American Hospital Association

Liberty Place, Suite 700
325 Seventh Street, NW
Washington, DC 20004-2802
(202) 638-1100 Phone
www.aha.org

March 12, 2014

Submitted electronically via e-mail to: Notice.Comments@irscounsel.treas.gov

Sunita Lough
Commissioner, Exempt Organizations
Internal Revenue Service
CC:PA:LPD:PR (Notice 2014-3)
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: **Notice 2014-3 Proposed Procedures for Charitable Hospitals to Correct and Disclose Failures to Meet Section 501(r)**

Dear Commissioner Lough:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our 43,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to comment on the Department of the Treasury and Internal Revenue Service's (IRS) proposed guidance establishing the correction and disclosure procedures under which certain failures to meet the requirements of Section 501(r) of the Internal Revenue Code will be excused.

The AHA supports the three-tier approach included in the proposed regulation for addressing noncompliance with the Section 501(r) requirements. It adopts a calibrated approach that distinguishes among three levels of infractions. Minor or inadvertent mistakes due to reasonable cause ("level 1") must be corrected. Infractions that are more than minor or inadvertent but not willful or egregious ("level 2") will be excused if they are corrected and disclosed in accordance with prescribed procedures. Willful or egregious failures may result in loss of exemption. Reserving loss of exemption for only those circumstances where noncompliance is willful or egregious strikes the right balance between mistakes that can, and will, happen given the detail and specificity of the proposed regulations and the real world complexity of the day-to-day operation of a hospital, and the extraordinary circumstances where a hospital's charitable operation is called into question. The proposed correction and disclosure procedures provide a good foundation for a hospital to determine what measures must be taken to address an infraction that is more than minor or inadvertent but not willful or egregious. We also recommend several additions and clarifications for the final guidance below.

Minor or Inadvertent Mistakes Level 1 Noncompliance. We urge that the final guidance say more about the types of noncompliance that are included in this category. The preamble to the 2013 proposed regulation addressing sanctions recognized that mistakes may occur even if the hospital has practices and procedures in place that are reasonably designed to facilitate overall compliance with section 501(r) and has implemented safeguards reasonably calculated to prevent errors. It would be helpful for the final guidance to offer examples of minor and inadvertent mistakes. For example, a glitch in the hospital's website may result in a previously posted community health needs assessment report or financial assistance policy being temporarily unavailable; or signage in the emergency department or admitting area that had fallen down or is out of place for a short duration. Assuming it is down for only a short period of time (few hours, days or even a week), getting it corrected should be sufficient. Also, aberrations may occur in determining an individual's eligibility for financial assistance. Assuming that an application was overlooked or a mistake was made on an individual basis and not as the result of a systemic problem, correcting the situation should be sufficient. Similarly, if providing a summary of the Financial Assistance Policy (FAP) to an individual at admission or discharge was missed, following-up with the individual should be sufficient.

The implication of the four examples of level 2 noncompliance included in the proposed procedures is that mistakes that are more than minor or inadvertent involve failures to adopt an adequate policy or failures to implement the policy systemically. We urge that the final guidance state affirmatively that, where a policy exists and meets the 501(r) requirements, and the hospital is able to demonstrate substantial compliance with the policy, it will be considered minor and inadvertent if the hospital fails to apply it properly in a given case, or set of cases.

Correction Procedures. As proposed, the procedures for excused noncompliance in the level 2 category do not provide for any interaction between the hospital and the IRS unless or until a potential examination occurs. While a hospital must satisfy the principles of correction in the guidance, it is placed in the position of being second-guessed by the IRS about the sufficiency of its response. This may occur years after the mistake occurred or was identified and corrected. We recommend that a "best efforts" or "good faith" safe harbor apply when a hospital's corrective action is examined. This approach furthers Treasury and IRS's goal of incenting hospitals to take steps to remedy and disclose failures to comply with 501(r) requirements, while also protecting hospitals from potential adverse consequences in the event of difference of opinion about the sufficiency of corrective action.

Lastly, a clarification is needed in the lead-in paragraph regarding examples of correction. Consistent with the "correction principles" enunciated in the guidance, the second sentence should be revised to include the bolded text: "For purposes of these examples, assume that the hospital facility corrected the failure **to the extent reasonably feasible** with respect to all affected persons as promptly after discovery as is reasonable…."

In closing, we want to reiterate a point we have made in prior letters regarding implementation of Section 501(r). It is imperative that hospitals are provided an adequate transition period to make the necessary changes to their policies, procedures and information systems to come into compliance with the final regulations.

If you have any questions, please contact me at (202) 626-2336 or mhatton@aha.org; or Maureen Mudron, deputy general counsel, at (202) 626-2301 or mmudron@aha.org.

Sincerely,

/s/

Melinda Reid Hatton
Senior Vice President and General Counsel