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Earl Pomeroy
Congress of the United States
North Dakota

July 7, 2010

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The Honorable Timothy Geithner
Secretary of Treasury
1500 Pennsylvania Avenue Northwest
Washington, D.C. 20220

Dear Secretary Geithner:

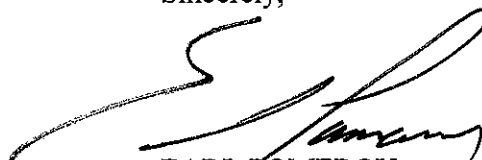
The Patient Protection and Affordable Health Care Act of 2010 (PPACA) includes a provision that requires health care consumers, beginning January 1, 2011 to obtain a physician's prescription for over-the-counter (OTC) drugs, other than insulin, in order for these medications to be eligible for reimbursement from their Flexible Spending Account (FSA), Health Spending Account (HSA), Health Reimbursement Account (HRA) or Archer Medical Spending Account (Archer MSA). As you move forward with implementing this provision, I urge you to work with consumer and stakeholders to address certain compliance issues in advance of the mandated implementation date in order to avoid unnecessary costs, confusion or compliance problems.

I have heard from employee benefit administrators in my state of the challenges they are facing in making the appropriate system changes necessary to comply with this new requirement by the rapidly approaching deadline. In particular, I have been informed that administrators and retail merchants are being faced with the tough choice of suspending their electronic systems during their busiest time (mid-November of this year) to update their systems or wait until the year ends to ensure that consumers receive the 2010 benefits they deserve, but then not be prepared for 2011. Under either scenario, consumers are left confused and frustrated and benefit administrators and retail merchants will be left with increased processing and consumer service costs.

In addition, I am concerned by the lack of clarity regarding the definition of "prescribed" drug. This information is necessary as administrators and employers work to educate their employees regarding this new policy. As you develop this guidance, I encourage you evaluate proposals to include in this definition a letter of recommendation from a medical practitioner which has the potential to avoid excessive costs to consumers and providers while still ensuring that pre-tax dollars are used for medically necessary purposes.

Thank you for your attention to this matter and please do not hesitate to me if you have additional questions.

Sincerely,



EARL POMEROY
Member of Congress