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July 15, 2022

Barb Jones
Washington Office of the Insurance Commissioner
302 Sid Snyder Ave., SW
Olympia WA 98504

Re: R 2022-05 Cost-sharing for prescription drugs

Dear Ms. Jones:

AHIP writes today to express concerns with language in the pre-publication draft rules for R 2022-05, Cost-sharing for prescription drugs, relating to the exemption for qualifying health plans with a health savings account from the requirements of SSB 5610.

HSA-qualifying plans – high-deductible health plans (HDHPs) coupled with health savings accounts (HSAs) – are popular with insurance enrollees as they provide first dollar coverage for preventive care benefits and allow policyholders to set aside money on a pre-tax basis to pay for other qualified medical expenses.

The proliferation of copay coupons and other patient assistance programs has raised questions about whether and how these third-party payments can be counted towards an enrollee's deductible in an HSA-qualifying plan and the potential tax implications for enrollees. Increased state activity requiring health insurance carriers to count these payments towards enrollees' cost sharing requirements has exacerbated these concerns.

The Internal Revenue Service (IRS) released guidance¹ to address whether an individual in an HDHP who has a discount card that enables the user to obtain discounts for health care services or products may contribute to an HSA. The IRS affirmed that HDHP enrollees may use discount cards and contribute to an HSA, but noted:

“Discount cards that entitle holders to obtain discounts for health care services or products at managed care market rates will not disqualify an individual from being an eligible individual for HSA purposes if the individual is required to pay the costs of the health care (taking into account the discount) until the deductible of the HDHP is satisfied.”

To better understand this guidance's impact on a state law requiring insurers to count third-party payments towards enrollees' cost sharing requirements, the Illinois Department of Insurance requested clarity from the IRS. The IRS responded in April 2021² and clarified that the same principle regarding discount cards in their previous guidance also applies to third-party payments – such as rebates or

¹ [Notice 2004-50: Guidance on Health Savings Accounts](#), Q&A9. Internal Revenue Service. Revised and corrected August 9, 2004.

² [Internal Revenue Service: Letter Number 2021-0014](#). April 16, 2021.

coupons – that have the same effect as discounts. They noted that a deductible may only be satisfied by actual medical expenses the covered individual incurred and provided a helpful example to illustrate their interpretation of the law.

Considering this guidance, laws that require insurers to count third-party payments towards enrollees' cost sharing requirements could impact an enrollee's ability to contribute to their HSA. As these bills have been introduced, AHIP and our members have advocated for an exception for HSA-qualifying plans. The Washington legislature agreed with these concerns added a carefully crafted exemption in SSB 5610:

“(5) This section does not apply to a qualifying health plan for a health savings account to the extent necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from the enrollee's health savings account under internal revenue service laws, regulations, and guidance.”

AHIP supports the first sentence of (5)(c) in the OIC's pre-publication draft rules, “A qualifying health plan for a health savings account (HSA-qualifying plan) is not subject to the requirements under RCW 48.43.xxx (Substitute Senate Bill No. 5610, chapter 228, Laws 2022).” We believe that this exemption language conforms to the intent of SSB 5610.

However, we have concerns with the two sentences that follow: “An HSA-qualifying plan may apply a deductible to coverage of prescription drugs only at a minimum level necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from the enrollee's health savings account under Federal Internal Revenue Service laws and regulations. The individual and family deductibles applied to prescription drugs under an HSA-qualifying plan must be the minimum deductibles set by the Federal Internal Revenue Service for a plan to be an HSA-qualifying plan under Federal Internal Revenue Service laws, regulations, and guidance.”

These sentences regulate the deductible itself; they do not regulate what payments a carrier must apply to the deductible, which was the focus of SSB 5610. We believe that these sentences are not only unnecessary but would require the complete redesign of all HSA-qualifying plans. As written, no HSA-qualifying plan could have a prescription drug deductible other than the IRS minimum deductible (for 2023, \$1,500 for individual coverage and \$3,000 for family coverage³). This would mean that the WAHBE 2023 silver and bronze standard plan designs are out of compliance with this rulemaking, because they have deductibles of \$2,000 and \$6,500, respectively.

The intent of SSB 5610 was not to make any changes to the deductible itself, and legislators carefully crafted the exemption for HSA-qualifying plans to ensure that it protected enrollees from potential tax consequences, in accordance with IRS guidance. Therefore, we ask (5)(c) be amended to align with the language in SSB 5610.

AHIP stands ready to work together to ensure that this language protects patients without upending the design of all HSA-qualifying health plans. Please do not hesitate to contact me with any questions at sberry@ahip.org or 202.807.9984.

³ [Rev. Proc. 2022-24](#). Internal Revenue Service.

Sincerely,

A handwritten signature in black ink that reads "Stephanie" followed by a long horizontal flourish.

Stephanie Berry
Regional Director

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.