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December 8, 2017

The Honorable Kevin Brady  
United States House of Representatives  
1011 Longworth House Office Building  
Washington D.C. 20515

Dear Chairman Brady:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) wishes to outline its concerns with H.R. 1, the Tax Cuts and Jobs Act.

**As you meet to resolve the differences between the House- and Senate-passed versions of the bill, the AHA strongly urges you to adopt the Senate position maintaining the tax exemption for private activity bonds, including qualified 501(c)(3) hospital bonds.** The ability to obtain tax-exempt financing is a key benefit of hospital tax-exemption that works to make access to vital hospital services available in communities large and small across America. Tax-exempt hospital bonds serve needed and necessary public purposes and help reduce health care costs.

Hospitals were included when Congress established private activity bonds in 1968. Congress recognized then that hospitals are an indispensable part of every community's infrastructure. If hospital access to tax-exempt financing is eliminated, the result could be devastating for both patients and their communities. The financial unraveling of a hospital has the potential to impact a community more profoundly than the unplanned closure of nearly any other institution.

Because the Tax Cuts and Jobs Act is, in part, focused on the goals of strengthening the economy and increasing jobs, it should be noted that hospitals are often the largest employers in the communities they serve. Hospitals directly employed nearly 5.7 million people in 2015 and are the second-largest source of private-sector jobs. The \$852 billion in goods and services hospitals purchased in 2015 from other businesses created additional economic value for their communities. A study conducted by the analytics firm IHS, found that a complete elimination of tax-exempt interest for nonprofits would reduce GDP by \$23.6 billion and cost 299,000 jobs that generate \$15.6 billion in income for workers.



By preserving hospital access to tax-exempt bonds, the Senate-passed bill recognizes that 501(c)(3) organizations in many cases perform functions which would otherwise fall to governments. A Joint Committee on Taxation report on the Tax Reform Act of 1986, which renewed most of the previously defined private activities of the 1968 Act, noted that Congress recognized that section 501(c)(3) organizations in many cases perform functions which governments would otherwise have to undertake. The use of the term “private activity bond” to classify obligations for section 501(c)(3) organizations in the Internal Revenue Code of 1986 in no way connotes any absence of public purpose associated with their issuance. Further recognizing their importance, Congress has never subjected hospital bonds to volume caps or the Alternative Minimum Tax.

Finally, as it relates to bonds, we oppose the proposal in both bills to eliminate the ability of hospitals to execute advance refundings of outstanding tax-exempt bonds, and urge you to restore that ability or enact a significant transition to the new law. Loss of the ability to restructure debt with tax-exempt advance refundings will divert resources from patient care.

**Both House- and Senate-passed versions of the bill would change the way companies could deduct interest expense on their debt, generally by limiting the deduction to 30 percent of adjusted taxable income.** Importantly, however, the House and Senate bills differ on the definition of taxable income – defined in the House bill as Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA). In contrast, the Senate-passed bill defines income as only Earnings Before Interest and Taxes (EBIT), which would make its 30 percent limit far more disadvantageous for companies carrying a significant debt load. The AHA recommends that conferees adopt the House definition of income based on EBITDA.

Investor-owned hospitals have made significant investments in the communities they serve – particularly rural areas – in recent years. These investments, made through borrowing, were aimed at increasing access to care, and oftentimes reviving distressed community hospitals. When these investments were made, it was under the assumption that existing rules regarding the long-standing tax treatment of these borrowed funds would remain. Unfortunately, this legislation would change the rules and adversely affect certain hospitals for undertaking these past investments, as well as make it more difficult to make similar investments in the future.

**In addition, while the House bill does not address the Affordable Care Act’s individual mandate that most individuals have health insurance, the Senate bill includes a provision that would eliminate enforcement of the mandate, essentially repealing it. The AHA opposes this provision.** The Congressional Budget Office’s (CBO) Nov. 8 estimate stated that repealing the individual mandate would decrease the number of individuals with health insurance by 4 million in 2019 and 13 million in 2027. Experts agree that in order to have a health insurance system in which anyone can obtain coverage regardless of their health status, there must be incentives for everyone to enroll in and maintain coverage throughout the year. Broad and sustained enrollment contributes to affordable coverage, as costs are shared across a larger pool of individuals. Repealing the individual mandate will reduce enrollment, further destabilizing an already fragile individual and small group health insurance market on which

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more than 10 million Americans rely. The AHA strongly recommends that the Senate proposal be dropped.

**We also are concerned about the proposed 20 percent excise tax for certain hospital employee compensation proposed in both bills.** There is already a rigorous process prescribed by the Internal Revenue Service for setting up executive compensation. The process requires an impartial panel drawn primarily from the board of trustees, which is charged with setting CEO compensation based on the marketplace and documenting deliberations to attract the best talent. At a minimum, conferees should include an exception for existing contracts or nonqualified deferred compensation plans for applicable tax-exempt organizations, similar to the amendment for private corporations included in the Senate bill.

**Finally, the House bill would repeal the medical expense deduction, used by about 10 million people every year.** Those with medical expenses above the threshold have either low income, high out-of-pocket medical expenses or both. This already vulnerable population should not be further penalized by elimination of this important deduction. The Senate bill would allow a deduction for medical expenses over 7.5 percent of Adjusted Gross Income for 2017 and 2018. Conferees should support the Senate provision.

Sincerely,

Thomas P. Nickels  
Executive Vice President