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NHA Nebraska Hospital Association

The influential voice of Nebraska's hospitals

December 11, 2017

The Honorable Don Bacon
1516 Longworth House Office Building
Washington, DC 20515

Dear Congressman Bacon,

On behalf of our member hospitals, the Nebraska Hospital Association (NHA) wishes to outline our concerns with the House and Senate versions of the Tax Cuts and Jobs Act.

The NHA strongly urges you to support the Senate position maintaining the exemption for private activity bonds, including qualified 501(c)3 hospital bonds. For many of our communities, tax-exempt financing has been the key to maintaining vital healthcare services. Private-activity bond financing has assisted many hospitals to finance critical facility and infrastructure improvements in their communities. Eliminating the tax-exemption for private-activity bonds would force hospitals to borrow at higher interest rates thus increasing the cost to provide services in their communities.

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. Nebraska hospitals employee over 41,000 people throughout the state. They are one of the state's largest sources of private-sector jobs.

By preserving hospital access to tax-exempt bonds, the Senate-passed bill recognizes that 501(c)3 organizations perform functions which would otherwise fall to governments. A Joint Committee on Taxation report on the Tax Reform Act of 1986, noted that Congress recognized that these organizations in many cases perform functions which governments would otherwise have to undertake. The use of the term "private activity bond" to classify these obligations in no way connotes any absence of public purpose associated with their issuance. To further recognize the 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 refunding of outstanding tax-exempt bonds, and we urge you to oppose this proposal as well. Loss of the ability to restructure debt with tax-exempt advance refunding will divert resources from patient care. Advance refunding allows hospitals to take advantage of decreasing interest rates thus reducing the cost of capital and the cost of care.

Both House and Senate 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, the House and Senate bill differ on the definition of taxable income. The House bill defines it as Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). The Senate bill defines it as Earnings Before Interest and Taxes (EBIT), which would make its 30 percent limit far more disadvantageous for companies carrying a significant debt load. The NHA urges you to support the House definition of income based on EBITDA.

Investor-owned hospitals have made significant investments in the communities they serve, particularly in rural areas. These investments, made through borrowing, were aimed at increasing access to care and 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 making it more difficult to make similar investments in the future.

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 NHA opposes this provision. The Congressional Budget Office's (CBO) November 8th 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 110,000 Nebraskans rely. The NHA strongly urges you to oppose the Senate proposal to eliminate the individual mandate.

We are also 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 form the board of directors, which is charged with setting CEO compensation based on the marketplace and documenting deliberations to attract the best talent. At a minimum, the bill should include a provision that provides an exemption for existing contracts or nonqualified deferred compensation plans for applicable tax-exempt organizations, like the amendment for private corporation included in the Senate bill.

Finally, the House bill would repeal the medical expense deductions, used by about 10 million people each 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. The NHA urges you to support the Senate provision.

Respectfully submitted,

Laura

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President