

May 11, 2023

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate
Washington, DC

The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate
Washington, DC

Dear Chairman Wyden and Ranking Member Crapo:

On behalf of NAIC’s members—the chief insurance regulators in 50 states, the District of Columbia, and U.S. territories—we write seeking your support on two issues that we also raised in the last Congress: returning oversight of Medicare Advantage (MA) plan marketing to states and clarifying Health Savings Account (HSA) rules.

Medicare Advantage Marketing

First, we want to express our appreciation to Chairman Wyden for his report last year on MA marketing that highlighted some of the egregious marketing practices state regulators have identified. As the report concludes, greater enforcement is necessary to protect seniors. We strongly believe that enforcement should be at the state level, as it was before the Medicare Modernization Act was passed in 2003.

The Medicare Modernization Act or MMA limited the authority of states to oversee MA plans to just solvency and licensing. Before the MMA, states had full authority to review marketing practices, pursue market conduct reviews, and penalize poor actors – but after the MMA states have no such authority. We strongly recommend that Congress return to the states authority to oversee the advertising and marketing of MA plans.

Health Savings Account Rules

As we wrote last year, HSAs are a valuable tool for millions of Americans. They help participants grow their savings while keeping premium costs in check through the use of high deductible plans (HDHPs).

Under the current rules, qualified HDHP may not, except in a few instances outlined in federal law, cover services before the deductible is met. In the states, legislators have sought to protect consumers by requiring insurance plans to cover certain services before a deductible is met or to count payments made by drug manufacturers or other third parties toward a consumer’s deductible in certain circumstances. The HSA rules have been interpreted to disallow HSA contributions by enrollees in HDHPs that are subject to these state regulations. This can prevent many consumers from accessing the benefits of an HSA or lead to a state exempting HDHP enrollees from important protections they would otherwise be eligible for.

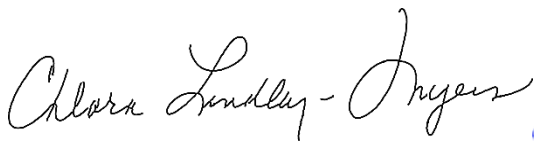
We ask Congress to update HSA law to preserve state flexibility in health plan regulation. Congress has not adopted a definition of “deductible” in the HSA statute in Section 223 of the Internal Revenue Code. This has led to an IRS interpretation of what spending “counts” toward a

deductible when it is more appropriate for states, as the regulators of insurance, to determine what, if any, regulation of deductibles is needed. We urge Congress to add a definition of deductible that defers to state law on what spending must be included when counting deductible spending.

HSA law should be flexible enough to allow reasonable state regulation of cost sharing and we request that Congress update the law to build in such flexibility.

Thank you for your consideration in these important matters.

Sincerely,



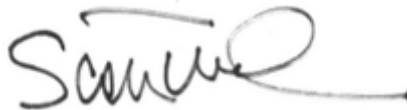
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