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Mr. William Melofchik
General Counsel
National Conference of Insurance Legislators
NCOIL National Office
2317 Route 34S, Suite 2B
Manasquan, New Jersey 08736

Via Email: WMelofchik@ncoil.org

Dear Mr. Melofchik:

Will, congratulations on a successful meeting in Alexandria. We were pleased to attend and participate in all of the meetings.

The American Bankers Association Health Savings Account Council (“ABA HSA Council”) represents institutions that hold 95% of all HSA accounts in the U.S.

In preparation for the Alexandria Meeting and following our review of the NCOIL Telemedicine Reimbursement and Authorization Model Act (“Telehealth Model Act”), we had previously forwarded at the request of Kevin McKechnie, a September 14 email regarding potential issues with the Model Act as it relates to Health Savings Accounts (“HSAs”). You requested that we submit a more formal letter for the record.

As we noted at the time, although the Telehealth Model Act is itself unobjectionable, to the extent that it references cost-sharing issues, we wanted to remind NCOIL of the ABA HSA Council’s ongoing concerns with proposals, be they legislative or regulatory, that could have the potential to unintentionally disqualify an individual from using their HSA due to Internal Revenue Service guidelines, as noted below.

The Health Insurance and Long Term Care Issues Committee met to discuss (but has not yet adopted) the Telehealth Model Act on Saturday, September 26. Sections 4 (E) and (F) of the Model Act reference deductibles, copayments and coinsurance as follows:

Section 4:

(D) An insurer, corporation, or health maintenance organization shall reimburse the treating provider or the consulting provider for the diagnosis, consultation, or treatment of the insured

delivered through telemedicine services on the same basis that the insurer, corporation, or health maintenance organization is responsible for coverage for the provision of the same service through in-person consultation or contact.

(E) An insurer, corporation, or health maintenance organization may offer a health plan containing a deductible, copayment, or coinsurance requirement for a health care service provided through telemedicine services; however, such deductible, copayment, or coinsurance shall be combined with the deductible, copayment, or coinsurance applicable to the same services provided through in-person diagnosis, consultation, or treatment.

(F) No insurer, corporation, or health maintenance organization shall impose any annual or lifetime dollar maximum on coverage for telemedicine services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan. (emphasis added).

The Internal Revenue Code¹ allows a deduction from income up to a certain annual amount for an individual's contributions made to a HSA as long as the individual is enrolled in a "HSA-qualified" health insurance plan. The individual can then use the HSA funds to pay plan deductibles and other out-of-pocket expenses. The general rule is that to be HSA-qualified, there are two requirements: First, a plan must be a high-deductible health plan. Second, the plan cannot provide first-dollar coverage for any benefit (that is, without cost-sharing) unless the affected benefit is considered "preventive care."² The addition to a plan of even a single benefit that requires first-dollar coverage without the benefit constituting preventive care would prevent the health plan from being a HSA-qualified plan – denying the individual the ability to contribute to their HSA so that they may use HSA funds to pay any deductible or other cost-sharing with respect to that plan.

We attach to this letter an updated copy of our "HSA Checklist" that addresses this in more detail, for the record; this paper has been shared with many state insurance regulators, the NAIC and several insurance legislators.

Additionally, on a recent iteration of new proposals in the Centennial State, we wanted to share the attached letters to the Colorado Department of Regulatory Agencies/Division of Insurance in response to two Requests for Information ("RFIs") regarding proposed rule-making on mental health access and substance abuse issues. Kevin requested specifically that we share those letters with you as the latest evidence of our efforts to reinforce awareness.

¹ 26 U.S.C. § 223.

² IRS Notices 2004-23, 2004-50, 2013-57, and 2019-45; and the Affordable Care Act, <https://www.healthcare.gov/coverage/preventive-care-benefits/>.

Finally, we are extremely appreciative for NCOIL's adoption of the 2018 Resolution in favor of sound proposals that preserve the ability to use a Health Savings Account consistent with federal/IRS rules. With the passage of time, it may be appropriate for NCOIL to reaffirm that position, and it would be beneficial if that could be accomplished at the upcoming December Tampa meeting.

We will follow up with a writing under Kevin's signature to the Executive Committee and Health Insurance & Long Term Care Committee Chairs (New York Assemblywoman Pam Hunter and Arkansas Representative Deborah Ferguson) to that effect and we will make sure that you are copied on the communication.

Thank you for your continuing interest and support. We look forward to the Tampa meeting. We ask that this letter and its contents be included in the formal record.

Sincerely,

Jeffrey M. Klein

Jeffrey M. Klein
Of Counsel

Cc: Mr. Kevin McKechnie
Chrys Lemon, Esq.
Ms. Jennifer Hatten
Mr. Roy Ramthun

Attachments.

ABA HSA Council "Checklist"

ABA HSA Council/McIntyre & Lemon Comment Letters on Colorado RFIs.