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Health Savings Account Act

Did you know that global pharmaceutical company Bayer Healthcare was the corporate co-chair in 2011?

Summary

A bill to permit the establishment and maintenance of health savings accounts; to provide penalties and remedies; to exempt contributions from taxation; and to prescribe the requirements of and restrictions on health savings accounts.

Model Legislation

Section 1. {Title} This Act shall be known and may be cited as the "Health Savings Account Act."

Section 2. {Definitions} As used in this Act

(A) "Eligible individual" means the individual taxpayer, including employees of an employer who contributes to health savings accounts on the employees' behalf, whom:

(1) Must be covered by a "High Deductible Health Plan" individually or with dependent; and;

(2) May not be covered under any health plan that is not a high deductible health plan, except for:

(i) coverage for accidents

(ii) workers compensation insurance

(iii) insurance for a specified disease or illness

(iv) insurance paying a fixed amount per day per hospitalization

(v) tort liabilities

(3) Who establishes or on whose behalf the health savings account is established

(B) "Deductible" means the total deductible for an eligible individual and all the dependents of that eligible individual for a calendar year

(C) "Dependent" means the spouse or child of the eligible individual as defined in Section 152 of the Internal Revenue Code

(D) "Qualified medical expense" means an expense paid by the taxpayer for medical care described in Section 213(d) for the Internal Revenue Code

(E) "High deductible" means:

(1) In the case of self-only coverage, an annual deductible (increased each year by a cost-of-living adjustment) which is not less than $1000 and the sum of the annual deductible and other annual out-of-pocket expenses required to be paid under the plan for covered benefits does not exceed $5000

(2) In the case of family coverage, an annual deductible (increased each year by a cost-of-living adjustment) of not less that $2000 and the sum of the annual deductible and other annual out-of-pocket expenses required to be paid under the plan for covered benefits does not exceed $10,000

(3) A plan shall not fail to be treated as a high deductible plan by reason of failing to have a deductible for preventive care or, in the case of network plans, for having out-of-pocket expenses that exceed these limits on an annual deductible for services provided outside the network.

(F) "Health savings account" or "account" means a trust or custodian established in this state pursuant to a health savings account program exclusively to pay the qualified medical expenses of an eligible individual or his or her dependents, but only if the written governing instrument creating the account meets the following requirements:

(1) Except in the case of a rollover contribution, no contribution will be accepted

(a) unless it is in cash; or

(b) to the extent such contribution, when added to the previous contributions to the Account for the calendar year, exceeds 100 percent of the eligible individual's deductible or $2600 for an individual or $5150 per family, whichever is lower

(2) The trustee or custodian is a bank, an insurance company, or another person approved by the Secretary of Health and Human Services.

(3) No part of the trust assets will be invested in life insurance contracts

(4) The assets of the account will not be commingled with other property except as allowed for under Individual Retirement Accounts

(5) Eligible individual's interest in the account is nonforfeitable

(G) "Health Savings Account program" or "program" means a program that includes all of the following:

(1) The purchase by an eligible individual or by an employer of a high deductible health plan

(2) The contribution into a health savings account by an eligible individual or on behalf of an employee or by his or her employer. The total annual contribution may not exceed the amount of the plan's higher deductible or the amounts listed in Section F (1)(b)

(H) "High Deductible Health Plan" means a health coverage policy, certificate, or contract that provides for payments for covered benefits that exceed the higher deductible.

Section 3. {Applicability and Scope}

(A) The provisions of this Act shall apply also to taxpayers who are not receiving preferred federal tax treatment for a health savings account (under I.R.C. Section 223)

(B) For taxable years beginning after (insert year) a resident of (insert State) or an employer shall be allowed to deposit contributions to a health savings account. The amount of deposit for (insert year) shall not exceed the amount of the plan's high deductible, nor $2600 for an individual policy, and $5150 for a family policy.

(C) Except as provided in Section 5, principal contributed to and interest earned on a health savings account and money reimbursed to an eligible individual or an employee for qualified medical expenses are exempt from taxation under (the Income Tax Act).

Section 4. {Distribution of HSA Funds} The trustee or custodian shall utilize the funds held in a health savings account solely for the purpose of paying the qualified medical expenses of the eligible individual or his or her dependents, or to purchase a health coverage policy certificate, or contract, if the eligible individual is receiving unemployment compensation, is exercising continuation privileges under federal law, is purchasing a long term care insurance contract, or to pay for health insurance other than a Medicare supplemental policy for those who are Medicare eligible. Funds held in a health savings account shall not be used to cover expenses of the eligible individual or his or her dependents that are otherwise covered, including but not limited to, medical expense covered pursuant to an automobile insurance policy, worker's compensation insurance policy or self-insured plan, or another employer-funded health coverage policy, certificate, or contract.

Section 5. {HSA Withdrawals}

(A) Notwithstanding Section (C), (D), (E), or (F) an eligible individual may withdraw money from his or her health savings account for any purpose other than a purpose described in Section 4 (A).

(B) Subject to subsection (C), if the eligible individual withdraws money for any purpose other than a purpose described in section 4 (A) at any other time, all of the following apply:

(1) The amount of the withdrawal is income for the purposes in the (Income Tax Act) in the tax year of the withdrawal

(2) Interest earned on the account during the tax year in which a withdrawal under this subsection is made is income for the purposes of the (Income Tax Act)

(C) The amount of disbursement of any assets of a health savings account pursuant to a filing for protection under Title 11 of the United States Code, 11 U.S.C. 101, et seq. By an eligible individual or person for whose benefit the account was established is not considered a withdrawal for purposes of this section. The amount of a disbursement is not subject to taxation under (the Income Tax Act) and subsection (B) does not apply

(D) The transfer of an eligible individual's interest in a health savings account to an eligible individual's spouse or former spouse under a divorce or separation instrument shall not be considered a taxable transfer made by such eligible individual, notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as a health savings account with respect to which such spouse is the eligible individual

(E) Upon the death of the eligible individual, the trustee or custodian shall distribute the principle and accumulated interest of the health savings account to the estate of the deceased.

(F) If an employee becomes employed with a different employer that participates in a health savings account program, the employee may transfer his or her health savings account to that new employer's trustee or custodian, or to an individually purchased account program.

Section 6. {Severability clause}

Section 7. {Repealer clause}

Were *your* laws repealed?

Section 8. {Effective date}

Adopted by the Health and Human Services Task Force at the Spring Task Force Summit, May 2005. Approved by the ALEC Board of Directors, June 2005.