



June 8, 2011

The Honorable Timothy F. Geithner  
Secretary, Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20509

Dear Secretary Geithner:

The under-signed members of the Independence Through Enhancement of Medicare and Medicaid (ITEM) Coalition write to express our concerns with the broad application of the medical device tax under the Patient Protection and Affordable Care Act of 2010 (“ACA”, Pub. L No 111-148) to a wide variety of medical devices and supplies typically used by individuals with injuries, illnesses, disabilities, and chronic conditions to remain healthy, functional and live as independently as possible within the home and community rather than an institution. The ITEM Coalition is a national consumer-led coalition devoted to raising awareness and building support for policies which enhance access to assistive devices that help people with disabilities and chronic conditions live independently at home and in the community.

The Affordable Care Act includes a provision requiring an annual excise tax on the sale of a “taxable medical device” equal to 2.3% of the price of the device. The tax is imposed on any sale by a “manufacturer, producer or importer” of the device. Under the law, a “taxable medical device” is any medical device as defined in section 201(h) of the Federal Food, Drug and Cosmetic Act (FFDCA) and includes Class I, II, and III medical devices.

Under the ACA, the Secretary of Treasury is required to exempt from the definition of “taxable medical device” “any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.” We believe that Congress clearly intended to exempt device sales to consumers from the medical device tax so the tax does not directly flow downstream to impact individuals. According to the National Health Expenditure Data, Americans paid over \$18 billion out of pocket to purchase durable medical equipment in 2009 (over 50 percent of all DME expenditures and \$2 billion more than all private and public health insurance payors combined for that year).<sup>[1]</sup> Application of this tax to medical

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<sup>[1]</sup> Table 4, National Health Expenditures, by Source of Funds and Type of Expenditure: Calendar Years 2003-2009  
<https://www.cms.gov/NationalHealthExpendData/downloads/tables.pdf>

devices used by individual consumers could inevitably restrict access to devices and supplies that help individuals achieve health, function, and independent living. For example, because few insurance plans cover low vision aids, consumers bear all of the cost directly for this category of DMEPOS. Failure to exempt from the tax medical devices that are purchased by individual consumers will result in increased costs for individuals with disabilities and could result in consumers going without needed devices.

As organizations representing direct consumers of a wide variety of medical devices, we believe that sales of home medical equipment (HME), including durable medical equipment, prosthetics, orthotics, and supplies, should be exempt from the definition of “taxable medical device,” much like eyeglasses, contact lenses, and hearing aids are exempted. This exemption should include a broad array of devices and supplies that individual consumers use to improve mobility (e.g., wheelchairs, canes, crutches, walkers, prosthetics, orthotics, etc.), or improve the ability to breathe via prescribed oxygen (e.g., oxygen devices and supplies), and other items such as home care beds, bath safety aids, commodes and other devices that enable consumers to live in their homes and communities, rather than in a health care institution.

Thank you for your consideration of our views.

Sincerely,

ACCSES

ADAP Advocacy Association

Alpha One

American Association of People with Disabilities

American Association of the Deaf-Blind

American Council of the Blind

American Medical Rehabilitation Providers Association

American Occupational Therapy Association

American Foundation for the Blind

American Therapeutic Recreation Association

Amputee Coalition of America

Association of Assistive Technology Act Programs

Association of University Centers on Disabilities

Blinded Veterans Association

Brain Injury Association of America

Communication Service for the Deaf

Easter Seals

International Center for Disability Resources on the Internet

National Association for the Advancement of Orthotics and Prosthetics

National Association for Home Care & Hospice

National Association of the Deaf

National Council on Independent Living

National Family Caregivers Association

National Spinal Cord Injury Association

Paralyzed Veterans of America

Rehabilitation Engineering and Assistive Technology Society of North America

Speech Communications Assistance By Telephone

Spina Bifida Association

The Arc of the United States

United Cerebral Palsy

United Spinal Association