

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 health plan for the benefit of his employees;

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

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

C. Principal contributed to and interest earned on a medical care savings account and money paid for eligible medical expenses are exempt from taxation under the Income Tax Act.

D. Before establishing a program, the employer

shall notify all employees in writing of the federal tax status of the program and how federal income taxation affects New Mexico income taxes.

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

F. Nothing in the Medical Care Savings Account Act prohibits the employer from requiring the employee to contribute to the qualified higher deductible health plan or the medical care savings account.

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

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

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

A. An employer, in conjunction with an account administrator, shall provide a current written statement to

employees that details how money in their medical care savings accounts is or will be invested and the rate of return employees may reasonably anticipate on the investment of the savings accounts. The account administrator shall file the statement with the department.

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

C. Payments may be made by the employee directly to a health care provider through the use of a debit card or check that accesses the employee's medical savings account. If the account administrator determines that the employee paid for goods or services that do not qualify as eligible medical expenses, the employee shall be required to reimburse his medical savings account, and he shall be liable for any federal and state taxes and penalties. If the employee chooses to be reimbursed for eligible medical expenses, the account administrator shall reimburse the employee from the employee's medical care savings account. When seeking reimbursement, the employee shall submit documentation of eligible medical expenses paid by the employee.

D. If an employer makes contributions to a program on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary

to cover eligible medical expenses incurred that exceed the amount in the employee's savings account if the employee agrees to repay the advance from future installments or when he ceases to be an employee of the employer or a participant in the program. Such advances shall be exempt from taxation under the Income Tax Act. "

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

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

A. An employee may withdraw money without penalty from his medical care savings account for a purpose other than payment of eligible medical expenses when the employee attains the age specified in Section 1811 of the Social Security Act. An employee may also withdraw money without penalty for payment of coverage for:

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

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

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

B. Except as provided in Subsection A of this

section, if an employee withdraws money from the employee's medical care savings account that is not used exclusively to pay eligible medical expenses of the employee or a dependent, it shall be included in the gross income of the employee for taxation purposes.

C. Except as provided in Subsection A of this section, if an employee withdraws money from the employee's medical care savings account for a purpose other than a rollover to a new account administrator:

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

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

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

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

(2) request, in writing, that the former employer's account administrator continue to administer the

savings account, including in the request an agreement to pay the cost, if any, of account administration on that savings account; or

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

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

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

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

(3) mail a check to the person or employee at his last known address for the amount in the account as of the day the check was issued.

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

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