NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

April 18, 2022

The Honorable Ron Wyden, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

The Honorable Mike Crapo, Ranking Member
Senate Committee on Finance
239 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal, Chairman
Ways and Means Committee
U.S. House of Representatives
1102 Longworth House Office Building
Washington D.C. 20515

The Honorable Kevin Brady, Ranking Member
Ways and Means Committee
U.S. House of Representatives
1139 Longworth House Office Building
Washington D.C. 20515

Dear Chairmen Wyden and Neal and Ranking Members Crapo and Brady:

On behalf of NAIC's members—the chief insurance regulators in 50 states, the District of Columbia, and U.S. territories—thank you for your continued commitment to improving health insurance markets through tax policy. We write to encourage action in three areas important to enhancing affordability and access to health insurance coverage: fixing the Affordable Care Act's family glitch, updating health savings account rules to accommodate modern benefit designs and key consumer protections, and extending enhanced premium tax credits.

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), which may expire as soon as July. 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 you and other federal officials to ensure those who are eligible can find affordable coverage in state individual health insurance markets. Enacting legislation in these three areas will help more people afford coverage that meets their needs.

Addressing the Family Glitch

The Affordable Care Act 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 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. 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.

The Administration has proposed a regulatory fix for the family glitch and we will comment on that proposal. Nonetheless, we believe there is a role for Congress, too. The underlying statute should be clarified so that families' access to affordable coverage does not depend on a favorable interpretation from Administration officials. We ask your Committees to take action to make the law straightforward and clear and make premium tax credits available if employer offers are not affordable when considering coverage costs for an entire family.

Updating 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 deducible plans (HDHPs). Deductible levels are a key component in determining whether a health insurance plan is compatible with a health savings account under federal tax law. 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 your Committees to examine and, where necessary, update HSA laws to prevent counterproductive interference between federal tax law and state insurance regulation.

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. Consumer protections like these have been adopted by states across the political spectrum, from Oklahoma to Connecticut, Tennessee to Illinois, and several other states. 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 law to disallow HSA contributions by enrollees in high deductible health plans 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 and enrollees alike.

While state insurance regulators seek greater clarity from the Department of the Treasury and the Internal Revenue Service on HSA contributions when state cost sharing regulations are in place, 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.

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

Extending Enhanced Premium Tax Credits

The increased size and availability of premium tax credits since 2021 have resulted in greater enrollment in Marketplace plans in state individual health insurance markets. The greater subsidies have enhanced affordability of coverage for families of modest means as well as those who were previously denied help with coverage costs due to income limits.

Under current law, the enhanced premium tax credits would cease at the end of 2022. Such a change would have a major impact on state health insurance markets. The affordability of coverage would change for millions of enrollees and some may choose to discontinue their Marketplace coverage at the end of the year. Others may continue their enrollment, only to be caught off guard by significantly higher premium costs in 2023, when more may choose to disenroll. Those most likely to drop coverage due to higher out-of-pocket premiums are the healthiest enrollees, so risk pools are likely to worsen under these scenarios. These changes would not only affect access to coverage for millions, they would roil insurance markets as issuers and regulators adjust to a likely smaller and somewhat higher-risk overall individual market.

In addition to the predicted effects of a change in enhanced subsidies, the uncertainty over the future of increased premium tax credits is already affecting health insurers and state regulators. Health insurers are already developing their rates for 2023 and regulators must review them in the coming months and approve them by the third quarter of 2022. Uncertainty about the size and shape of the individual market next year complicates these efforts. Unresolved uncertainty may lead to higher than necessary premiums.

We urge Congress, with your leadership, to act by July of this year to extend the enhanced premium tax credits beyond their current end date.

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

Sincerely,

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