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SENATE BILL 685

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Leonard Lee Rawson

AN ACT

RELATING TO MEDICAL SAVINGS ACCOUNTS; ALLOWING FOR DIRECT
PAYMENTS TO HEALTH CARE PROVIDERS; PROVIDING LIABILITY FOR
PAYMENTS FOR INELIGIBLE MEDICAL EXPENSES.

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

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

"59A-23D-4. MEDICAL CARE SAVINGS ACCOUNT PROGRAM --

A. Except as otherwise provided by statute,
contract or collective bargaining agreement, an employer may
establish a medical care savings account program for his
employees.

B. In establishing the program, the employer
shall:

(1) provide a qualified higher deductible

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1 health plan for the benefit of his employees;

2 (2) contribute to medical care savings
3 accounts for the employees; and

4 (3) appoint an account administrator to
5 administer the savings accounts.

6 C. Principal contributed to and interest earned on
7 a medical care savings account and money [~~reimbursed from the~~
8 ~~savings account to an employee~~] paid for eligible medical
9 expenses are exempt from taxation under the Income Tax Act.
10 [~~For the purposes of this subsection, "reimbursement" includes~~
11 ~~advances paid to the employee by the employer for eligible~~
12 ~~medical expenses as provided in Subsection D of Section 5 of~~
13 ~~the Medical Care Savings Account Act.~~]

14 D. Before establishing a program, the employer
15 shall notify all employees in writing of the federal tax
16 status of the program and how federal income taxation affects
17 New Mexico income taxes.

18 E. Any compensation required by the account
19 administrator to administer the program shall be paid by the
20 employer, and the employer shall not require the employee to
21 contribute to such compensation while the employee
22 participates in the program. If the employee ceases to
23 participate in the program, he shall be responsible for costs
24 associated with his account.

25 F. Nothing in the Medical Care Savings Account Act

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1 prohibits the employer from requiring the employee to
2 contribute to the qualified higher deductible health plan or
3 the medical care savings account.

4 G. Nothing in the Medical Care Savings Account Act
5 requires an employee to participate in a program. The
6 employer shall offer the program to all employees on a
7 nondiscriminatory basis. "

8 Section 2. Section 59A-23D-5 NMSA 1978 (being Laws 1995,
9 Chapter 93, Section 5, as amended by Laws 1997, Chapter 243,
10 Section 29 and also by Laws 1997, Chapter 254, Section 4) is
11 amended to read:

12 "59A-23D-5. ACCOUNT ADMINISTRATOR- - EMPLOYER AND EMPLOYEE
13 RESPONSIBILITIES. - -

14 A. An employer, in conjunction with an account
15 administrator, shall provide a current written statement to
16 employees that details how money in their medical care savings
17 accounts is or will be invested and the rate of return
18 employees may reasonably anticipate on the investment of the
19 savings accounts. The account administrator shall file the
20 statement with the department.

21 B. Except as provided in Section 59A-23D-6 NMSA
22 1978, money in a savings account shall be used solely for the
23 purpose of paying the eligible medical expenses of an employee
24 and his dependents.

25 C. Payments may be made by the employee directly

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1 to a health care provider through the use of a debit card or
2 check that accesses the employee's medical savings account.
3 If the account administrator determines that the employee paid
4 for goods or services that do not qualify as eligible medical
5 expenses, the employee shall be required to reimburse his
6 medical savings account, and he shall be liable for any
7 federal and state taxes and penalties. If the employee
8 chooses to be reimbursed for eligible medical expenses, the
9 account administrator shall reimburse the employee from the
10 employee's medical care savings account [~~for eligible medical~~
11 ~~expenses~~]. When seeking reimbursement, the employee shall
12 submit documentation of eligible medical expenses paid by the
13 employee.

14 D. If an employer makes contributions to a program
15 on a periodic installment basis, the employer may advance to
16 an employee, interest free, an amount necessary to cover
17 eligible medical expenses incurred that exceed the amount in
18 the employee's savings account if the employee agrees to repay
19 the advance from future installments or when he ceases to be
20 an employee of the employer or a participant in the program.
21 Such advances shall be exempt from taxation under the Income
22 Tax Act. "

23 Section 3. Section 59A-23D-6 NMSA 1978 (being Laws 1995,
24 Chapter 93, Section 6, as amended by Laws 1997, Chapter 243,
25 Section 30 and also by Laws 1997, Chapter 254, Section 5) is

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1 amended to read:

2 "59A-23D-6. WITHDRAWALS. --

3 A. An employee may withdraw money without penalty
4 from his medical care savings account for a purpose other than
5 ~~[reimbursement of]~~ payment of eligible medical expenses when
6 the employee attains the age specified in Section 1811 of the
7 Social Security Act. An employee may also withdraw money
8 without penalty for payment of coverage for:

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

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

14 (3) a health plan during a period in which
15 the ~~[individual]~~ person is receiving unemployment compensation
16 under any federal or state law.

17 B. Except as provided in Subsection A of this
18 section, if an employee withdraws money from the employee's
19 medical care savings account that is not used exclusively to
20 pay eligible medical expenses of the employee or a dependent,
21 it shall be included in the gross income of the employee for
22 taxation purposes.

23 C. Except as provided in Subsection A of this
24 section, if an employee withdraws money from the employee's
25 medical care savings account for a purpose other than a

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1 rollover to a new account administrator:

2 (1) the amount of the withdrawal shall be
3 considered gross income to the employee and subject to
4 taxation; and

5 (2) the administrator shall also consider as
6 a withdrawal on behalf of the employee a penalty equal to
7 fifteen percent of the amount of the withdrawal and shall
8 consider this as gross income to the employee for taxation
9 purposes.

10 D. If [~~an individual~~] a person is no longer
11 employed by an employer that participates in a program or if
12 an employee chooses to cease participating in the program, the
13 [~~individual~~] person or employee shall, within sixty days of
14 his final day of employment or participation:

15 (1) request, in writing, the rollover of his
16 savings account to a new account administrator;

17 (2) request, in writing, that the former
18 employer's account administrator continue to administer the
19 savings account, including in the request an agreement to pay
20 the cost, if any, of account administration on that savings
21 account; or

22 (3) withdraw the money from the savings
23 account subject to the provisions of Subsection C of this
24 section, if the withdrawal is not for the purpose of a
25 rollover when within sixty days of the receipt of the funds

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1 they are placed with a new account administrator.

2 E. No more than sixty days after the date of
3 notification by the employee pursuant to Subsection D of this
4 section, the account administrator shall:

5 (1) transfer the savings account to a new
6 account administrator as requested;

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

9 (3) mail a check to the [~~individual~~] person
10 or employee at his last known address for the amount in the
11 account as of the day the check was issued.

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