American Bankers Association
HSA Council

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July 9, 2026

The Honorable Deanna Gordon
702 Capitol Avenue
Annex Room 367
Frankfort, KY 40601

Dear Representative Gordon:

Re: **Eye Care Services Model before the Health Insurance & Long Term Care Issues Committee-Summer National Meeting-July 17, 2026**

The American Bankers Association via its Health Savings Account Council ("ABA HSA Council") and Office of Insurance Advocacy have been involved long-term in the workings of NCOIL and appreciate being part of the process and this important organization.

Thank you for the opportunity to comment on the proposed NCOIL Model which you have sponsored, "Ensuring Access to Eye Care Services and Materials for Patients Through Transparent and Fair Business Practices". ABA HSA Council appreciates the intent of the model and is basically agnostic regarding many of the underlying substantive provisions; however, we are cognizant of the letter sent to you by the National Association of Vision Care Plans and their comment about possible inconsistencies with federal HSA law.

Section 4 of the Model is denoted "Covered and Non-Covered Services and Materials Provisions" and subdivisions "C" and "E" are notable:

"C. A contract between an Insurer or Vision Benefit Manager and an eye care provider shall include a fee schedule that includes and individually identifies each covered service and covered material and its corresponding allowed amount, reimbursement amount paid to the eye care provider, and any form of a cost-sharing amount paid by the enrollee to the eye care provider.
"E. A service or material provided by a participating eye care provider cannot be designated as a covered service or covered material by the Insurer or Vision

Benefit Manager in the design of a health benefit plan, vision benefit plan, or vision benefit discount plan if the reimbursement amount to the participating eye care provider is only comprised of an enrollee's payment to the participating eye care provider."

Section 4(E) as best as we can determine, appears to suggest that the relevant service not be deemed a "covered service" if it only reflects the enrollee's payment to the provider. We have been involved at NCOIL and in the states over the last half decade in monitoring and commenting on state benefit mandates that, while well intentioned, may have a detrimental effect on the efficacy of HSAs in a given state. This is because federal law, rules and guidance with regard to an HSA coupled with a high-deductible health plan only allow payments made by an enrollee, and not by any other third party (such as with a drug coupon) to apply to one's deductible.

The present Eye Care Access Model provision may have the effect of requiring other payments including third party payments to be reflected and considered, in order to have a service be deemed a "covered service".

In November 2023, at its Annual Meeting, NCOIL recognized this issue and in the same Health Insurance & Long Term Care Issues Committee, adopted a resolution in support of a safe harbor for HSAs when confronted with similar mandates:

A link to that Resolution is here:

https://ncoil.org/resource/resolution-in-support-of-embedded-provisions-in-state-insurance-code-to-protect-health-savings-accounts-qualified-health-insurance-policies-from-certain-state-benefit-mandates-adopted-11-18-23/

The model was the genesis of our efforts to secure state legislation which would create an embedded insurance code provision or safe harbor for HSAs. And we are pleased not only that NCOIL, through this Committee, had adopted that safe harbor, but so have numerous states including just this past session, Kentucky, Alabama, Iowa and New York.

We would recommend that Section 4 of the current Eye Care Access model be amended to include this provision based on language in the NCOIL Resolution in support of embedded insurance code provisions:

"A health savings account-qualified health insurance policy is exempt from the provisions of this section which include a cost-sharing requirement for a covered service to the extent the exemption is necessary to meet the criteria for a health savings account-qualified health insurance policy."

A further point. There is language in the proposal in new section 8 that reads:

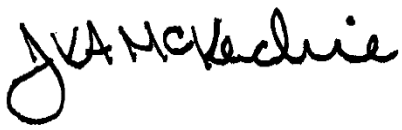
"Notwithstanding any other provision of State law, including any law that purports to be the sole body of law governing the Insurer, an Insurer shall comply with this Act, to the extent not preempted by Federal law."

In matters concerning HSAs, federal tax law as implemented by the IRS sets policy for HSAs but does not pre-empt state law. In any event, we do not believe that this language constitutes a safe harbor to any extent and would reiterate the need for the above language from the prior NCOIL Resolution.

We would be willing to make a statement at the Health Insurance & Long Term Care issues committee meeting if necessary at the Boston Summer meeting but we request that this letter be included in the record.

Thank you for your sponsorship of this important matter and your public service and for your consideration of our views.

Respectfully submitted,



J. Kevin A. McKechnie
Executive Director & Founder, ABA HSA Council

Cc: The Honorable Sarge Pollock, Chair, Health Insurance & Long Term Care Issues Committee

The Honorable Senator Mary Felzkowski, Vice-Chair, Health Insurance & Long Term Care Issues Committee

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