



Sound Policy. Quality Care.

September 10, 2010

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

Dear Secretary Geithner:

As the Alliance of Specialty Medicine (Alliance), our mission is to advocate for sound federal health care policy that fosters patient access to the highest quality specialty care and improves timely access to high quality medical care for all Americans. As patient and physician advocates, the Alliance writes to express our opposition to a possible change in existing tax policy which would provide a tax break for trial attorneys.

The issue in question involves changing existing tax policy that would enable trial attorneys to treat litigation costs as a deductible business expense when they enter into a gross contingency fee contract. The Alliance believes that this change, scored by the Joint Committee on Taxation to cost almost \$1.6 billion, would encourage additional lawsuits against physicians and thus increase costs for physicians and their patients. This change in policy also runs counter to President Obama's remarks at the American Medical Association meeting in 2009, highlighting the need for medical liability reforms that protect patient access to care. The additional financial burden that would be incurred by physicians and patients as a result of this policy change would further cripple the broken medical liability system in our country as physicians already face enormous costs defending themselves in medical liability cases. Because most of these cases are eventually dropped or are ruled in favor of the physician, providing incentive for additional lawsuits makes little sense at a time when rising healthcare costs threaten patients' access to quality specialty care.

Further complicating the issue, Congress repeatedly refused to advance legislation containing the tax break when such legislation was introduced in the 111th Congress. Moreover, altering the policy in this manner would run counter to the Field Service Advice (FSA) issued by the Internal Revenue Service in 1997. The FSA maintained that treating litigation costs as a deductible expense, as handed down in the *Boccardo v. Commissioner of Internal Revenue* case, should apply only to the Ninth Circuit.

As you consider your response to this issue, we urge the Treasury Department to refrain from changing existing tax policy which would negatively impact patients and physicians and add billions in unnecessary costs to our already overburdened health care system. Thank you for your consideration.

Sincerely,

American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American Gastroenterological Association
American Society of Cataract and Refractive Surgery
American Urological Association
Coalition of State Rheumatology Organizations
Congress of Neurological Surgeons
Heart Rhythm Society
National Association of Spine Specialists
Society for Cardiovascular Angiography and Interventions