

Congress of the United States

Washington, DC 20510

September 17, 2010

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

Dear Secretary Geithner:

Internal Revenue Code section 833 was amended as part of the Patient Protection and Affordable Care Act of 2010 (“the Affordable Care Act”). The purpose of the modification was to ensure that the Blue Cross and Blue Shield organizations that were benefiting from special tax provisions were conducting their organizations in a way that warranted those benefits; that is, that their business practices were different than those of a commercial health insurance company. To this end, Section 833 now requires applicable organizations to meet a medical loss ratio (“MLR”) of 85 percent or higher in order to take advantage of the special tax benefits.

During the legislative process on the Affordable Care Act, concerns were raised on how the amendment would be interpreted on two issues: the calculation of the MLR and the tax benefits lost for failure to meet the MLR. It was too late, however, to fix the drafting errors to clarify the intended meaning. Senator Max Baucus, however, explained the intent of the legislation in a statement that is part of the Congressional Record. The intent of the amendment is as follows:

First, in calculating MLRs under Section 833, the applicable organizations can include both the cost of reimbursement for clinical services provided to the individuals they insure and the cost of activities that improve health care quality. This determination is made on an annual basis and only affects the application of the special deductions for that year. Funds spent on wellness programs and services that improve patient health and reduce hospital readmissions are activities that are intended to be encouraged by the amendment. Also, including these activities is consistent with the goals

behind the Affordable Care Act and the calculation of medical loss ratios elsewhere in the legislation.

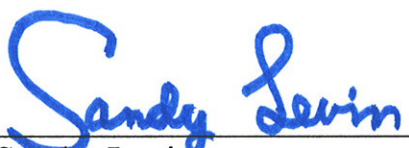
Second, the consequence for not meeting the MLR threshold is that the 25 percent deduction for claims and expenses and the exception from the 20 percent reduction in the deduction for unearned premium reserves is not allowed. The organization is still treated as a stock property and casualty insurance company. This interpretation makes common sense and parallels the technical explanation prepared by the Joint Committee on Taxation, which was released simultaneously with the passage of the Affordable Care Act.

Our staffs, in consultation with your staff and the staff of the Joint Committee, are working to develop and pass legislation that will clarify these issues. It is our understanding that these are indeed technical corrections as the Joint Committee scored the amendment consistent with the intent outlined above.


In the interim, we encourage you to issue public guidance indicating it is Treasury's intent to administer section 833 in a manner consistent with the intent of the legislation.

We appreciate your attention to this matter.

Sincerely,



Sander Levin
United States Representative
Chairman
Committee on Ways and Means



Max Baucus
United States Senator
Chairman
Committee on Finance