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COMMITTEE ON THE BUDGET

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Congress of the United States
House of Representatives
Washington, DC 20515

July 1, 2013

Mr. Mark Mazur
Assistant Secretary for Tax Policy
Department of Treasury
1500 Pennsylvania Ave N.W.
Washington, DC 20220

Re: Potential Updates to Rev. Proc. 97-13

Dear Mr. Mazur:

As Ranking Member of the Subcommittee on Health of the Committee on Ways and Means, I am deeply interested in initiatives that advance better coordinated care among hospitals, physicians, and other health care professionals. Such coordinated care is not only good for the patient, it is also good for the economy since coordinated care results in a decrease in the number of duplicative tests performed on patients, and can decrease the potential for medical errors that lead to readmissions and other negative consequences.

Many of the reforms in the Affordable Care Act are intended to promote better care coordination. In fact, the Center for Medicare and Medicaid Innovation ("**CMMI**") was tasked with developing new, replicable models where health care professionals and hospitals provide high quality care at a lower cost on a population-wide basis. CMMI is now in the process of testing various permutations of accountable care organizations, as well as various bundled payment initiatives. It is my hope that these programs result in savings to the Medicare program and that patients see demonstrable, measurable improvements in the quality of care that they are provided.

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However, I am aware that stakeholders are concerned about the implications that participating in such innovative programs may have on tax-exempt bond financed facilities. As you know, facilities that are financed with tax-exempt bonds attempt to structure their contractual arrangements to fit within the safe harbors of Rev. Proc. 97-13. The safe harbors are narrow and limit the terms of such arrangements. Also, the safe harbors limit the types of permissible compensation arrangements and may not address innovative payment methods such as payment bundles. Because of the limited nature of the safe harbors, some of the newly emerging innovative methods by which a hospital may want to compensate a physician do not fit squarely within the existing safe harbors. Of course, this does not automatically make the bonds that finance the health care facility taxable. However, stakeholders generally structure arrangements to fit squarely within a safe harbor with respect to their compensation arrangements, as they are aware that the IRS is closely scrutinizing these issues, particularly since it is easier to do so given the Form 990 redesign. As a result, stakeholders may have some anxiety with entering into new and innovative arrangements encouraged by the Affordable Care Act.

While I understand and fully support the intended purpose behind Rev. Proc. 97-13 and believe it should be retained, I believe it should be updated to recognize the newly emerging compensation models between hospitals and physicians. It is imperative that the IRS begin to consider such modifications immediately, since under the Affordable Care Act, models that emerge as successful from CMMI can be rapidly expanded throughout the country. Thus, it is important to update the guidance and allow providers time to gain an understanding of how they can fit squarely within a safe harbor before such programs are expanded on a nationwide basis.

Thank you for your consideration of this important matter. Should you wish to discuss this matter further, please do not hesitate to contact Tiana Korley on my staff at (202) 225-3106 or at tiana.korley@mail.house.gov.

Regards,

Hon. Jim McDermott
Member of Congress