrance S. Carter & Karen J. Cooper**

A. INTRODUCTION

Canada Revenue Agency (“CRA”) released its guidance dealing with promotion of health and charitable registration on August 27, 2013. The guidance, referenced as CG-021, is entitled Promotion of Health and Charitable Registration (“Guidance”), and replaces the following Charities Summary Policies: CSP A19, Alcohol, Drug, Addiction, CSP-A11, Abortion (Medical Clinic) - Women, CSP-C24, Counselling, CSP C20, Crisis Centre, CSP-D11, Relieving Sickness, Disability, CSP H02, Provision of Health Care, CSP H03, Health Clinic, and CSP M04, Holistic Medicine. The Guidance describes how CRA interprets the common law and *Income Tax Act* (“ITA”) when determining whether an organization created for the purpose of promoting health is eligible to become a registered charity under the *ITA*.

B. PROMOTION OF HEALTH IN THE CHARITABLE CONTEXT

1. Definition

The Guidance defines promotion of health as “directly preventing or relieving physical or mental health conditions by providing health care services or products to eligible beneficiaries” (Para 8).

* Terrance S. Carter, B.A., LL.B., Trade-Mark Agent, is the managing partner of Carters Profession Corporation, and counsel to Fasken Martineau DuMoulin LLP on charitable matters. Karen J. Cooper, LL.B., LL.L., TEP, is a partner at Carters Professional Corporation practicing charity and not-for-profit law with an emphasis on tax issues. The authors would like to thank Dianne T. Hajdasz, B.Sc. (Hons.), B.Ed., J.D., Student-At-Law, for her assistance in the preparation of this Bulletin.

2. Categories of charity

In order for a charity to be registered under the *ITA*, its purposes must be exclusively charitable, must provide a public benefit, and must describe the scope of the organization's activities. The Guidance repeats the common law principle that a purpose is considered to be exclusively charitable when it falls under one of the four categories of charity: (1) relief of poverty; (2) advancement of education; (3) advancement of religion; and (4) other purposes beneficial to the community in a way the law regards as charitable. Promotion of health falls under the fourth category of charities – other purposes beneficial to the community in a way the law regards as charitable.

3. Assessing the charitable benefit of purposes that promote health and the activities that further these purposes

A purpose that promotes health may be eligible for charitable registration provided that:

- ◆ The purpose and activities prevent or relieve a health condition by providing health care services or products to eligible beneficiaries;
- ◆ The health care services meet the standards for effectiveness, quality and safety;
- ◆ The charitable benefit is provided to the public or large segment of the public; and
- ◆ The health care service does not confer an unacceptable private benefit.

Firstly, in order for the promotion of health purpose to qualify for charitable registration, the purpose must provide a clear charitable benefit to the public or sufficient segment of the public. A charitable benefit must be provable and socially useful, which means that it must be tangible or objectively measurable to be provable, and it must have a value and impact on the public to be socially useful. The charitable benefit must also be a direct result of the charitable purpose and the activities that further the purpose. A charitable benefit for promotion of health is demonstrated when a purpose and activities prevent or relieve a health condition by administering health care services or products.

Secondly, these health care services and products must meet the standards for effectiveness, quality and safety. The standard for effectiveness refers to the “positive and desirable outcomes normally resulting from a health care service or product,” such as eliminating or reducing symptoms of a health condition (Para 8). The standard for quality and safety refers to “the quality and safety standards normally expected to be met by a health care provider, and the quality and safety standards normally applied to health products” (Para 8). If

the health care services and products are recognized under the *Canada Health Act* or provincial/territorial medical insurance plans, then the standard for effectiveness is already met. Cosmetic health care services or products do not provide a charitable benefit unless they are medically necessary for the patient, and in this situation, would be viewed as preventing or relieving a health condition that meets the standards for effectiveness, quality and safety.

Thirdly, in order for a charitable benefit to be a public benefit, it must be provided to eligible beneficiaries, which are, in this case, the whole public or a sufficient segment of the public if a restriction is necessary to accomplish the charitable purpose.

Fourthly, for a public benefit to qualify as a charitable benefit, it must not confer an unacceptable private benefit. The Guidance defines a private benefit as “a benefit or advantage (charitable or non-charitable) provided to a person, entity or organization that is not a charitable beneficiary, or a benefit provided to a charitable beneficiary that goes beyond what is considered to be charitable” (Para 93). A private benefit is unacceptable when it is not incidental (i.e. necessary, reasonable, and proportionate to the public benefit) to achieving a charitable purpose.

4. Promotion of health purposes and activities

Charitable purposes that promote health are divided into four groups: (1) core health care; (2) supportive health care; (3) protective health care; and (4) health care products.

a) Core health care

When an organization or institution provides core health care services and products to eligible persons, this can be a promotion of a health purpose. As stated in paragraph 19 of the Guidance, core health care includes the following: (i) diagnosing and treating health conditions; (ii) assisting with rehabilitation; and (iii) protecting and maintaining public health.

i) Diagnosing and treating health conditions

Paragraphs 21 and 22 of the Guidance provide several examples of purposes and activities that promote health through the diagnosis and treatment of health conditions. One example of this purpose is: “Promoting health by providing the public with medical hospitals, clinics or

dispensaries.” An example of activities that promote health through diagnostic purposes is: “Operating a diagnostic imaging clinic to diagnose illness or injury.”

ii) Assisting with rehabilitation

An organization that helps with rehabilitation can promote health provided that the rehabilitation assists with the “recovery from loss of function due to a health condition” (Para 23). Paragraphs 24 and 25 include examples of purposes and activities that promote health by providing rehabilitation services to patients. An example of this purpose is: “Promoting health by assisting with the recovery from alcohol addiction.” One example of an activity that furthers this purpose is: “Establishing and operating counseling or support group programs.”

iii) Protecting and maintaining public health

The protection and maintenance of public health refers to the prevention of health conditions or death. This prevention can be done by preventing the spread of an illness, or by reducing the negative effects or development of a health condition. An example of this promotion of a health purpose is: “Promoting health by protecting and maintaining public health by reducing the risk of premature delivery in pregnant women by providing pre-natal care” (Para 27). An example of an activity in this category is: “Conducting epidemical research into the spread of communicable diseases” (Para 28).

b) Supportive health care

Supportive health care is a promotion of a health purpose when it provides “health-related support to individuals with health conditions” or “extended support for families or caregivers of individuals with health conditions” (Para 29). The standard for effectiveness is satisfied when there is a recognized charitable benefit, and the standards for quality and safety are usually irrelevant.

i) Providing health-related support to individuals with health conditions

Support services and products should support an individual’s recovery from a health condition. An example of a health promotion purpose providing support is: “Promoting health by providing individuals with [ovarian cancer] with services that facilitate the delivery of health care services” (Para 32). An example of an activity that furthers a promotion of a health purpose using supportive services is an organization “providing toys or games to hospitalized children” (Para 33).

- ii) Providing health-related support for families or caregivers of individuals with health conditions

This type of support is acceptable provided that the charitable benefit is discernible. An example of a purpose that promotes health by supporting a patient's family is: "Promoting accommodations to family members of hospitalized or seriously ill patients" (Para 35). A related activity could involve an organization "establishing and operating a home near a medical facility for use by family members of hospitalized or seriously ill patients" (Para 36).

- c) Protective health care

In order to be a promotion of health purpose, protective health care must demonstrate a protection and preservation of people's health, and it can do this by offering health-related emergency services or by regulating those people who provide health care services. The effectiveness standard does not appear to be an issue when the health care service is recognized as charitable.

- i) Providing health-related emergency services

Emergency services promote health when they protect an individual from injury or death. Paragraph 41 provides examples of purposes that promote health by offering emergency services, such as: "Promoting health by providing publically available ambulance or paramedic services." Paragraph 42 lists examples of activities that further the purpose, which includes the "hiring and training [of] employees."

- ii) Regulating health care service providers

Regulating health care providers can be a promotion of health purpose because it can protect people's access to quality services. When regulatory bodies for health care providers are governed by Canadian legislation, then it is implied that the activities further charitable purposes. On the other hand, groups or associations that aim to benefit its health care provider members may not qualify as charities.

- d) Health care products

A promotion of a health purpose is also possible when supplying health products to people who medically require the health products to treat a mental health or physical health condition. However, the products must meet the effectiveness, quality and safety standards described above. An example of

a charitable purpose that promotes health by offering health care products is: “Promoting health by providing affected populations with health care products that prevent or relieve a health condition” (Para 49). An activity that could further this purpose may include the “buying and distributing of drugs or medical devices for use inside or outside Canada” (Para 50).

C. SPECIAL TOPICS

In addition to the four main groups of charitable purposes that promote health described above, the Guidance provides an overview of various “special topics” that may be considered charitable purposes that promote health and to which special considerations may apply. These special topics include: (1) complementary or alternative health care; (2) physical fitness and wellness; (3) providing information as a charitable activity; (4) providing medical clinics; (5) Providing health care services in underserved areas or areas of social and economic deprivation; and (6) charging fees.

1. Complementary or alternative health care

If the complementary or alternative health care services and products are recognized under the *Canada Health Act* or provincial/territorial medical insurance plans, then only the standards for quality and safety must be demonstrated. A list of examples is provided in paragraph 54, which includes natural health products, meditation, and Chinese medicine.

2. Physical fitness and wellness

Although promotion of sport is not charitable at common law, encouraging and facilitating physical fitness and public participation in fitness may be a promotion of health purpose. The programs and activities must *directly* lead to physical fitness and must be available to the public. For example, it would be acceptable for an organization to provide physical activity programs to children. Yoga and meditation, for example, may further the promotion of health purpose when they can be shown to reduce the symptoms of an illness. However, programs that aim to improve quality of life by targeting general well-being are not charitable. Encouraging physical fitness may often advance the core health purposes, such as when the purpose protects the public health by preventing the occurrence of influenza.

3. Providing information as a charitable activity

Health information can be a promotion of a health purpose only if it allows the public to perform behaviours that further the charitable purpose. An activity that offers health information to the public is an acceptable charitable purpose provided that it satisfies the requirements for the content, audience and distribution, as described in paragraph 64. The health information must be truthful and detailed, must enable the audience to act in ways that promote health, must target the appropriate audience, and must in fact reach the intended audience. In certain cases it may be acceptable, when the audience and distribution requirements are met, for the health information to direct readers to the charity's resources that do satisfy the content requirements. When information is already publically available, the organization must add to the existing content, because then the organization would be carrying out its *own* charitable activities, as required for registered charities. The mere recirculation of existing data without the organization's input would need to be justified to CRA if it is more than incidental.

4. Providing medical clinics

A medical clinic may be charitable, but it must provide services to the public as a whole. It is possible to limit services to particular people when this restriction is necessary for the charitable purpose. For instance, a medical clinic that specializes in prostate cancer may accept only male patients with this health condition. The clinic must not provide any "unacceptable private benefit", such as unreasonably high salaries.

5. Providing health care services in underserved areas or areas of social and economic deprivation

Although it is unacceptable to provide a more than incidental private benefit, what is incidental varies in different circumstances based on the facts of each case. CRA may therefore allow a different standard for services that are provided in underserved and deprived areas based on an expanded view of acceptable private benefits in such areas.

6. Charging fees

Charities can charge fees for health care services or products, but they may not have a profit-making intention. The fees should not exclude members of the public; otherwise it will not provide the necessary public benefit. However, if fees are charged, CRA will assess based on the facts and factors stated in paragraph 78, such as whether the charges are reasonable.

D. HEALTH-RELATED ACTIVITIES THAT FURTHER OTHER CHARITABLE PURPOSES

There are health-related activities that can further the other charitable purposes, which include the relief of poverty, advancement of education and advancement of religion.

1. Health-related activities that further relief of poverty purposes

There are health-related activities that may provide relief to the poor, such as by “providing eye glasses in developing countries” (Para 83). These health activities would further the relief of poverty purposes.

2. Health-related activities that further advancement of education purposes

Health-related activities can further the advancement of education purpose when the activities are structured, have a teaching or learning component, and attempt to educate an audience. An example of a health-related activity that furthers the advancement of education is the teaching and training of medical health professionals. When organizations teach about health care services and products, those services and products must meet the effectiveness, quality and safety standards. Health-related research can also further this purpose, such as a clinical trial of medical drugs.

3. Health-related activities that further advancement of religion purposes

The advancement of religion means “manifesting, promoting, sustaining and increasing belief” in a religion with faith in a higher power, worship, and a system of doctrines and observances (Para 92). In order to be charitable, the activity must be clearly and materially connected to the religion’s attributes. The Guidance recognizes that health care may further the advancement of religion purpose and this is a welcomed development for the religious sector. Health-related activities can further the advancement of religion purpose in two ways: (1) when the provided health care is an activity that promotes the teachings of the religion; or (2) when the health care serves religious staff members, in support of their religious contributions.

E. APPENDIX A: THE EFFECTIVENESS STANDARD REQUIREMENTS

An organization must be able demonstrate that the health care services and products used to treat health conditions are in fact “effective” at eliminating or reducing the condition’s symptoms (Para 1). Appendix A describes the requirements relating to the effectiveness of health care services and products, and provides

questions to help an organization figure out whether its services and products satisfy the effectiveness standard.

F. APPENDIX B: THE QUALITY AND SAFETY STANDARDS FOR HEALTH CARE SERVICE PROVIDERS

An organization must be able to demonstrate that its health care service providers are offering appropriate and safe services. Appendix B describes the quality and safety standards for health care providers and provides questions to help an organization evaluate its health care service providers. For example, a health care service provider that is currently licensed and in good standing with a professional regulatory body in Canada will meet the relevant quality and safety standards.

G. APPENDIX C: THE QUALITY AND SAFETY STANDARDS FOR HEALTH CARE PRODUCTS

An organization must be able to demonstrate that its health care products satisfy the quality and safety requirements. Appendix C provides questions to help an organization evaluate the safety and quality of its medical devices, drugs, and natural health products. For example, medical devices that appear on the Medical Device Active Listing and that are not subject to any recalls, advisories or warnings will satisfy the quality and safety requirements. Drugs and natural health products must meet similar requirements for quality and safety standards.