

The key points to make:

1. You need to discuss with an Attorney who specializes in Non-Profits. The reason is non-profits do not have the same issues as for profit companies, special tax issues and special state unique issues when setting up the non-profit and a possible for profit subsidiary.

2. A 501c(6) is an association like chamber of commerce, NFL, trade associations that a member supported. It would also be subject to the state laws it is organized under. Each state is different for tax and record keeping

3. To be a 501c(6) you need to have a significant amount of your revenue from members usually greater than 30-40% and from a large number of members at least 20+ preferably a lot more. Membership dues can be determined in various ways such as everyone pays \$100 for membership or individuals pay \$50, companies with less than 10 employees or less than \$100,000 in revenue pay \$250, those with revenue over \$1M pay \$1,000, over \$5M or over 200 employees pay \$5,000 or any combo you decide as long as it is listed and known to all potential members as a membership fee.

4. A 501c(6) should not inure funds to any member nor should it benefit just the members but the industry itself. For instance: Open EMR needs a standard setting group. The 501c(6) can be the standard setter for the industry sponsored by members but it oversees the Open EMR industry not just for members. If it benefits just the members it can be considered a for-profit organization by the IRS.

5. The 501c(6) organization would have a board of directors and an executive team to oversee the day-to-day operations, collect membership dues, perform recordkeeping and submission for nonprofit grants, and promote the industry as a whole not just the members interests or you jeopardize your nonprofit status.

6. Some items can be done by the nonprofit such as selling a catalog or guide that has individual advertisements in the guide from member and/or nonmember advertisers but this is called Unrelated Business Income (UBI) and is taxable using a 990-T. The profits generated are for the nonprofit to use. Again there are issues as to the amount of funds the nonprofit receives from these for profit activities which can jeopardize the nonprofit status of the main organization. There is also issues if the nonprofit has to get a loan to support these for profit activities or investments, then all the activities may be subject to taxation-depends on how structured.

7. The nonprofit can have a for profit subsidiary that may be fully owned by the non-profit and pays taxes with the profits going to the nonprofit parent. However, there are questions that the IRS will state such as whether this is a sham to help benefit members especially if the board members for the for profit subsidiary are the same as for the nonprofit board. The best way is to form a For Profit company separate and distinct from the Non-Profit organization. The Non-Profit organization can own all or part of the business and sell shares if corporation or units if LLC to outside people. The nonprofit can own a significant part or all the stock and the dividends support the nonprofit as investment income. Since the nonprofit started the for profit subsidiary and owns all or part of

the company they can have a majority directors but should also have outside directors who are not part of the Nonprofit board. This helps show that there is not a sham to try and get tax free money strictly by nonprofit and work is limited to nonprofit board members or nonprofit membership. Based on the by-laws, there can be some restrictions put in such as only certain types of work can be done, the nonprofit must have a minimum number of directors in the for profit, restrictions on selling stock and other items including some state restrictions depending on the state that you incorporated the for profit in and the states it is operating from. The legal issues need an attorney to provide since the determination of a c-corp or LLC can have great influence on how the bylaws or operating agreement are set out and who can do what.

8. Think NFL. The NFL is a 501c(6). Members are the NFL teams, the NFL logo is licensed and outside companies make and sell the jerseys. The NFL gets a lot of money from membership and TV rights. However, the NFL is a sports organization as a 501c(6) because it benefits the sport overall and gets money from membership and the members pledge to follow the rules and standards set by the NFL which are voted on by members in the industry. This is how the OPEN EMR could work.

9. Tax issues are increased with the amount of funds received. If you have less than \$50K in revenue you have a 990-N, or 990-S over \$50k or previously submitted a 990-S and over \$200K a 990. The 990 asks for a lot of information such as membership dues money, grants received, expenses, net assets, investment income, depending on salaries and benefits the pay for individuals making over \$100K, names, addresses, and remuneration received by board members and other items that need a lot of attention and bookkeeping and records management.

Again, there are a number of changes that have been proposed by the IRS that will be coming out over the next couple of years changing many issues with nonprofits by the IRS Or they may change under President Trump, so a lawyer with nonprofit specialty is really needed if you really want to ensure a focused group and ensure the bylaws are properly determined.