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HOUSE BILL 820

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BRETT D. JOHNSON

FOR THE HEALTH CARE REFORM COMMITTEE

AN ACT

RELATING TO INSURANCE; AMENDING THE MEDICAL CARE SAVINGS ACCOUNT ACT TO COMPLY WITH FEDERAL LAW REQUIREMENTS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-23D-1 NMSA 1978 (being Laws 1995, Chapter 93, Section 1) is amended to read:

"59A-23D-1. SHORT TITLE. -- ~~[Sections 1 through 7 of this act]~~ Chapter 59A, Article 23D NMSA 1978 may be cited as the "Medical Care Savings Account Act". "

Section 2. Section 59A-23D-2 NMSA 1978 (being Laws 1995, Chapter 93, Section 2) is amended to read:

"59A-23D-2. DEFINITIONS. -- As used in the Medical Care Savings Account Act:

A. "account administrator" means any of the

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1 following that administers medical care savings accounts:

2 (1) a national or state chartered bank, savings
3 and loan association, savings bank or credit union;

4 (2) a trust company authorized to act as a
5 fiduciary in this state;

6 (3) an insurance company or health maintenance
7 organization authorized to do business in this state pursuant to
8 the ~~[New Mexico]~~ Insurance Code; or

9 ~~[(4) an employer that has a self-insured health
10 plan under the federal Employee Retirement Income Security Act
11 of 1974;~~

12 ~~(5) a broker, agent or investment advisor;~~

13 ~~(6) a person who holds a certificate or
14 registration as an insurance administrator or for whom the
15 registration has been waived; or~~

16 ~~(7) an employer who participates in the medical
17 care savings account program;]~~

18 (4) a person approved by the federal health and
19 human services secretary;

20 B. "deductible" means the total covered medical
21 expense ~~[the]~~ an employee or his dependents must pay prior to
22 any payment by ~~[the]~~ a qualified higher deductible health plan
23 for a calendar year;

24 C. "department" means the department of insurance;

25 D. "dependent" means:

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- 1 (1) a spouse;
- 2 (2) an unmarried or unemancipated child of the
- 3 employee who is a minor and who is:
- 4 (a) a natural child;
- 5 (b) a legally adopted child;
- 6 (c) a stepchild living in the same
- 7 household who is primarily dependent on the employee for
- 8 maintenance and support;
- 9 (d) a child for whom the employee is the
- 10 legal guardian and who is primarily dependent on the employee
- 11 for maintenance and support, as long as evidence of the
- 12 guardianship is evidenced in a court order or decree; or
- 13 (e) a foster child living in the same
- 14 household, if the child is not otherwise provided with health
- 15 care or health insurance coverage;
- 16 (3) an unmarried child described in
- 17 Subparagraphs (a) through (e) of Paragraph (2) of this
- 18 subsection who is between the ages of eighteen and twenty-five
- 19 and is a full-time student at an accredited educational
- 20 institution; provided, "full-time student" means a student is
- 21 enrolled in and taking twelve or more semester hours or
- 22 equivalent contact hours in secondary, undergraduate or
- 23 vocational school or nine or more semester hours or equivalent
- 24 contact hours in graduate school; or
- 25 (4) a child over the age of eighteen who is

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1 incapable of self-sustaining employment by reason of mental
2 retardation or physical handicap and who is chiefly dependent on
3 the employee for support and maintenance;

4 E. "eligible individual" means an individual who
5 with respect to any month:

6 (1) is covered under a qualified higher
7 deductible health plan as of the first day of that month;

8 (2) is not, while covered under a qualified
9 higher deductible health plan, covered under any health plan
10 that:

11 (a) is not a qualified higher deductible
12 health plan; and

13 (b) provides coverage for any benefit
14 that is covered under the qualified higher deductible health
15 plan; and

16 (3) is covered by a qualified higher deductible
17 health plan that is established and maintained by the employer
18 of the individual or of the spouse of the individual when the
19 employer is a small employer;

20 ~~[E.]~~ F. "eligible medical expense" means an expense
21 paid by the employee for medical care described in Section
22 213(d) of the Internal Revenue Code of 1986 that is deductible
23 for federal income tax purposes to the extent that those amounts
24 are not compensated for by insurance or otherwise

25 ~~[F.]~~ G. "employee" includes a self-employed

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1 individual;

2 [G-] H. "employer" includes a self-employed

3 individual;

4 [H-] I. "medical care savings account" or "savings
5 account" means an account established by an employer ~~to pay the~~
6 ~~eligible medical expenses of an employee and his dependents~~ in
7 the United States exclusively for the purpose of paying the
8 eligible medical expenses of the employee, but only if the
9 written governing instrument creating the trust meets the
10 following requirements:

11 (1) except in the case of a rollover
12 contribution, no contribution will be accepted:

13 (a) unless it is in cash; or

14 (b) to the extent the contribution, when
15 added to previous contributions to the trust for the calendar
16 year, exceeds seventy-five percent of the highest annual limit
17 deductible permitted pursuant to the Medical Care Savings
18 Account Act;

19 (2) no part of the trust assets will be
20 invested in life insurance contracts;

21 (3) the assets of the trust will not be
22 commingled with other property except in a common trust fund or
23 common investment fund; and

24 (4) the interest of an individual in the
25 balance in his account is nonforfeitable;

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1 ~~[I.]~~ J. "program" means the medical care savings
2 account program established by an employer for his employees;
3 ~~[and~~

4 ~~J.]~~ K. "qualified higher deductible health plan"
5 means a health coverage policy, certificate or contract that
6 provides for payments for covered health care benefits that
7 exceed the policy, certificate or contract deductible ~~[and]~~,
8 that is purchased by an employer for the benefit of an employee
9 and that has the following deductible provisions:

10 (1) self only coverage with an annual
11 deductible of not less than one thousand five hundred dollars
12 (\$1,500) or more than two thousand two hundred fifty dollars
13 (\$2,250) and a maximum annual out-of-pocket expense requirement
14 of three thousand dollars (\$3,000), not including premiums;

15 (2) family coverage with an annual deductible
16 of not less than three thousand dollars (\$3,000) or more than
17 four thousand five hundred dollars (\$4,500) and a maximum annual
18 out-of-pocket expense requirement of five thousand five hundred
19 dollars (\$5,500), not including premiums; and

20 (3) preventive care coverage may be provided
21 within the policies without the preventive care being subjected
22 to the qualified higher deductibles; and

23 L. "small employer" means:

24 (1) with respect to any calendar year, an
25 employer that employed an average of fifty or fewer employees on

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1 business days during either of the two preceding calendar years,
2 but a preceding calendar year may be taken into account only if
3 the employer was in existence throughout that year and if not in
4 existence throughout a preceding calendar year, the
5 determination shall be based on the average number of employees
6 reasonably expected to be employed on business days in the
7 current calendar year; or

8 (2) a growing employer that satisfies the
9 conditions of Section 220C(4)(c) of the Internal Revenue Code of
10 1986. "

11 Section 3. Section 59A-23D-3 NMSA 1978 (being Laws 1995,
12 Chapter 93, Section 3) is amended to read:

13 "59A-23D-3. ACCOUNT ADMINISTRATOR--REGISTRATION WITH
14 DEPARTMENT--DEPARTMENT POWERS AND DUTIES. --

15 A. An account administrator shall register annually
16 with the department and pay [a] an annual registration fee of
17 twenty-five dollars (\$25.00). The registration fee shall be
18 deposited in the general fund. Registration as an account
19 administrator does not affect the regulation of a bank, savings
20 and loan association, credit union, trust company or insurance
21 company as otherwise provided by law.

22 B. An account administrator shall provide to the
23 department annually a list of the employers for whom it provides
24 account administration and the number of employees and
25 dependents for whom it administers accounts. The information

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1 shall be provided in the form requested by the department. The
2 department may request other information it deems appropriate
3 from the account administrator; provided, however, that the
4 department shall not request any information about an individual
5 employee or dependent unless a complaint has been filed with the
6 department by that employee or dependent and the information is
7 required to investigate the complaint.

8 C. The department may receive, investigate and
9 settle complaints about medical care savings accounts and
10 account administrators or it may refer complaints to other
11 appropriate agencies.

12 D. The department, beginning January 1, 1998, shall
13 adjust annually the ~~[maximum]~~ deductible for qualified higher
14 deductible health plans to reflect the ~~[last known increase in~~
15 ~~the medical care component of the consumer price index published~~
16 ~~by the United States department of labor. For 1995, the maximum~~
17 ~~deductible shall not be less than one thousand dollars (\$1,000)~~
18 ~~and not more than three thousand dollars (\$3,000)]~~ adjustment
19 allowed by the Internal Revenue Code of 1986 for medical savings
20 accounts.

21 ~~[E. The department may adjust annually the maximum~~
22 ~~employer contribution to reflect the last known increase in the~~
23 ~~medical care component of the consumer price index. For 1995,~~
24 ~~the employer's contribution shall not exceed three thousand~~
25 ~~dollars (\$3,000).]~~ "

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1 Section 4. Section 59A-23D-5 NMSA 1978 (being Laws 1995,
2 Chapter 93, Section 5) is amended to read:

3 "59A-23D-5. ACCOUNT ADMINISTRATOR--EMPLOYER AND EMPLOYEE
4 RESPONSIBILITIES. --

5 A. [The] An employer, in conjunction with [the] an
6 account administrator, shall provide a current written statement
7 to employees that details how money in their medical care
8 savings accounts is or will be invested and the rate of return
9 employees may reasonably anticipate on the investment of the
10 savings accounts. The account administrator shall file the
11 statement with the department.

12 B. Except as provided in Section [~~6 of this act~~]
13 59A-23D-6 NMSA 1978, money in [the] a savings account shall be
14 used solely for the purpose of paying the eligible medical
15 expenses of [the] an employee and his dependents.

16 C. The account administrator shall reimburse the
17 employee from the employee's medical care savings account for
18 eligible medical expenses. When seeking reimbursement, the
19 employee shall submit documentation of eligible medical expenses
20 paid by the employee.

21 D. If an employer makes contributions to a program
22 on a periodic installment basis, the employer may advance to an
23 employee, interest free, an amount necessary to cover eligible
24 medical expenses incurred that exceed the amount in the
25 employee's savings account if the employee agrees to repay the

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1 advance from future installments or when he ceases to be an
2 employee of the employer or a participant in the program. Such
3 advances shall be exempt from taxation under the Income Tax
4 Act. "

5 Section 5. Section 59A-23D-6 NMSA 1978 (being Laws 1995,
6 Chapter 93, Section 6) is amended to read:

7 "59A-23D-6. WITHDRAWALS. --

8 A. An employee may withdraw money without penalty
9 from his medical care savings account for a purpose other than
10 reimbursement of eligible medical expenses ~~when he reaches the~~
11 ~~age of fifty-nine and one-half]~~ when the employee attains the
12 age specified in Section 1811 of the Social Security Act. An
13 employee may also withdraw money without penalty for payment of
14 coverage for:

15 (1) a health plan during any period of
16 continuation coverage required under any federal law;

17 (2) a qualified long-term care insurance
18 contract as defined by Section 7702B(6) of the Internal Revenue
19 Code of 1986; or

20 (3) a health plan during a period in which the
21 individual is receiving unemployment compensation under any
22 federal or state law.

23 B. Except as provided in Subsection A of this
24 section, if an employee withdraws money from the employee's
25 medical care savings account ~~[on the last business day of the~~

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1 ~~account administrator's business year for a purpose not set~~
2 ~~forth in Section 4 of the Medical Care Savings Account Act the~~
3 ~~money withdrawn shall be considered income to the individual,~~
4 ~~subject to taxation. The withdrawal does not subject the~~
5 ~~employee to a penalty or make interest earned on the account~~
6 ~~during the tax year taxable as income to the employee] that is~~
7 ~~not used exclusively to pay eligible medical expenses of the~~
8 ~~employee or a dependent, it shall be included in the gross~~
9 ~~income of the employee for taxation purposes~~

10 C. Except as provided in Subsection A of this
11 section, if an employee withdraws money from the employee's
12 medical care savings account for a purpose [~~not set forth in~~
13 ~~Section 4 of the Medical Care Savings Account Act at any time~~
14 ~~other than the last business day of the account administrator's~~
15 ~~business year] other than a rollover to a new account~~
16 administrator:

17 (1) the amount of the withdrawal shall be
18 considered gross income to the [~~individual~~] employee and subject
19 to taxation; and

20 (2) the administrator shall [~~withdraw and~~] also
21 consider as a withdrawal on behalf of the employee [~~pay~~] a
22 penalty equal to [~~ten~~] fifteen percent of the amount of the
23 withdrawal and

24 [~~(3) all interest earned on the balance in the~~
25 ~~savings account during the tax year in which the withdrawal is~~

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1 ~~made shall be considered income to the individual and subject to~~
2 ~~taxation]~~ shall consider this as gross income to the employee
3 for taxation purposes.

4 D. If an individual is no longer employed by an
5 employer that participates in a program or if an employee
6 chooses to cease participating in the program, the individual or
7 employee shall, within sixty days of his final day of employment
8 or participation:

9 (1) request, in writing, the ~~[transfer]~~
10 rollover of his savings account to a new account administrator;

11 (2) request, in writing, that the former
12 employer's account administrator continue to administer the
13 savings account, including in the request an agreement to pay
14 the cost, if any, of account administration on that savings
15 account; or

16 (3) withdraw the money from the savings account
17 subject to the provisions of Subsection C of this section, if
18 the withdrawal is not for the purpose of a rollover when within
19 sixty days of the receipt of the funds they are placed with a
20 new account administrator.

21 E. No more than ~~[thirty days after the expiration of~~
22 ~~the sixty-day period]~~ sixty days after the date of notification
23 by the employee pursuant to Subsection D of this section, the
24 account administrator shall:

25 (1) transfer the savings account to a new

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1 account administrator as requested;

2 (2) agree, in writing, to continue to act as
3 the account administrator for the savings account; or

4 (3) mail a check to the individual or employee
5 at his last known address for the amount in the account as of
6 the day the check was issued [~~excluding the applicable~~
7 ~~withdrawal penalty. The penalty shall be paid to the human~~
8 ~~services department at the same time as the individual's or~~
9 ~~employee's check is issued~~].

10 F. Upon the death of an employee, the account
11 administrator shall distribute the principal and accumulated
12 interest of the savings account to the estate of the employee."

13 Section 6. Section 59A-23D-7 NMSA 1978 (being Laws 1995,
14 Chapter 93, Section 7) is amended to read:

15 "59A-23D-7. REPORT. --

16 A. The superintendent [~~of insurance~~] shall report to
17 the legislature on or before December 1, 1999 on the
18 availability of health care coverage pursuant to the Medical
19 Care Savings Account Act and the market share of programs in
20 comparison with traditional employer-provided health insurance
21 programs; the results of a survey of employer and employee
22 satisfaction with programs; and the results of a loss ratio
23 study relative to programs.

24 B. The superintendent shall adopt and promulgate
25 regulations for enforcing and administering the provisions of

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1 the Medical Care Savings Account Act."

2 Section 7. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

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**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 25, 1997

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
whom has been referred

HOUSE BILL 820

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

Respectfully submitted,

Gary King, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Rios, Sandel, Vigil

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 10, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 820

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 4, lines 18 and 19, strike "when the employer is
a small employer".

2. On page 5, line 8, after "employee" insert "or
dependent".

3. On page 6, line 3, remove bracket and line through "and"
and on line 4 insert an opening bracket before "J.".

4. On page 6, line 22, strike "; and" and insert a period
and closing quotation mark.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 820

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5. On page 6, strike lines 23 through 25 and on page 7,
strike lines 1 through 10.

Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: King, Rios

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 820

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 16, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been
referred

HOUSE BILL 820, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Shannon Robinson, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 820

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Adair, Boitano, Vernon, Smith

Absent: None

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[bracketed material] = delete