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November 15, 2012

Tim Jones
Branch V Chief Counsel
Financial Institutions and Products
Internal Revenue Service
United States Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224-0001

Dear Mr. Jones:

Thank you for taking the time to meet with Scott Lilienthal, Mike Rock and me on October 9 to discuss the need to update IRS Revenue Procedure 97-13 as you continue to implement the *Patient Protection and Affordable Care Act (ACA)* and in light of other changes that have occurred in the health care field.

We understand that you are seeking our views and suggestions as you consider the application of the provisions of the Internal Revenue Code (Code) limiting “private business use” of facilities financed with tax-exempt state or local bonds, such as hospitals and medical foundations that participate in ACA programs.

As we discussed, current rules as embodied in Rev. Proc. 97-13 present a barrier to hospital and medical foundation use of particular arrangements that are encouraged by the ACA, such as accountable care organizations, bundled payments and other shared savings programs. Furthermore, hospitals face significant penalties right now under the law’s readmission reduction and value-based purchasing programs. Rev. Proc. 97-13 prevents the types of arrangements that can effectively align incentives among physicians, hospitals and other health care service providers to meet the goals of these two policies.

Our view is that the IRS should issue guidance by notice, or other appropriate form, recognizing that ACA programs, or substantially similar programs, do not involve incentives designed to maximize net profits, but rather involve incentives designed to improve the quality and efficiency of care and, consequently, address its cost. Incentives designed to improve quality



and efficiency do not raise the same concerns as incentives designed to maximize net profits and, thus, should not be viewed as resulting in health care service providers receiving an impermissible benefit through tax-exempt bond financing.

Attached please find a proposed draft notice that we believe addresses our concerns. We understand that these proposed safe harbors for the ACA and similar programs are very broad, and that the IRS may need more detailed information about each of the ACA programs. We remain committed to arranging a meeting or conference call for you with hospital representatives who have the most detailed information about these programs. We believe the best outcome would come through a dialogue between you and those who would rely on your guidance. I look forward to discussing this with you further.

For more information, please contact me at mhatton@aha.org or (202)-626-2336, or Mike Rock at mrock@aha.org or (202)-626-2325.

Sincerely,

/s/

Melinda Hatton
Senior Vice President and General Counsel

Attachment

Cc: Jim Polfer, Branch Chief, Office of Chief Counsel, IRS
Stephen Larson, Associate Chief Counsel, Financial Institutions and Products
Rebecca Harrigal, Deputy Associate Chief Counsel, Financial Institutions and Products
Vicky Tsilas, Associate Tax Legislative Counsel, Office of Tax Policy, Treasury