

Congress of the United States
Washington, DC 20510

September 23, 2010

Via Electronic Transmission

The Honorable Timothy Geithner
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Dear Secretary Geithner:

When the Democrats passed their health care overhaul bill earlier this year, it was the result of a divisive and partisan process by which the bill was substantially written behind closed doors. Unfortunately, when complex pieces of legislation like this one are written in this way, errors will occur. The type of secretive, opaque process that led to this legislation was not open to public scrutiny and input, which usually serves to root out drafting errors and technical problems before a bill becomes the law of the land. To make matters worse, during floor consideration last December, Democratic leaders did not permit the normal consideration of amendments during Senate debate that would have allowed problems like this one and other even more significant flawed policies to be rectified. In a bill that affected every single American and was reorganizing 17 percent of the nation's economy, this process was especially disturbing.

Beyond the inherently flawed policy that is the basis of the legislation, one of the many errors in the Democrat's health overhaul involves a modification to Internal Revenue Code § 833. The Democrat's health care overhaul modifies § 833 to deny its application to Blue Cross Blue Shield Plans failing to meet an 85 percent medical loss ratio (MLR). Under current law, § 833 provides a 25 percent deduction and an exception from the 20 percent reduction in the unearned premium reserve deduction to qualifying Blue Cross Blue Shield Plans.

Unfortunately, it has come to light that there are two key problems involving the modification by the Democrats' health care overhaul of § 833. First, a failure to satisfy the MLR requirement could also trigger a loss of deemed insurance company status, which was reportedly unintended by the Democrats who drafted the bill. And second, the MLR standard for § 833 appears to be a different MLR standard than the one created in the Public Health Service Act ("PHSA") by a different section of the Democrats' health care overhaul. The new federal MLR standard by itself has generated significant controversy and concern about the impact on premiums, access to insurance, and prevention of fraud and abuse. Moreover, the fact that the MLR standard applied for in § 833 may be completely different than the MLR standard for the PHSA is almost certain to negatively impact health insurance markets and could disrupt benefits and result in loss of coverage for individuals and families. To avoid this set of issues and minimize the level of disruption the Democrats' health care overhaul is projected to cause, the MLR standard for purposes of § 833 should at a minimum be the same MLR standard applied for purposes of the PHSA.

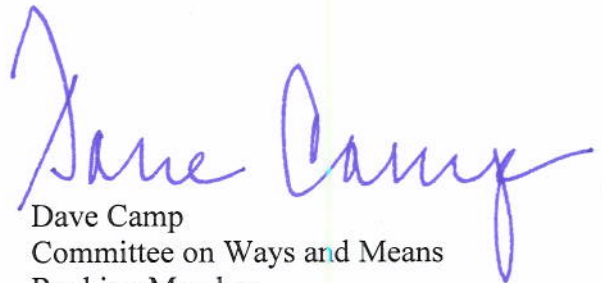
Although we did not support the passage of the Democrats' health care overhaul because, among other things, it cuts Medicare by \$529 billion, raises taxes by half a trillion, and will result in higher insurance premiums, we are concerned that this careless drafting error is likely to cause needless additional disruption of health coverage. This error in the legislation is another unfortunate example of why the backroom process that led to the enactment of this law does not serve the public well, particularly in legislation with the scope and magnitude of health care reform. The potential impact of this error is of sufficient concern that it requires a solution in the near-term to avoid the unnecessary negative consequences on individuals and families who rely on this health insurance coverage. Until a legislative remedy can be enacted, we encourage you to issue guidance indicating that Treasury will administer the modifications to section 833 in a manner consistent with the legislation we intend to pass at the appropriate time to address these two concerns.

Thank you for your attention to this matter.

Sincerely,



Charles E. Grassley
Committee on Finance
Ranking Member



Dave Camp
Committee on Ways and Means
Ranking Member