ENGROSSED HOUSE
BILL NO. 2649

By: Steele, Dank, Balkman, Covey, Denney, McCarter, Nance, Peterson (Pam), Sullivan, Terrill, Turner and Worthen of the House

and

Laughlin of the Senate

(insurance - amending 36 O.S., Sections 6060.15, 6060.16, 6060.17 and 6060.18 - Health Savings Account Act - definitions - eligible expenditures - Oklahoma Income Tax Code - codification - emergency)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 306, O.S.L. 2005 (36 O.S. Supp. 2005, Section 6060.15), is amended to read as follows:

Section 6060.15 As used in this act:

1. "Deductible" means the total deductible for an eligible individual and all the dependents of that eligible individual for a calendar year;

2. "Dependent" means the spouse or child of the eligible individual as defined in Section 152 of the Internal Revenue Code;

3. "Eligible individual" means the individual taxpayer, including employees of an employer who contributes to health savings accounts on the employees' behalf, who:

a. must be covered by a "high deductible health plan" individually or with dependent,

b. may not be covered under any health plan that is not a high deductible health plan, except for:

(1) coverage for accidents,

(2) workers' compensation insurance,

(3) insurance for a specified disease or illness,

(4) insurance paying a fixed amount per day per hospitalization, and

(5) tort liabilities, and

c. establishes the health savings account, or on whose behalf the health savings account is established;

4. "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 their dependents, but only if the written governing instrument creating the account meets the following requirements:

a. except in the case of a rollover contribution, no contribution will be accepted:

(1) unless it is in cash, or

(2) to the extent the contribution, when added to the previous contributions to the account for the calendar year, exceeds ~~one hundred percent (100%) of the eligible individual's deductible or Two Thousand Six Hundred Dollars ($2,600.00) for an individual or Five Thousand One Hundred Fifty Dollars ($5,150.00) per family, whichever is lower~~ the maximum contribution amount pursuant to Section 223 of the Internal Revenue Code,

b. the trustee or custodian is a bank, a credit union, an insurance company, or another person approved by the United States Secretary of Health and Human Services,

c. no part of the trust assets will be invested in life insurance contracts,

d. the assets of the account will not be commingled with other property except as allowed for under Individual Retirement Accounts, and

e. eligible individual's interest in the account is nonforfeitable;

5. "Health savings account program" or "program" means a program that includes all of the following:

a. the purchase by an eligible individual or by an employer of a high deductible health plan, and

b. the contribution into a health savings account by an eligible individual or on behalf of an employee or by their employer. The total annual contribution may not exceed the ~~amount of the plan's higher deductible or the amounts listed in paragraph 8 of this section~~ maximum contribution amount pursuant to Section 223 of the Internal Revenue Code;

6. "High deductible health plan" means a health coverage policy, certificate, or contract that provides for payments for covered benefits that exceed the higher deductible;

7. "Qualified medical expense" means an expense paid by the taxpayer for medical care described in paragraph d of Section 213 of the Internal Revenue Code, but only to the extent such amounts are not compensated for by insurance or otherwise; and

8. "High deductible" means:

a. in the case of self-only coverage, an annual deductible which is not less than One Thousand Dollars ($1,000.00) 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 Five Thousand Dollars ($5,000.00), or

b. in the case of family coverage, an annual deductible of not less than Two Thousand Dollars ($2,000.00) 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 Ten Thousand Dollars ($10,000.00).

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 which exceed these limits on an annual deductible for services provided outside the network.

SECTION 2. AMENDATORY Section 3, Chapter 306, O.S.L. 2005 (36 O.S. Supp. 2005, Section 6060.16), is amended to read as follows:

Section 6060.16 A. The provisions of this act shall also apply to taxpayers who are not receiving preferred federal tax treatment for a health savings account pursuant to Section 223 of the Internal Revenue Code.

B. For taxable years beginning after 2005, a resident of Oklahoma or an employer shall be allowed to deposit contributions to a health savings account. The amount of deposit for each year shall not exceed ~~one of the following:~~

~~1. The amount of the plan's high deductible; or~~

~~2. Two Thousand Six Hundred Dollars ($2,600.00) for an individual policy; or~~

~~3. Five Thousand One Hundred Fifty Dollars ($5,150.00) for a family policy~~ the maximum contribution amount pursuant to Section 223 of the Internal Revenue Code.

C. Except as provided in Section ~~5~~ 6060.18 of this ~~act~~ title, the following are exempt from taxation under the Oklahoma Income Tax Act:

1. Principal contributed to and interest earned on a health savings account ~~up to the amount of the high deductible~~; and

2. Money reimbursed to an eligible individual or an employee for qualified medical expenses.

SECTION 3. AMENDATORY Section 4, Chapter 306, O.S.L. 2005 (36 O.S. Supp. 2005, Section 6060.17), is amended to read as follows:

Section 6060.17 ~~A.~~ The trustee or custodian shall utilize the funds held in a health savings account solely for the following purposes:

1. To pay the qualified medical expenses of the eligible individual or their dependents; or

2. To purchase a health coverage policy certificate, or contract, if the eligible individual:

a. is receiving unemployment compensation,

b. is exercising continuation privileges under federal law, or

c. is purchasing a long-term care insurance contract; or

3. To pay for health insurance other than a Medicare supplemental policy for those who are Medicare eligible.

~~B. Funds held in a health savings account shall not be used to cover expenses of the eligible individual or their dependents that are otherwise covered, including, but not limited to, medical expenses covered by the following:~~

~~1. An automobile insurance policy;~~

~~2. Workers' compensation insurance policy or self-insured plan; or~~

~~3. Another employer-funded health coverage policy, certificate or contract.~~

SECTION 4. AMENDATORY Section 5, Chapter 306, O.S.L. 2005 (36 O.S. Supp. 2005, Section 6060.18), is amended to read as follows:

Section 6060.18 A. Notwithstanding paragraphs C, D, E, and F of this section, an eligible individual may withdraw money from

their health savings account for any purpose other than a purpose described in subsection A of Section ~~4~~ 6060.17 of this ~~act~~ title.

B. If the eligible individual withdraws money for any purpose other than a purpose described in ~~subsection A of~~ Section ~~4~~ 6060.17 of this ~~act~~ title, at any other time, all of the following shall apply:

1. The amount of the withdrawal is income for the purposes ~~in~~ of the Oklahoma Income Tax Act in the tax year of the withdrawal; and

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 Oklahoma Income Tax Act~~ The tax imposed on the withdrawal which is includable in income shall be increased by ten percent (10%) of the amount which is so includable.

C. The amount of disbursement of any assets of a health savings account pursuant to a filing for protection under Section 101 of Title 11 of the United States Code 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 Oklahoma Income Tax Act and subsection B of this section 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 title, and the interest shall, after the transfer, be treated as a health savings account with respect to which the spouse is the eligible individual.

E. Upon the death of the eligible individual, the trustee or custodian shall distribute the principal 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 their health savings account to that new employer's trustee or custodian, or to an individually purchased account program.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1375 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Oklahoma State and Education Employees Group Insurance Board shall make the health savings account authorized by the provisions of this act available to all persons who are eligible employees for purposes of any health care insurance offered through or under the supervision of the Board.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 16th day of February, 2006.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2006.

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Presiding Officer of the Senate