

April 18, 2022

The Honorable Janet Yellen
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Charles P. Rettig
Commissioner of the Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20024

Dear Secretary Yellen and Commissioner Rettig:

The tax system has played a key role in making health insurance coverage more affordable for Americans for many years. On behalf of NAIC's members—the chief insurance regulators in 50 states, the District of Columbia, and U.S. territories—we write to encourage you to take action in two areas to further improve the affordability of coverage and the functioning of health insurance markets. The Affordable Care Act's family glitch should finally be repaired and the tax rules around health savings accounts should be updated to provide greater clarity and accommodate key consumer protections established by states.

These changes would enhance affordability for millions of Americans and are particularly important due to the expected end of the Covid-19 Public Health Emergency (PHE). With the end of the PHE, up to 15 million Medicaid enrollees are expected to separate from their public health coverage. We want to work with federal officials to ensure those who are eligible can find affordable coverage in state individual health insurance markets. Fixing the family glitch and clarifying HSA rules will help more people afford coverage that meets their needs.

Addressing the Family Glitch

As you know, the Affordable Care Act (ACA) makes premium tax credits available only when an individual or family does not have access to affordable coverage through an employer. While this policy appropriately seeks to balance increased affordability for Marketplace plans with stability in employer coverage, its implementation has led to unfair outcomes for some families and restricted access to affordable coverage. Because the IRS currently measures affordability only by the cost of coverage for a single employee, families may be unable to access any affordable coverage when an employer focuses its premium contributions on coverage for the employee and not family members. Premiums for family coverage are significantly more expensive than coverage for an individual, but IRS has, to date, ignored these costs in determining affordability for a family.

State regulators believe it is time to change this policy to allow families to access premium tax credits when employer coverage is unaffordable—specifically when premiums for coverage for all family members would exceed the affordability threshold. We applaud the recent action by the Administration in proposing a possible regulatory fix and state regulators will review and provide comments on that proposal.

Nonetheless, we agree that the underlying statute has ambiguity and in a separate letter we have requested Congress to clarify the law. However, we do not believe regulatory action should wait for Congressional action and thank you for the steps you have taken to bring greater affordability for families by proposing revisions to the IRS interpretation and fixing the family glitch.

Updating and Clarifying Health Savings Account Rules

Health savings accounts (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 tax law, deductible levels are a key component in determining whether a health insurance plan is compatible with a health savings account. At the same time, deductible levels and other cost sharing provisions also fall under concurrent state regulation due to their use in health insurance. We urge you to examine and, where necessary, update health savings account regulations to prevent counterproductive interference between federal rules and state insurance regulation. We also believe that more clarification is needed in IRS communications regarding HSAs. Varying guidance has been offered as stakeholders seek to understand the rules of the road.

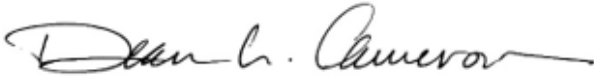
HSA law allows only individuals enrolled in a high deductible health plan to contribute to an HSA. States have sought to protect consumers by requiring insurance plans to cover certain services before a deductible is met or to count payments made by drug manufacturers or other third parties toward a consumer's deductible in certain circumstances. These consumer protections are most often intended to apply to a broad range of consumers in the state, regardless of whether they are enrolled in an HDHP or another type of plan. Some have interpreted HSA rules 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. In addition, some have interpreted HSA law to consider not the deductible set by the terms of an enrollee's health plan, but the "minimum annual deductible" referenced in the HSA statute in section 223 of the Internal Revenue Code. This can lead to confusion among regulators as well as enrollees and the health plans and banks who serve them.

State insurance regulators seek greater clarity from Treasury and IRS on HSA contributions when state cost sharing regulations are in place. Section 223 clearly defines a high deductible health plan as a plan with a deductible in excess of \$1,000 (for self-only coverage and as adjusted by the Secretary), but it does not define "deductible." We believe a reasonable interpretation would look to the terms of the health plan itself in defining a plan as an HDHP. When a state law requires certain amounts to count toward a deductible, that does not change the terms of the plan and we do not believe there is justification for interference with state laws that direct how to count spending toward a deductible. We ask IRS to preserve state flexibility in health plan regulation. As the use of deductibles in health insurance markets has evolved since HSAs were created, state legislatures and state insurance regulators have worked to establish valuable consumer protections that in some cases involve

insurance payments prior to the deductible or third-party payments of a portion of the deductible. These protections do not fundamentally alter the balance between premium and deductible in an HDHP and should not prevent an enrollee from contributing to an HSA. HSA rules should be flexible enough to allow reasonable state regulation of cost sharing and we request that you update the rules to build in such flexibility.

State insurance regulators would appreciate the opportunity to work with you and your staff to further develop proposals in both of these areas. We believe taxpayers, insurance consumers, and state insurance markets would all benefit from these adjustments to federal regulations. Thank you for your consideration.

Sincerely,



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