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Mr. Lawrence M. Brauer  
Internal Revenue Service  
Attn: SE:T:EO:RA:T  
1111 Constitution Ave., N.W., Room 3T2  
Washington, DC 20224

Re: Compensation and Benefits Survey

Dear Larry:

Pursuant to our recent telephone conversation, I am writing this letter on behalf of the American Hospital Association ("AHA"). In connection with the recent enforcement initiative by the Internal Revenue Service (the "Service") with respect to nonprofit organizations, certain questions have arisen. AHA would like guidance with respect to certain of these issues, as follows:

1. The announcement mentions the enforcement effort will focus on compensation and "benefits". How does the Service define "benefits" for this purpose and does the Service have published guidance and requirements for these benefits?

2. The announcement refers to officers and "other insiders". How does the Service define "other insiders" for this purpose? For example, would other insiders include the medical staff of a hospital?

3. The announcement refers to organizations that pay "excessive" compensation and benefits. Is this the same definition as "Excess Benefit Transactions" pursuant to the Intermediate Sanctions?

4. With respect to "excessive" compensation above in No. 3, how will the Service determine if the compensation is excessive? Will the Service refer to certain surveys in this area to determine reasonable compensation and, if so, are those surveys available to the general public (or were surveys conducted specifically for the Service)? If not, what compensation survey or comparability data would the Service recommend, if any, for setting compensation or benefits for the hospital management?

5. The nonprofit hospitals would like to have a compensation survey they can rely on which is reasonable and is consistent with industry standards and Service approved. Some state hospital associations have adopted an industry compensation

survey for hospital employees and management, including CEO and CFO. Would state hospital association approved surveys meet the standard for comparable data under the Intermediate Sanctions rule?

6. If the organization has followed the "rebuttable presumption" process of the Intermediate Sanctions, will that establish the reasonableness of the compensation and benefits for purposes of the Service enforcement program?

7. Does the Service recommend that nonprofit hospitals adopt on a voluntary basis some of the Sarbanes Oxley provision? If yes, which provisions does the Service recommend that the hospitals adopt and/or when will the Service publish guidance in this area?

8. Could there be an excess benefit transaction when the amount paid is reasonable in relation to the services provided? If yes, under what circumstances?

9. Are gifts of nominal value to board members or physicians of nonprofit organizations (in recognition for past services) income to the board members or physicians? If so, at what value does it become income?

10. If an uncompensated board member receives a gift valued at less than \$600 (for past uncompensated services) does that amount need to be reported on the Form 990?

11. What process should a board use to set its own compensation? Can the board use the rebuttable presumption process?

12. At what value does an occasional nonmonetary benefit or gift become income to an employee of the hospital?

13. The Service has suggested that a "Periodic Review" be conducted in this area in connection with a conflict of interest policy. How often would the Service recommend these reviews be conducted? Is there a suggested outline of issues or areas that the Service would recommend for this review?

14. If legal opinions from recognized experts in this area are rendered in connection with these "periodic reviews" would the Service take into account this fact when determining if Intermediate Sanctions should apply?

15. Will the exempt organization IRS agents use selected portions of the Market Segment Specialization Program, Audit Technique Guide for "Corporate Executive Compliance", issued February 14, 2005, when reviewing exempt organizations.

16. We understand that the IRS is looking at cell phone use in the healthcare area regarding potential personal use. If healthcare professionals or employees need to carry phones for their work, will the IRS treat part of the cost of the cell phones as compensation to the employee, if the personal use is de minimis?

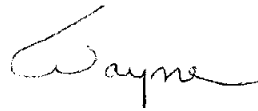
17. If the organization has determined that it is important for spouses to travel with Board Members and management to business meetings, will the IRS treat the spousal travel as compensation to the Board Member or executive, if the spouse attends the business meeting?

18. Will the reporting changes resulting from newly-created Code section 409A, which will require that all deferred compensation be reportable on a Form W-2 in the year of deferral, impact the reporting requirements on an organization's Form 990?

19. If, pursuant to the Code section 409A, a hospital executive is deemed to recognize taxable compensation in a tax year earlier than the tax year such compensation is actually received by him or her, is it likely that the Service would also characterize such failure to report income as an automatic excess benefit transaction as such amount(s) would not have been properly reported on a Form 1099, Form W-2 or Form 990?

Thank you for your willingness to answer or discuss the above questions. If you would like to arrangement a telephone conference (or meeting) to obtain additional facts or information, we would be happy to discuss at your convenience.

Very truly yours,



Wayne B. Henry

WBH:jlm

cc: Mr. Marvin Friedlander – Internal Revenue Service  
Ms. Melinda Hatton – American Hospital Assoc.  
Mr. Michael Rock – American Hospital Assoc.

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