2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HCR 3026

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HCR 3026
2/4/2019
32050

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Urging Congress & the Internal Revenue Service to allow states to determine health benefit coverage requirements without jeopardizing health savings account eligibility.

Minutes: Attachment 1

Vice Chairman Lefor: Opens the hearing on HCR 3026.

Chairman Keiser: Introduces HRC 3026. Attachment 1.

3:50

Rep Schauer: Have you been in contact with the congressional delegation & or the IRS?

Chairman Keiser: Attached is an NCIOL resolution that was sent with signatures. This is an issue, especially on the banking side. We have conference committee

Rep M Nelson: The procedure couldn't be covered by the health saving account if it's during the time of your deductible. It could be afterwards?

Chairman Keiser: It's the opposite.

Rick Clayburgh~President & CEO of the Bankers Association: We are here to support HCR 3026. To answer Rep M Nelson question, under the IRS code on a first in plan, the high deductible plan where the first dollars are covered by the individual. Any state requirement of some type of coverage is not considered preventative, the IRS will not let the individual participate in that plan. Nothing is covered at all. We stand in strong support.

Chairman Keiser: Anyone else here to testify in support, opposition, neutral on HCR 3026? Closes the hearing. What are the wishes of the committee?

Rep Kasper: Moves a Do Pass.

Rep Schauer: Second.

Chairman Keiser: Further discussion?

Roll call was taken on HCR 3026 for a Do Pass with 14 yes, 0 no, 0 absent & Rep Richter is the carrier.

Date: Feb 4, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 3026

House Industry, Business and Labor **Committee**

☐ **Subcommittee**

Amendment LC# or Description:

Recommendation

☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions ☐ Reconsider ☐

Motion Made by Rep Kasper **Seconded By** Rep Schauer

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson	X	

Total (Yes) 14 No 0

Absent 0

Floor Assignment Richter

REPORT OF STANDING COMMITTEE

HCR 3026: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3026 was placed on the Eleventh order on the calendar.

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HCR 3026

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HCR 3026
2/27/2019
Job #32925

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

A concurrent resolution urging Congress and the Internal Revenue Service to allow states to determine health benefit coverage requirements without jeopardizing health savings account eligibility.

Minutes:

Chairman Klein: Opened the hearing on HCR 3026. All members were present.

Rick Clayburgh, President/CEO North Dakota Bankers Association: testified in support of the bill. Representative Keiser introduced this on his behalf in the house but we thought we would do it here. It deals with an issue when a state makes changes, it's a good resolution, but when states adopt certain medical procedures or treatments to be covered under an insurance policy that is offered under the state. Some of those under the Affordable Healthcare Act, will allow high deductible healthcare plans and HSAs, only for preventative care and those are defined by the ACA. Some states, Illinois and Maryland, they were addressing vasectomies, and the required that the procedure be covered by a state policy but the ACA does not consider that preventative care, so that would totally exclude all HSA accounts to be considered appropriate under the Affordable Healthcare Act. So this resolution is asking Congress and the IRS to address the issues, to allow states to address issues at the state level without jeopardizing the qualification that an individual can contribute pretax to an HSA plan. Very important issue. The in vitro bill that was heard in here. That would have required some amendments to ensure that wouldn't have gone awry. So it's not just an issue for Illinois. There are little things that could pop up and jeopardize the structure of an HSA account.

Senator Roers: So what is this asking us to do?

Rick: I'd hope you'd pass this resolution that is asking congress to allow states to be able to make changes to their state health plans and what states regulate without jeopardizing the tax-free nature of an HSA account.

Senator Piepkorn: Maybe you can explain a bit about HSA accounts.

Rick: A health savings account is considered first dollar coverage accounts. It's a high deductible plan, it means the first dollars that go into the plan, are used to cover the deductible. Under Affordable Healthcare Act, a high deductible plan right now for a single individual is $2700. So if I'm making a contribution tax-free to fund my HSA that I'll use to pay my medical bills, the first $2700 of my medical bills is covered by me and then I pay those out of the HSA account that I've built up tax-free. Those first in dollars, that is the issue that causes the problem with the Affordable Healthcare Act, because they say only preventive care can be covered under a high deductible, first in, savings account. So the issues about vasectomies not considered preventive care, the fact that I'm paying that out of my first $2700 would make my plan invalid and no longer eligible under the tax requirements for the health savings accounts.

Chairman Klein: Be ineligible under the federal tax code?

Rick: Under the IRS code. That's the issue, with that also makes the plan itself that you're participating in, invalid as well.

Senator Piepkorn: so really this resolution is asking congress to allow us to determine this and not them?

Rick: I put language together in the house, this is simply asking congress and the IRS to let states manage health benefits coverage without having to worry about jeopardizing HSA eligibility.

Senator Piepkorn: What effect does passing this resolution have?

Rick: All of the states, the national conference of insurance legislators is going around the country getting this resolution to go to congress. They're hoping that if all 50 states do this, it will elevate something in Washington outside of what's happening now and something might happen.

Chairman Klein: We're sending congress a message that the states are worried about these issues. NCOIL is worried about how we may be jeopardizing our IRS regulations, which have become an important part of our healthcare continuum.

Rick: If a state passes something that runs a foul with this and makes the state's health plan ineligible, you now have a lot of people that don't have a health plan that is operating properly. So it is a big deal.

Senator Burckhard: Where do these resolutions end up?

Chairman Klein: Copies will be sent to the commissioner of the internal revenue and to each member of the North Dakota congressional delegation. Where they will be filed appropriately. We've done resolutions forever and we just kind of say the same things, are we being listened to? Has anything really ever happened? Some would say yes. But it is a resolution and we're trying to urge them to do the right thing.

Rick: I know this is an issue that is at the national level. And when you get states like Illinois and Maryland, there are a number of other states that have the ability to reach out to their delegation. But from the banking perspective, these are very important issues because all of our organizations are involved in providing health insurance coverage to employees and we don't want to jeopardize that and we hope someone listens

Chairman Klein: Barry just a me too thing?

Chairman Klein: Closed the hearing on HRC 3026.

Vice Chairman Vedaa: Moved a Do Pass

Senator Kreun: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Senator Kreun will carry the resolution.

Date: 2/22
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3026

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Vedaa Seconded By Kreun

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Kreun

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3026: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3026 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HCR 3026

Attachment 1
Feb 4, 2019

HCR 3026

HDHP (HSA) and first-dollar coverage

First dollar coverage refers to benefits where the plan's co-pay or co-insurance is available from the start, regardless of the deductible. With an HSA insurance plan first dollar coverage is only available for certain preventive care benefits, such as an annual physical. Other than preventive care, you will have to satisfy your deductible before any co-payment or co-insurance benefits can go into effect.

IRS Notice 2013-57 (issued September 9, 2013) clarifies that a high deductible health plan (HDHP) will not fail to qualify as an HDHP under IRC section 223(c)(2) merely because it provides –without a deductible—the preventive care services required under section 2713 of the Public Health Service Act (PHS Act). These are the preventive care services that the Affordable Care Act (ACA) requires to be offered by all group health plans and health insurance issuers offering group or individual health insurance coverage.

Problem arise when States pass laws requiring health insurers to provide "first-dollar" coverage for non-preventive care treatments.

Illinois Example: (August 2018) Illinois Gov. Bruce Rauner signed a bill that would fix a state law inadvertently preventing hundreds of thousands of Illinoisans with high-deductible health plans from contributing to their health savings accounts. The bill became necessary after Illinois passed a law requiring health insurers to provide first-dollar coverage of vasectomies. However, vasectomies are not recognized by the IRS as a preventive procedure eligible for first-dollar coverage under an HDHP, thus hampering the ability of Illinois residents with HDHPs and HSAs to use them. The bill addresses the problem by allowing vasectomies to be subject to an HDHP's deductible requirement.

***George** – your resolution is asking Congress and the IRS to let state manage health benefit coverage without having to worry about jeopardizing HSA eligibility.*

State Legislators Signal Support for HSA Fix: (January 2019)

The National Council of Insurance Legislators recently met in Oklahoma City and approved a unanimous bipartisan resolution supportive of policies that preserve health savings account access. American Bankers Association SVP Kevin McKechnie applauded the move to "preserve the ability of millions of Americans to finance their health care with HSA-qualified insurance plans. The ABA HSA Council and its members are grateful for NCOIL's support and the important role they play in national insurance policy."

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The NCOIL resolution advises states to avoid actions taken in several states requiring health insurers to provide first-dollar coverage of vasectomies. Since vasectomies are not recognized by the IRS as a preventive procedure eligible for first-dollar coverage under an HDHP, these policies have hampered the ability of state residents with HDHPs and HSAs to use them. Working with state bankers associations, ABA's HSA Council has secured legislative fixes for this problem in Illinois, Maryland and Vermont.

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Attachment 1
Feb 4, 2019

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SECRETARY: Asm. Kevin Cahill, NY

IMMEDIATE PAST PRESIDENTS:
Sen. Jason Rapert, AR
Sen. Travis Holdman, IN

For Immediate Release
January 16, 2019
Contact: Paul Penna
(732) 201-4133

NCOIL URGES SUPPORT OF HEALTH SAVINGS ACCOUNTS

Passes Resolution Encouraging State Legislatures to Exempt HSA-Qualified Insurance Plans from Certain State First-Dollar Coverage Mandates

Manasquan, NJ – At the recently concluded 2018 NCOIL Annual Meeting in Oklahoma City, the organization unanimously passed a bi-partisan resolution in support of state regulated health savings account-based coverage. The resolution was sponsored by KY Rep. Steve Riggs and ND Sen. Jerry Klein.

Health Savings Accounts (HSAs) are linked to high deductible health plans (HDHPs), which must meet certain requirements, most notably that the plan deductible must apply to all covered benefits received from in-network providers – the only exception being for "preventive care services" as defined by the Internal Revenue Service (IRS).

The resolution aims to advise states to avoid the actions that certain states undertook relating to enacting laws requiring fully-insured plans issued within their borders to cover male sterilization benefits without application of the plan deductible, copays or coinsurance. Those laws effectively made HSAs inoperable in those states because the laws go beyond a clear understanding of what the IRS considers "preventive care services" that could be exempt from the deductible.

Accordingly, the resolution encourages state legislatures to adopt a provision in their state statutes exempting HSA-qualified insurance plans from any requirement, past or future, to cover any benefit without such benefit being subject to the policy deductible, coinsurance, or other cost-sharing unless such benefit is "preventive care" - as defined by the IRS.

"In my final NCOIL meeting as a legislator, I am proud to sponsor a resolution that aims to make health insurance more affordable for consumers and preserve coverage for the millions of Americans with HSAs" stated KY Rep. Steve Riggs, NCOIL Immediate Past President, who did not seek re-election and is retiring at the end of his term. "In my nearly three decades in the state legislature, the increasing cost of health insurance has been alarming and finding ways to save constituents money should be a priority for all lawmakers."

"Encouraging state legislators to adopt a provision of their state statutes exempting HSA-qualified insurance plans from these particular cost-sharing requirements is imperative so that residents with

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HSAs in those states can continue with coverage without any interruption," stated ND Sen. Jerry Klein, co-sponsor of the resolution. "Some of the states that created these conflicts in their statutes did so unknowingly, so it is important that NCOIL step in to make sure all states are aware of the problem and provide them with a solution."

"This is another example of NCOIL ensuring that that legislators understand the broader implication of their actions" said Commissioner Tom Considine, NCOIL CEO. "By communicating this with the Secretary of Health and Human Services NCOIL aims to ensure state regulation of insurance is protected."

A full copy of the resolution is below.

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Sen. Travis Holdman, IN

National Council of Insurance Legislators (NCOIL)

Resolution in Support of State Regulated Health Savings Account-Based Coverage

Adopted by the Financial Services Committee on December 6, 2018 and the Executive Committee on December 8, 2018

Sponsored by: Rep. Steve Riggs (KY) and Sen. Jerry Klein (ND)

WHEREAS, Health Savings Accounts (HSAs) insure tens-of-millions of Americans in the employer market and millions more who shop within each state's individual market; and

WHEREAS, HSAs are regulated primarily by the Internal Revenue Service (IRS), one critical feature of qualification being the prohibition of covering medical expenses that are not preventive in nature without cost-sharing; and

WHEREAS, HSAs in the insured marketplace require qualified insurance designed and licensed under the laws of the several states but in conformance with IRS regulations; and

WHEREAS, States, pursuant to federal law, regulate the business of insurance and thus the quality and quantity of health insurance products available within each state's borders; and

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Attachment 1
Feb 4, 2019

WHEREAS, States, at their discretion, decide what benefits must be covered by a policy of insurance within their borders, subject to federal guidelines [under the ACA]; and

WHEREAS, by enacting first dollar insurance mandates and/or coverage requirements for benefits other than preventive care, as defined by the IRS, states risk disqualifying otherwise HSA-qualified fully insured plans; and

WHEREAS, in states where a non-preventive benefit is required to be covered without cost-sharing, HSA owners become ineligible to contribute to their HSAs and must then find replacement health insurance;

NOW, THEREFORE, BE IT RESOLVED, that NCOIL policy shall be to encourage state legislators to adopt a provision of their state statutes exempting HSA-qualified insurance plans (as defined under 23 U.S.C § 223) from any requirement, past or future, to cover any benefit without such benefit being subject to the policy deductible, coinsurance, or other cost-sharing unless such benefit is preventive care - as defined by the IRS;

AND, BE IT FINALLY RESOLVED, that NCOIL shall communicate adoption of this policy to the Speaker of the House and Senate President of each state legislature, the Chair of all state committees that have jurisdiction over insurance matters, all state Insurance Commissioners, the National Association of Insurance Commissioners (NAIC), and to the Secretary of Health and Human Services (HHS).

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NCOIL is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to 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 policymakers 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 longstanding insurance issues.