



McIntyre & Lemon, PLLC
1015 15th Street, NW, Suite 1025
Washington, D.C. 20005
Tel: 202-659-3900

October 25, 2021

Jolie H. Matthews, Esq.
Senior Health and Life Policy Counsel
National Association of Insurance Commissioners (NAIC)
Executive Office
444 North Capitol Street, N.W.
Hall of the States, Suite 700
Washington, DC 20001-1509

Via email to jmatthews@naic.org.

Re: NAIC Regulatory Framework Task Force: 2022 Charges

Dear Ms. Matthews:

We are submitting this letter formally, following submission of our recent email on October 15, 2021, in response to your request for comments on the NAIC Regulatory Framework Task Force 2022 Charges. This is on behalf of the American Bankers Association Health Savings Account Council, of which Mr. Kevin McKechnie is Executive Director. ABA HSA Council members administer approximately 95% of the nation's Health Savings Accounts. We have remained active in the Task Force and other "B" Committee-related meetings and make these comments in pursuant thereof.

You are aware of our work with the NAIC and states on a number of matters relevant to cost-sharing in general and on rules governing third party payments on behalf of enrollees or insureds at the NAIC, NCOIL and other national trade associations. We have been particularly cognizant of the recent IRS correspondence with the Illinois Department of Insurance, and the distribution of that letter to, and awareness of it, by other Departments.

Because so much of the NAIC's efforts in this area is on consumer protection, we have become concerned that well-intended but misguided proposals can have an unintended consequence on HSA account owners and their ability to continue to contribute to their HSA, because the cost-sharing legislation of concern does not conform to IRS guidance. The NAIC should, and does, share our concern in that regard.

So taken together, given the primacy of this issue for us and the work that the NAIC has already been engaged in on this issue, we believe it important to codify the issue in a new “G” within the Regulatory Framework Task Force 2022 Charges, as follows:

“G. Monitor, analyze and report to states on the effect of state cost-sharing legislative mandates on the efficacy of Health Savings Accounts and the relevancy of recent Internal Revenue Service guidance about such mandates.”

Thank you for your consideration. We are open to discuss this further or provide any information as necessary.

Very truly yours,

/s/ JEFFREY M. KLEIN

Jeffrey M. Klein,
Of Counsel

cc.: Mr. J. Kevin McKechnie-ABA HSA Council
Chrys D. Lemon, Esq.-McIntyre & Lemon, PLLC