NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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August 9, 2013

Dan Drake, Chairman
Board of Directors
Warren Memorial Hospital
321 Sycamore Street
Friend, NE 68359

Dear Mr. Drake:

As you may know, the Auditor of Public Accounts (APA) has a toll-free telephone number and an email address for Nebraskans to raise issues – anonymously, if they wish – about possible waste, mismanagement, or fraud within government. In connection with this, we help to provide accurate information to taxpayers and attempt to address concerns about governmental finances. We try to do so in a timely manner, believing this to be a valuable service to the State's citizens.

Recently, this office was contacted regarding alleged mismanagement of employee deferred compensation plan contributions at Warren Community Hospital (Hospital) in Friend, Nebraska. It was reported that the Hospital's payroll department has intentionally delayed depositing contributions withheld from employee paychecks into the individual brokerage accounts maintained for the management of the deferred compensation plan.

Upon receiving the above allegation, the APA first contacted the Hospital on May 15, 2013, and began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. It has been decided that no such audit or attestation of the Hospital, by the APA, is necessary at this time. However, during the course of our preliminary work, we noted a certain internal control or compliance matter or other operational matter that is presented below. The comment and recommendation, which has been discussed with management, is intended to improve internal control or result in other operating efficiencies.

Our consideration of internal control was for the limited purpose described in the paragraph above and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Therefore, material weaknesses or significant deficiencies may exist that were not identified.

Draft copies of this letter were furnished to the Board to provide them an opportunity to review the letter and to respond to the comment and recommendation included in this letter. The Board has chosen not to have a response included in this letter.

Hospital Background

The Hospital is operated by a Board of Directors (Board), whose members are appointed by the Mayor of the City of Friend (City.) For auditing purposes, therefore, the Hospital is considered a component unit of the City.

The Hospital was established in 1930 and is currently managed by the following Board – two members of which are also City government officials.

Board Member	Title
Dan Drake*	President
Ron Corbett	Member
Wayne Milton	Member
Aubrey Paulsen	Member
Jim Vossler**	Secretary

* *Dan Drake is a City Council Member*
** *Jim Vossler is the City Mayor*

Annually, the Hospital is audited by an independent certified public accounting (CPA) firm. The September 30, 2012, fiscal year-ended audit report for Warren Memorial Hospital included the Hospital, the Warren Memorial Hospital Foundation, Inc., (Foundation) and the Warren Memorial Hospital District (District). Collectively, these three entities are known as the Facility, whose financial information is blended into one financial statement.

According to its audit, the "Hospital is a health care institution which provides short-term inpatient and outpatient care, as well as long-term intermediate care and physician clinic services."

The Foundation is a not-for-profit corporation that advances "the objectives and purposes of the Hospital." The Foundations Board of Directors is appointed by the Hospital's Board, and its primary activities include "providing facilities and equipment for Hospital operations, and obtaining debt financing for additions to and improvements of existing Hospital facilities."

The District is a State of Nebraska Hospital District formed in 2008 to levy property taxes to support the Hospital.

Hospital Employee Deferred Compensation Plan

In 1990, the Hospital implemented a deferred compensation plan for its employees. The "Section 457 Deferred Compensation Plan" document, which was signed on March 1, 1990, sets forth the particulars of the plan. Among its fundamental provisions are the following: 1) the Hospital has contracted with American United Life Insurance Co. to administer and coordinate the Plan; 2) the Hospital will deliver deferred amounts to American United Life Insurance Co. for investment; and 3) for each member of the Plan, American United Life Insurance Co. maintains a Participation Account that reflects the monies deferred.

Additionally, the "OneAmerica Financial Partners, Inc. Eligible 457 Prototype Plan and Trust Agreement" (Agreement), which the Hospital points to as its basic plan document, contains other important provisions. Among those, the document provides: 1) the plan is subject to § 457(b) of the Internal Revenue Code; 2) a separate account must be maintained in the name of each Participant to

reflect the value of his or her deferred compensation; and 3) the deferred employee contributions are to be held in a trust for the exclusive benefit of the participants and their beneficiaries.

Thus, American United Life Insurance Co., the founding member of OneAmerica Financial Partners, Inc., manages the individual Participation Accounts into which the deferred compensation contributions are deposited. However, making such deposits possible is the responsibility of the Hospital – as those deposits occur only when the Hospital actually delivers to American United Life Insurance Co. the contribution amounts withheld from the participating employees' earnings.

Most important, perhaps, is the requirement that the deferred employee contributions be used for the exclusive benefit of the plan participants and their beneficiaries.

Finally, a subsequent "Eligible 457 Prototype Plan Adoption Agreement," which was signed in 2005, reiterates that the Hospital's deferred compensation plan is a "Government Eligible 457 Plan." Such plans fall under the Federal guidelines set out at 26 USC § 457. Specifically, 26 USC § 457(b) defines an "eligible deferred compensation plan" as one "established and maintained by an eligible employer . . . ." 26 USC § 457(e)(1)(A) defines an "eligible employer" as:

> *[A] State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State . . . .*

As indicated by both the Agreement and the "Eligible 457 Prototype Plan Adoption Agreement," the Hospital's employee deferred compensation plan falls within the above definitional language. Accordingly, the deferred compensation plan established by the Hospital constitutes what is commonly known as a "§ 457(b) plan."

Comment and Recommendation Regarding Deferred Compensation

Delay in Delivering Contributions

Twenty-four Hospital employees participated in the deferred compensation plan during the period reviewed by the APA. In reviewing the Hospital's handling of the deferred compensation contributions between December 2012 and April 2013, the APA found numerous instances of delays in transferring those funds to American United Life Insurance Co. for deposit into the appropriate employee Participation Accounts. The delays, which lasted between 13 and 143 days, are set out in the following table.

Pay Period	Employee Deduction	Employer Deduction	Total Deduction	Payment Type	Amount Paid	Date Cleared Bank	# of Days Paid After Pay Period
5/23/2013	$1,469.14	$539.33	$2,008.47	ACH	$2,008.47	Note 1	
5/4/2013	$1,433.53	$523.03	$1,956.56	ACH	$1,956.56	5/17/2013	13
5/4/2013	$46.41	$23.21	$69.62	ACH	$69.62	5/21/2013	17
4/20/2013	$1,536.81	$516.44	$2,053.25	ACH	$2,053.25	5/20/2013	30
4/20/2013	$48.98	$24.49	$73.47	ACH	$73.47	5/21/2013	31
4/6/2013	$1,583.60	$533.56	$2,117.16	ACH	$2,117.16	5/20/2013	43
4/6/2013	$49.77	$24.89	$74.66	ACH	$74.66	5/21/2013	44
3/23/2013	$1,570.93	$534.72	$2,105.65	ACH	$2,105.66	5/20/2013	58
3/23/2013	$52.29	$26.15	$78.44	ACH	$78.44	5/21/2013	59
3/9/2013	$1,616.97	$558.52	$2,175.49	ACH	$2,175.49	5/20/2013	72

Pay Period	Employee Deduction	Employer Deduction	Total Deduction	Payment Type	Amount Paid	Date Cleared Bank	# of Days Paid After Pay Period
3/9/2013	$62.78	$31.39	$94.17	ACH	$94.18	5/21/2013	73
2/23/2013	$1,591.70	$559.33	$2,151.03	ACH	$2,151.03	5/20/2013	86
2/23/2013	$49.34	$24.67	$74.01	ACH	$74.01	5/21/2013	87
2/9/2013	$1,349.80	$526.55	$1,876.35	ACH	$1,876.36	5/20/2013	100
2/9/2013	$49.60	$24.80	$74.40	ACH	$74.40	5/21/2013	101
1/26/2013	$1,432.70	$518.82	$1,951.52	ACH	$1,951.52	5/20/2013	114
1/26/2013	$47.39	$23.70	$71.09	ACH	$71.09	5/21/2013	115
1/12/2013	$1,485.40	$543.20	$2,028.60	ACH	$2,028.61	5/20/2013	128
1/12/2013	$50.29	$25.15	$75.44	ACH	$75.44	5/21/2013	129
12/29/2012	$1,472.50	$527.78	$2,000.28	ACH	$2,000.28	5/20/2013	142
12/29/2012	$54.02	$27.01	$81.03	ACH	$81.03	5/21/2013	143

Note 1: As of 5/29/2013, the check had not cleared the bank. Documentation provided indicated transmission date of 5/29/2013.

In a May 21, 2013, email response to an inquiry by this office, both Dan Bartz, the Chief Financial Officer (CFO) at that time, and Jamie Tuttle, the Human Resources Coordinator acknowledged the late pension plan contributions, as follows:

> *"The Hospital has been through many financial challenges in the past years and some insurance payments have been paid late but the policies have never had any lapses in coverage. The Hospital has also been late in the past on making pension plan deposits but are now in a current status."*

Similarly, in a May 29, 2013, email to Hospital employees, which was obtained by this office, Dan Bartz tacitly, acknowledged the practice of delaying the deposit of employee deferred compensation contributions. Additionally, that same message offered the following justification for the practice:

> *"Because of [sic] our pension plan is a 457, there are no guidelines stipulating when deposit [sic] are to be made."*

Such an assertion about a supposed lack of guidelines is incorrect. To start, Article 4.05 (page 7) of the "Section 457 Deferred Compensation Plan" document, which was quoted in part earlier, requires each Participant Account to be "credited each pay period with the amount deferred from the preceding pay period."

As illustrated by the above table, the Hospital has not complied with this plain directive in the plan's implementing document.

Furthermore, as pointed out already, both the Agreement and the "Eligible 457 Prototype Plan Adoption Agreement" are clear that 26 USC § 457 governs the Hospital's deferred compensation plan. 26 USC § 457(g)(1) requires all assets and income of a § 457(b) plan to be held in trust for the exclusive benefit of participants and their beneficiaries – emphasizing that a plan that fails to do so will not be treated as an eligible deferred compensation plan.

Equally important, the Internal Revenue Service (IRS) has issued Notice 98-8. That guideline mandates that all assets and income of a governmental § 457(b) plan be held in trust, or in custodial accounts or in specified annuity contracts, for the exclusive benefit of the participants and their beneficiaries. More crucial yet, IRS Notice 98-8 requires that employee deferred contributions

amounts under an eligible plan must be transferred to the trust within a specified period after the date the amounts would otherwise have been paid to the participant.

Finally, IRS Notice 98-8 warns that, unless the above requirements are met, no plan will qualify as an eligible § 457(b) plan. Therefore, any failure by the Hospital to abide by these specific requirements jeopardizes the continued eligibility of the Hospital's employee deferred compensation plan.

Possible Cash Flow Issues

According to its September 30, 2012, fiscal year-end audit report, the Hospital's operating cash flows declined significantly from 2011 to 2012, as follows:

	2012	**2011**
Net cash provided (used) by operating activities	$ (22,570)	$ 249,723

From that same audit, the Hospital also experienced a decrease in cash and cash equivalents at the end of the year:

	2012	**2011**
Cash and cash equivalents at end of year	$ 107,114	$ 182,345

According to its fiscal year-end 2012 audit report:

> *"During fiscal year 2012, Facility management discovered that an employed physician of the Hospital was included on the Office of Inspector General's (OIG) excluded physicians list, despite performing proper due diligence during the physician's recruitment process to the Facility. A physician included on this listing is not allowed to bill the Medicare program for services provided to Medicare beneficiaries. As Facility management was unaware of this fact, the physician was allowed to provide services to Medicare beneficiaries from the physician's employment inception date to February 24, 2012 (the date it was discovered this physician was on the OIG excluded physician listing) and the Facility accordingly billed these related charges. Once knowing of the physician's OIG status, the Facility immediately ceased billing any charges related to this physician, self-reported this issue to the OIG, and retained legal counsel as the OIG performed its investigation. The OIG's investigation resulted in no assessment of any fines or penalties to the Facility as well as a determination (after subsequent consultation with the Centers of Medicare and Medicaid Services) that any reimbursement on claims from charges that had been unknowingly billed and collected was not required to be refunded back to the Medicare program due to the Facility's current financial condition. This issue resulted in approximately $200,000 of patient charges the Facility is unable to bill and collect any form of reimbursement upon. These accounts have been written off."*

During discussions with Hospital administration, this loss of patient revenue was noted as having contributed to the Hospital's cash flow problems.

Corrective Action

Subsequent to being questioned by the APA about the intentional delays in sending deferred employee contributions to American United Life Insurance Co. for timely deposit into the appropriate Participation Accounts, the Hospital reported having taken corrective Action.

On July 17, 2013, the Dan Bartz notified the APA that a "lost interest calculation" totaling $1,205.08 had been completed – presumably, for the purpose of reimbursing the individual

employee Participation Accounts for the amount of interest lost due to the delayed deposits. **(See Attachment 1.)**

The lost interest calculation covers a period from March 2009 through May 2010. Because the APA did not evaluate the entire period covered by the lost interest calculation, we were unable to determine the accuracy of the late interest payments calculated by the Hospital.

As of July 24, 2013, the Hospital has not yet remitted these amounts to the employees' Participation Accounts. Additionally, the Hospital presented the APA with the following new Board policy:

WMH WARREN MEMORIAL HOSPITAL Friend Manor LTC

DEPARTMENT: HUMAN RESOURCES	
SUBJECT: PERSION PLAN DEPOSITS	
NUMBER: 1059	
EFFECTIVE DATE 05/01/2013	REVISED DATE:
APPROVED BY: BOARD OF DIRECTORS	
☐ POLICY ☐ CLINICAL PROTOCOL ☐ GUIDELINE ☐ ORGANIZ. PLAN	

POLICY

Warren Memorial Hospital offers a Governmental 457 pension plan to all eligible employees. The hospital and employees can make contributions according to plan documents.

PURPOSE

To assure that timely deposits are made to the pension plan

PROCEDURE:

Pension Plan deposits will be made on or before the Thursday following the pay date of Warren Memorial Hospital's Bi-Weekly payroll.

According to the Board meeting minutes for July 1, 2013, which the Hospital also provided to the APA, the above policy was adopted unanimously. Those meeting minutes state:

> Pension Plan Worksheet showing lost earnings using Department of Labor calculator, total lost earnings due to late payment of pension plan is $1,205.08. The Board also discussed the new policy regarding when Pension Plan deposit should be made. The policy recommended was for all deposits to be made on or before the Thursday following the pay date.
>
> Motion to approve the payment of lost earnings and the new Pension Plan Deposit policy by Vossler seconded by Milton, Voting Vossler – yes, Milton – yes, Paulsen – yes, Motion carried

In light of the above corrective action taken by the Hospital, the APA makes the following recommendation:

> We recommend that the Hospital adhere strictly to the Board's newly adopted policy regarding the handling of deferred employee contributions. Such amounts withheld under the Hospital's § 457(b) plan should, in compliance with that policy, be presented promptly to American United Life Insurance Co. to be held in trust for the exclusive benefit of the participants and their beneficiaries. Under no circumstances should the Hospital withhold those employee contribution amounts for any other purpose. We recommend further

> that the Hospital make available for immediate reimbursement the amount of interest determined to have been lost by the employees as a result of the delayed deposits – as well as consult with its accountant and legal counsel to ensure the accuracy and sufficiency of those payments.

* * * * * * * *

The pre-audit work performed supports the allegation regarding the delay in depositing employee contributions into the appropriate deferred compensation plan accounts. Subsequent to the APA's initial inquiries, the funds in question were eventually deposited – some, nearly five months after they were withheld from the employees' pay. Documentation was provided to the APA that indicated the Hospital's cash flow problems contributed to the late remittance of these employee contributions. Regardless of the cause, the APA believes that the Hospital's intentional delay in depositing the deferred compensation contributions into the proper employee accounts violates the requirements of the plan itself and specific provisions of Federal law governing such plans.

The Hospital should take, in a timely fashion, whatever action it deems appropriate to resolve the issue addressed in this letter – thereby, ensuring compliance with the provisions of the Hospital's own policy and other governing documents, as well as with the requirements of applicable Federal law.

Our planning and procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use our knowledge of the Hospital and its interaction with other entities gained during our work to make comments and suggestions that we hope will be useful to the Hospital.

This letter is intended solely for the information and use of the Hospital and is not intended to be, and should not be, used by anyone other than the specified party. However, this report is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Sincerely,

SIGNED ORIGINAL ON FILE

Mike Foley
State Auditor

.cc Warren Memorial Hospital Board of Directors
Dan Bartz, Interim CEO

Warren Memorial Hospital
Hospital's Late Interest Calculation

Attachment 1

Principal	Loss Date	Recovery Date	Amount Due
$2,685.33	3/4/2009	3/10/2009	$2.21
$2,626.87	3/18/2009	4/14/2009	$8.72
$2,598.49	4/5/2009	4/16/2009	$3.23
$2,829.75	5/1/2009	5/14/2009	$4.03
$2,877.17	6/13/2009	6/29/2009	$5.05
$2,930.40	6/27/2009	6/29/2009	$0.64
$2,807.82	9/19/2009	10/6/2009	$5.24
$2,432.74	2/6/2010	3/2/2010	$6.41
$2,757.93	2/20/2010	3/2/2010	$3.02
$2,519.39	4/17/2010	6/28/2010	$19.96
$2,474.11	4/30/2010	6/28/2010	$16.05
$2,486.36	5/14/2010	6/28/2010	$12.29
$2,398.84	5/29/2010	6/28/2010	$7.90
$5,228.21	6/13/2010	9/8/2010	$50.08
$2,645.87	6/26/2010	9/28/2010	$27.40
$2,581.14	7/9/2010	10/22/2010	$25.87
$2,701.10	7/23/2010	10/22/2010	$27.07
$3,443.38	8/7/2010	10/22/2010	$28.80
$2,617.67	8/21/2010	11/29/2010	$28.84
$2,730.99	9/4/2010	12/21/2010	$32.51
$3,021.66	9/18/2010	2/15/2011	$46.21
$2,673.77	9/29/2010	2/15/2011	$37.62
$2,768.91	10/15/2010	2/15/2011	$34.04
$2,736.87	10/29/2010	2/16/2011	$29.63
$2,799.10	11/13/2010	2/16/2011	$25.65
$2,748.40	11/28/2010	2/16/2011	$20.63
$2,746.10	12/10/2010	2/16/2011	$16.98
$2,810.62	12/24/2010	2/16/2011	$13.04
$2,639.32	1/8/2011	2/16/2011	$8.47
$2,790.49	1/22/2011	2/17/2011	$5.97
$2,653.25	2/5/2011	2/17/2011	$2.62
$2,551.01	9/30/2011	10/4/2011	$0.84
$2,127.72	12/9/2011	1/25/2012	$8.22
$2,101.39	12/23/2011	1/25/2012	$5.70
$2,136.27	1/7/2012	3/14/2012	$11.76
$2,179.08	1/21/2012	3/14/2012	$9.49
$2,185.38	2/4/2012	5/2/2012	$15.82
$2,083.36	2/18/2012	5/2/2012	$12.67
$2,093.97	3/1/2012	5/2/2012	$10.67
$2,150.74	3/15/2012	5/29/2012	$13.26
$2,154.64	3/30/2012	5/29/2012	$10.62
$2,128.73	4/14/2012	7/19/2012	$16.82
$1,987.72	4/28/2012	7/19/2012	$13.40
$1,737.76	5/11/2012	7/19/2012	$9.86
$1,919.77	5/25/2012	9/4/2012	$16.12
$1,579.15	6/9/2012	12/11/2012	$24.13
$1,618.42	6/23/2012	12/11/2012	$22.84
$1,608.83	7/6/2012	12/11/2012	$20.97
$1,834.39	7/20/2012	12/20/2012	$23.15
$1,855.47	8/4/2012	2/7/2013	$28.57
$1,958.63	8/18/2012	2/7/2013	$27.99
$1,987.53	9/1/2012	2/7/2013	$26.09
$1,943.25	9/15/2012	2/7/2013	$23.25
$1,943.01	9/29/2012	4/18/2013	$32.32
$1,986.05	10/12/2012	4/18/2013	$30.55
$2,041.50	10/26/2012	4/18/2013	$29.37
$2,018.99	11/10/2012	4/18/2013	$26.53
$2,006.30	11/24/2012	4/18/2013	$24.04
$2,019.31	12/7/2012	4/18/2013	$22.02
$2,038.77	12/21/2012	4/22/2013	$20.54
$2,039.19	1/5/2013	4/22/2013	$18.01
$2,079.71	1/19/2013	4/22/2013	$15.96
$2,000.28	2/2/2013	5/16/2013	$17.01
$2,028.61	2/16/2013	5/16/2013	$14.89
$1,951.52	2/28/2013	5/16/2013	$12.39
$1,876.36	3/13/2013	5/16/2013	$9.90
$2,151.03	3/27/2013	5/16/2013	$8.86
$2,175.49	4/13/2013	5/16/2013	$5.91
$2,105.66	4/27/2013	5/16/2013	$3.29
$2,117.16	5/10/2013	5/16/2013	$1.04
		TOTAL	$1,205.08