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## National Council of Insurance Legislators (NCOIL)

### Resolution in Support of Embedded Provisions in the State Insurance Code to Protect Health Savings Accounts-Qualified Health Insurance Policies from Certain State Benefit Mandates

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*\*Sponsored by Sen. Jerry Klein (ND)*

*\*Draft as of June 20, 2023.*

*\*To be introduced during the Health Insurance & Long Term Care Issues Committee Meeting on July 20, 2023.*

**WHEREAS**, the National Council of Insurance Legislators fully supports the state-based system of regulation for health insurance, consistent with federal statutes, rules, regulations and guidance; and NCOIL supports states continuing serving their role as sources of healthcare innovation in the most meaningful way; and

**WHEREAS**, individual insureds and/or enrollees and those in the group market require all the resources they need, to effectively manage the ever-increasing cost of health insurance; and

**WHEREAS**, qualified Health Savings Accounts, coupled with high deductible health plans, are one such tool that helps individuals or those in the employer group market manage those costs; and

**WHEREAS**, A Health Savings Account (“HSA”) is a trust or custodial account offered with a high-deductible health insurance plan that meets specific requirements in the U.S. Internal Revenue Code, as interpreted and administered by the federal Internal Revenue Service. An eligible individual can deduct contributions from income taxes and use contributed funds tax-free for qualified medical expenses; however, consumers cannot benefit from an HSA unless they are enrolled in an “HSA-qualified” plan; and

**WHEREAS**, many states have recently introduced or enacted sweeping benefit mandate bills and co-pay accumulator bills, to help insureds and enrollees with the cost of health insurance and medical services, by providing for so-called “first dollar or zero dollar coverage” or coverage that otherwise restricts the amount of the applicable deductible, co pay or coinsurance; and

**WHEREAS**, NCOIL recognizes that certain of these state benefit mandate bills, while well-intended, may have the effect of disqualifying an HSA in a given state because the federal HSA statute requires that HSA-qualified plans apply a minimum deductible (single and family) to all covered benefits that are not defined as “preventive care”; and that a plan will fail to so qualify if a state law requires coverage without (or with limited) cost-sharing for benefits that are not “preventive care”; and that such disqualification may prevent account owners from continuing to make tax-deductible contributions to their HSAs and also cause an insured or enrollee to have to possibly re-file their federal taxes and pay penalties; and these consequences were unseen and cause unintended harm to the individual; and

**WHEREAS**, it would serve and further legislative economy, to have each state adopt a provision embedded in its insurance code, as eight states have done, to protect the efficacy of HSAs, via a legislative “carve-out”, as opposed to the necessity of amending each and every state benefit mandate bill, such as those involving diabetes, breast cancer, prostate cancer and other diseases; that this would ensure that a health insurance plan that is an HSA-qualified plan is exempt from any state law that would cause the plan to be disqualified because the state law requires coverage of and/or cost-sharing for, benefits that would cause the plan to fail to meet the definition of a “high deductible health plan”, as that term is set forth in Section 223(c.)(2) of Title 26 of the United States Code.; and

**WHEREAS**, a number of states have enacted to date such a “carveout “ provision<sup>1</sup> and the following provision would serve as a model:

“A health savings account-qualified health insurance policy is exempt from a prohibition on cost-sharing requirements for a covered benefit that is required under state law to the extent the exemption is necessary to meet the criteria for a health savings account-qualified health insurance policy.

This section does not apply to any coverage required by state law that pertains to preventive care as defined by regulation or guidance issued by the United States Department of the Treasury under 26 U.S.C. § 223, as it existed on January 1, 2021, with respect to any health savings account qualified health insurance policy issued, delivered, amended, or renewed while the regulation or guidance issued by the United States Department of the Treasury is effective.”

**WHEREAS, NOW, THEREFORE, BE IT RESOLVED**, that NCOIL urges states to take action and pass legislation that would protect HSAs and HSA account owners, by providing a ‘carveout’ or exemption, embedded in their insurance code or insurance law, from relevant state benefits mandate and co pay accumulator bills, to ensure consistency with federal law, rules and guidance.

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<sup>1</sup> Arkansas (2021-Act 939) , Kentucky (KRS Chapter 304, Subtitle 17A. (via Chapter 133/2021), North Dakota (Century Code §26.1-36-01.1), Oregon (ORS §742.008), Pennsylvania (P.S. Title 72, § 3402b.5), Rhode Island (Title 27, Chapter 69), Texas (Insurance Code § 1653) and Utah (Title 31A, Chapter 22, Part 6, §657 (via Chapter 198/2022));