May 11, 2023

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

The Honorable Danny Werfel
Commissioner of the Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20024

Dear Secretary Yellen and Commissioner Werfel:

K v Z o (} (E / [•v the chief insurance regulators in 50 states, the District of Columbia, and U.S. territories, we write on two important ways tax policy affects health insurance.

First, we want to thank you for Treasury ‰ Œ š u action to address the family glitch in the implementation of the Affordable Care Act (ACA). Second, we renew our request for additional clarity on the regulation of Health Savings Accounts (HSAs). We believe the tax rules around HSAs should be updated to provide more certainty for stakeholders and to

family members. The revised interpretation allows the full cost of family coverage to be taken into account and has made premium tax credits available to more who need them. We appreciate this action to address what was a frustrating limitation on the availability of tax credits for families.

As we wrote to you in April 2022, states and consumers have also been frustrated by the impact of IRS interpretations related to HSAs, which are a valuable tool for millions of Americans, helping participants grow their savings while keeping premium costs in check through the use of high deductible plans (HDHPs). Under current tax law, deductible levels are a key determinant of a qualified HDHP which will allow HSA contributions by the enrollee. At the same time, deductible levels and other cost sharing provisions fall under concurrent state regulation due to their use in health insurance. We urge you to examine and, where necessary, update HSA regulations to prevent conflict between federal rules and state insurance regulations. 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.

A qualified HDHP may not, except in a few instances outlined in federal law, cover services before the deductible is met. State legislatures 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 manufacš µ Œ Œ• }Œ }šZ Œ šZ]Œ ‰ Œš] • š}Á Œ }v•µu Œ[• 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 for which they would otherwise be eligible.

For instance, after Kentucky enacted legislation to 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 guidance or regulation on HSAs and the deductibles of qualifying HDHPs. We believe taxpayers, insurance consumers, and state insurance markets would all benefit from an adjustment to current guidance. Thank you for your consideration.

Sincerely,

Chlora Lindley-Myers
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Director
Missouri Department of Commerce and Insurance

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