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May 27, 2016

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Mr. Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Secretary Burwell & Administrator Slavitt:

On behalf of the National Conference of Insurance Legislators (NCOIL), I write to you expressing concern over the March 2016 regulation issued by the Department of Health and Human Services (HHS) & Centers for Medicare & Medicaid Services (CMS), particularly the effect of that regulation on Health Savings Accounts (HSAs).

NCOIL is a legislative organization comprised principally of legislators serving on state insurance and financial institutions committees around the nation. NCOIL writes Model Laws in insurance, works to both preserve the state jurisdiction over insurance as established by the McCarran-Ferguson Act seventy years ago and to serve as an educational forum for public policy makers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making state policy when it comes to insurance and educate state legislators on current and perennial insurance issues.

As you know, HSAs are an important consumer-directed health plan that have helped drive down health costs. In 2015, enrollment in HSA plans climbed 13% to almost 20 million, raising the total amount of assets in HSA accounts to over \$28 billion. Those numbers reflect the growing popularity of HSAs, which is the result of entrusting consumers to make decisions about their own health care and finances.

However, based upon our analysis of the regulation, it will effectively eliminate HSA qualified health plans from the insurance exchanges next year. Under the regulation, consumers can either choose an ACA Qualified Health Plan (QHP) or an Internal Revenue Service (IRS) qualified HSA; they would be precluded from selecting a plan that qualifies as both, as they can currently. This is because the out-of-pocket limits and deductible requirements for qualified exchange-based plans set by HHS will conflict with those set by the IRS for HSAs. For example, the new mandated deductible is \$100 too high for Bronze plans, and \$50 too low for Gold plans. For Silver plans, the out-of-pocket maximum is \$600 too high.

Additionally, the regulation requires plans to cover numerous services below the deductible such as a limited numbers of primary-care visits, specialty-care visits, mental-health and substance-use-disorder outpatient services, urgent-care visits and drug benefits. However, IRS qualified HSA health plans are not permitted to cover any services below the deductible except for preventive services.

As a result of those conflicts, the millions of Americans who currently finance their present and future health care needs through HSAs will face a "Catch-22": keep their HSAs, which will result in them being advised they are losing coverage within six months of the expiration of their current plan year; or choose a "qualified" plan on the exchange and forego the opportunity to have an HSA, and thus be left with a plan that will not best meet their unique health care and financial needs.

NCOIL does not believe that depriving individuals of choices relating to a critical issue such as their health is a prudent regulatory practice. As the former Commissioner of the New Jersey Department of Banking and Insurance, I participated actively in the regulatory work delegated to the NAIC by Congress in the ACA, and oversaw regulation of numerous aspects of health-care plans in one of the largest markets in the nation. I know that ensuring individuals have access to coverage that meets their individual needs is a paramount priority. The HHS regulation will have the opposite effect: reducing individuals' coverage choices, and thereby eliminating competition and innovation in health plans.

NCOIL urges that HHS and CMS adopt a solution that will keep HSAs in the marketplace, thus preserving consumer choice, thereby allowing those consumers to select plans that best meet their needs. Please know that I am available to discuss this with you should you wish, or if I can be of further assistance in achieving a resolution.

With appreciation for your consideration and kind regards, I am,

Very truly yours,

A handwritten signature in black ink that reads "Tom Considine". The signature is written in a cursive, slightly slanted style.

Thomas B. Considine