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HOUSE BILL 449

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

LUCIANO "LUCKY" VARELA

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO MEDICAL CARE SAVINGS ACCOUNTS; CHANGING PROVISIONS
PERTAINING TO THE INCOME TAX EXEMPTION FOR MEDICAL CARE SAVINGS
ACCOUNTS; PROVIDING FOR A CONTINGENT REPEAL OF THE INCOME TAX
EXEMPTION FOR MEDICAL CARE SAVINGS ACCOUNTS; AMENDING, REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-2-5.6 NMSA 1978 (being Laws 1995,
Chapter 93, Section 8) is amended to read:

"7-2-5.6. EXEMPTION--MEDICAL CARE SAVINGS ACCOUNTS. --
Except as provided in Section [~~6 of this act~~] 59A-23D-6 NMSA
1978, employer and employee contributions to medical care
savings accounts established pursuant to the Medical Care
Savings Account Act, the interest earned on those accounts and
money reimbursed to an employee for eligible medical expenses

1 from those accounts or money advanced to the employee by the
2 employer for eligible medical expenses pursuant to that act are
3 exempt from taxation. "

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

6 "59A-23D-2. DEFINITIONS. --As used in the Medical Care
7 Savings Account Act:

8 A. "account administrator" means any of the
9 following that administers medical care savings accounts:

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

12 (2) a trust company authorized to act as a
13 fiduciary in this state;

14 (3) an insurance company or health maintenance
15 organization authorized to do business in this state pursuant to
16 the New Mexico Insurance Code;

17 (4) an employer that has a self-insured health
18 plan under the federal Employee Retirement Income Security Act
19 of 1974;

20 (5) a broker, agent or investment advisor;

21 (6) a person who holds a certificate [ø] of
22 registration as an insurance administrator or for whom the
23 registration has been waived; or

24 (7) an employer who participates in the medical
25 care savings account program;

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

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

6 D. "dependent" means:

7 (1) a spouse;

8 (2) an unmarried or unemancipated child of the
9 employee who is a minor and who is:

10 (a) a natural child;

11 (b) a legally adopted child;

12 (c) a stepchild living in the same
13 household who is primarily dependent on the employee for
14 maintenance and support;

15 (d) a child for whom the employee is the
16 legal guardian and who is primarily dependent on the employee
17 for maintenance and support, as long as evidence of the
18 guardianship is evidenced in a court order or decree; or

19 (e) a foster child living in the same
20 household, if the child is not otherwise provided with health
21 care or health insurance coverage;

22 (3) an unmarried child described in
23 Subparagraphs (a) through (e) of Paragraph (2) of this
24 subsection who is between the ages of eighteen and twenty-five
25 and is a full-time student at an accredited educational

Underscored material = new
[bracketed material] = delete

1 institution; provided, "full-time student" means a student is
2 enrolled in and taking twelve or more semester hours or
3 equivalent contact hours in secondary, undergraduate or
4 vocational school or nine or more semester hours or equivalent
5 contact hours in graduate school; or

6 (4) a child described in Subparagraphs (a)
7 through (e) of Paragraph (2) of this subsection who is over the
8 age of eighteen, who is incapable of self-sustaining employment
9 by reason of mental retardation or physical handicap and who is
10 [~~chiefly~~] primarily dependent on the employee for support and
11 maintenance;

12 E. "eligible medical expense" means an expense paid
13 by the employee for medical care described in Section 213(d) of
14 the Internal Revenue Code of 1986 that is deductible for federal
15 income tax purposes;

16 F. "employee" includes a self-employed individual;

17 G. "employer" includes a self-employed individual;

18 H. "employer contributions" means the sum of cash
19 and securities contributed by an employer to a medical care
20 savings account plus any medical care savings account advances
21 made by an employer to an employee;

22 [~~H.~~] I. "medical care savings account" or "savings
23 account" means an account established by an employer to pay the
24 eligible medical expenses of an employee and his dependents;

25 [~~H.~~] J. "program" means the medical care savings

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[bracketed material] = delete

1 account program established by an employer for his employees;
2 and

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

8 Section 3. Section 59A-23D-4 NMSA 1978 (being Laws 1995,
9 Chapter 93, Section 4) is amended to read:

10 "59A-23D-4. MEDICAL CARE SAVINGS ACCOUNT PROGRAM --

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

14 B. In establishing the program, the employer shall:

- 15 (1) provide a qualified higher deductible
16 health plan for the benefit of his employees;
17 (2) contribute to medical care savings accounts
18 for the employees; and
19 (3) appoint an account administrator to
20 administer the savings accounts.

21 [~~C. Principal contributed to and interest earned on~~
22 ~~a medical care savings account and money reimbursed from the~~
23 ~~savings account to an employee for eligible medical expenses are~~
24 ~~exempt from taxation under the Income Tax Act. For the purposes~~
25 ~~of this subsection, "reimbursement" includes advances paid to~~

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[bracketed material] = delete

1 ~~the employee by the employer for eligible medical expenses as~~
2 ~~provided in Subsection D of Section 5 of the Medical Care~~
3 ~~Savings Account Act.~~

4 ~~D.]~~ C. Before establishing a program, the employer
5 shall notify all employees in writing of the federal tax status
6 of the program and how federal income taxation affects New
7 Mexico income taxes.

8 ~~[E.]~~ D. Any compensation required by the account
9 administrator to administer the program shall be paid by the
10 employer, and the employer shall not require the employee to
11 contribute to such compensation while the employee participates
12 in the program. If the employee ceases to participate in the
13 program, he shall be responsible for costs associated with his
14 account.

15 ~~[F.]~~ E. Nothing in the Medical Care Savings Account
16 Act prohibits the employer from requiring the employee to
17 contribute to the qualified higher deductible health plan or the
18 medical care savings account.

19 ~~[G.]~~ F. Nothing in the Medical Care Savings Account
20 Act requires an employee to participate in a program. The
21 employer shall offer the program to all employees on a
22 nondiscriminatory basis. "

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

25 "59A-23D-5. ACCOUNT ADMINISTRATOR--EMPLOYER AND EMPLOYEE

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[bracketed material] = delete

1 RESPONSIBILITIES. --

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

9 B. Except as provided in Section ~~[6 of this act]~~
10 59A-23D-6 NMSA 1978, money in ~~[the]~~ a medical care savings
11 account shall be used solely for the purpose of paying the
12 eligible medical expenses of ~~[the]~~ an employee and his
13 dependents.

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

19 D. If an employer makes contributions to a program
20 on a periodic installment basis, the employer may advance to an
21 employee, interest free, an amount necessary to cover eligible
22 medical expenses incurred that exceed the amount in the
23 employee's savings account if the employee agrees to repay the
24 advance from future installments or when he ceases to be an
25 employee of the employer or a participant in the program. ~~[Such~~

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[bracketed material] = delete

1 ~~advances shall be exempt from taxation under the Income Tax~~
2 ~~Act.]"~~

3 Section 5. Section 59A-23D-6 NMSA 1978 (being Laws
4 1995, Chapter 93, Section 6) is amended to read:

5 "59A-23D-6. WITHDRAWALS. --

6 ~~[A. An employee may withdraw money without penalty~~
7 ~~from his medical care savings account for a purpose other than~~
8 ~~reimbursement of eligible medical expenses when he reaches the~~
9 ~~age of fifty-nine and one-half.~~

10 ~~B. Except as provided in Subsection A of this~~
11 ~~section]~~

12 A. If an employee withdraws money from the
13 employee's medical care savings account on the last business day
14 of the account administrator's business year for a purpose [~~not~~
15 ~~set forth in Section 4 of the Medical Care Savings Account Act]~~
16 other than payment of eligible medical expenses, the money
17 withdrawn shall be considered income to the individual, subject
18 to taxation. The withdrawal does not subject the employee to a
19 penalty or make interest earned on the account during the tax
20 year taxable as income to the employee.

21 ~~[C. Except as provided in Subsection A of this~~
22 ~~section]~~

23 B. If an employee withdraws money from the
24 employee's medical care savings account for a purpose [~~not set~~
25 ~~forth in Section 4 of the Medical Care Savings Account Act]~~

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[bracketed material] = delete

1 other than payment of eligible medical expenses at any time
2 other than the last business day of the account administrator's
3 business year:

4 (1) the amount of the withdrawal shall be
5 considered income to the [~~individual~~] employee and subject to
6 taxation;

7 (2) the administrator shall withdraw and, on
8 behalf of the employee, pay a penalty equal to ten percent of
9 the amount of the withdrawal; and

10 (3) all interest earned on the balance in the
11 savings account during the tax year in which the withdrawal is
12 made shall be considered income to the [~~individual~~] employee and
13 subject to taxation.

14 [~~D-~~] C. If an individual is no longer employed by an
15 employer that participates in a program or if an employee
16 chooses to cease participating in the program, the individual or
17 employee shall, within sixty days of his final day of employment
18 or participation:

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

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

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[bracketed material] = delete

1 (3) withdraw the money from the savings
2 account.

3 [~~E.~~] D. No more than thirty days after the
4 expiration of the sixty-day period pursuant to Subsection [~~D~~] C
5 of this section, the account administrator shall:

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

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

10 (3) mail a check to the individual or employee
11 at his last known address for the amount in the account as of
12 the day the check was issued, excluding the applicable
13 withdrawal penalty. The penalty shall be paid to the [~~human~~
14 ~~services~~] department at the same time as the individual's or
15 employee's check is issued. Any penalty received shall be
16 deposited into the general fund.

17 [~~F.~~] E. Upon the death of an employee, the account
18 administrator shall distribute the principal and accumulated
19 interest of the savings account to the estate of the employee."

20 Section 6. Section 59A-23D-6 NMSA 1978 (being Laws 1995,
21 Chapter 93, Section 6, as amended by Section 5 of this act,) is
22 repealed and a new Section 59A-23D-6 NMSA 1978 is enacted to
23 read:

24 "59A-23D-6. [NEW MATERIAL] WITHDRAWALS. --

25 A. If an employee withdraws money from the

1 employee's medical care savings account on the last business day
2 of the account administrator's business year for a purpose other
3 than payment of eligible medical expenses, the money withdrawn
4 shall be considered income to the individual and subject to
5 taxation to the extent that the money withdrawn is considered
6 income and subject to taxation under the provisions of the
7 Internal Revenue Code of 1986, as amended. The withdrawal does
8 not subject the employee to a penalty.

9 B. If an employee withdraws money from the
10 employee's medical care savings account for a purpose other than
11 payment of eligible medical expenses at any time other than the
12 last business day of the account administrator's business year:

13 (1) the amount of the withdrawal shall be
14 considered income to the employee and subject to taxation to the
15 extent that the money withdrawn is considered income and subject
16 to taxation under the provisions of the Internal Revenue Code of
17 1986, as amended;

18 (2) the administrator shall withdraw and, on
19 behalf of the employee, pay a penalty equal to ten percent of
20 the amount of the withdrawal; and

21 (3) all interest earned on the balance in the
22 savings account during the tax year in which the withdrawal is
23 made shall be considered income to the employee and subject to
24 taxation to the extent that the money withdrawn is considered
25 income and subject to taxation under the provisions of the

1 Internal Revenue Code of 1986, as amended.

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

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

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

14 (3) withdraw the money from the savings
15 account.

16 D. No more than thirty days after the expiration of
17 the sixty-day period pursuant to Subsection C of this section,
18 the account administrator shall:

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

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

23 (3) mail a check to the individual or employee
24 at his last known address for the amount in the account as of
25 the day the check was issued, excluding the applicable

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[bracketed material] = delete

1 withdrawal penalty. The penalty shall be paid to the department
2 at the same time as the individual's or employee's check is
3 issued. Any penalty received shall be deposited into the
4 general fund.

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

8 Section 7. REPEAL. -- Section 7-2-5.6 NMSA 1978 (being Laws
9 1995, Chapter 93, Section 8, as amended by Section 1 of this
10 act) is repealed.

11 Section 8. APPLICABILITY. --

12 A. The provisions of Sections 1, 2 and 5 of this act
13 apply to taxable years beginning on or after January 1, 1996.

14 B. The provisions of Sections 3, 4, 6 and 7 of this
15 act are applicable to taxable years for which the federal act
16 described in Section 9 of this act is applicable.

17 Section 9. CONTINGENT EFFECTIVE DATE. -- The provisions of
18 Sections 3, 4, 6 and 7 of this act are contingent upon the
19 passage by the United States congress and the approval by the
20 president of the United States of an act establishing income tax
21 treatment of medical care savings accounts similar to the
22 treatment established by Laws 1995, Chapter 93. Sections 3, 4,
23 6 and 7 of this act become effective on the date that the
24 federal act is effective for federal purposes.

State of New Mexico
House of Representatives

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4 **FORTY- SECOND LEGISLATURE**
5 **SECOND SESSION, 1996**
6
7

8
9 February 12, 1996
10

11 **Mr. Speaker:**
12

13 Your TAXATION AND REVENUE COMMITTEE, to whom has
14 been referred
15

16 HOUSE BILL 449
17

18 has had it under consideration and reports same with
19 recommendation that it DO PASS, amended as follows:
20

21 1. On page 5, between lines 7 and 8, insert the following
22 new section:
23

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

"59A- 23D- 3. ACCOUNT ADMINISTRATOR- - REGISTRATION WITH

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SECOND SESSION, 1996

HTRC/HB 449

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~~DEPARTMENT-- DEPARTMENT POWERS AND DUTIES. --~~

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

B. An account administrator shall provide to the department annually a list of the employers for whom it provides account administration and the number of employees and dependents for whom it administers accounts. The information shall be provided in the form requested by the department. The department may request other information it deems appropriate from the account administrator; provided, however, that the department shall not request any information about an individual employee or dependent unless a complaint has been filed with the department by that employee or dependent and the information is required to investigate the complaint.

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

D. The department shall adjust annually the maximum

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HTRC/HB 449

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1
2 deductible for qualified higher deductible health plans to reflect
3 the last known increase in the medical care component of the
4 consumer price index published by the United States department of
5 labor. For 1995, the maximum deductible shall not be less than
6 one thousand dollars (\$1,000) and not more than three thousand
7 dollars (\$3,000).

8 E. ~~[The department may adjust annually the maximum~~
9 ~~employer contribution to reflect the last known increase in the~~
10 ~~medical care component of the consumer price index. For 1995, the~~
11 ~~employer's contribution shall not exceed three thousand dollars~~
12 ~~(\$3,000).]~~ The annual employer contributions shall not exceed two
13 thousand dollars (\$2,000). Any annual contributions by an
14 employee shall not exceed two thousand dollars (\$2,000). ".

15 2. Renumber the succeeding sections accordingly.

16
17 3. On page 13, line 12, strike "and 5" and insert in lieu
18 thereof ", 3 and 6".

19
20 4. On page 13, line 14, strike "3, 4, 6 and 7" and insert in
21 lieu thereof "4, 5, 7 and 8".

22 5. On page 13, line 16, strike "9" and insert in lieu
23 thereof "10".

24
25 6. On page 13, line 18, strike "3, 4, 6 and 7" and insert in
lieu thereof "4, 5, 7 and 8".

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SECOND SESSION, 1996

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7. On page 13, lines 22 and 23, strike "3, 4, 6 and 7" and
insert in lieu thereof "4, 5, 7 and 8".

Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 12 For 0 Against

Yes: 12

Excused: None

Absent: Ryan

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Underscored material = new
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1 FORTY-SECOND LEGISLATURE
2 SECOND SESSION, 1996

HB 449/a

3
4 February 14, 1996

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6 Mr. President:

7
8 Your WAYS AND MEANS COMMITTEE, to whom has been
9 referred

10 HOUSE BILL 449, as amended

11
12 has had it under consideration and reports same with
13 recommendation that it DO PASS, amended as follows:

14
15 1. Strike House Taxation and Revenue Committee amendment 1.

16
17 2. On page 5, between lines 7 and 8, insert the following new
18 section:

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

21
22 "59A-23D-3. ACCOUNT ADMINISTRATOR--REGISTRATION WITH
23 DEPARTMENT--DEPARTMENT POWERS AND DUTIES.--

24
25 A. An account administrator shall register with the
department and pay a registration fee of twenty-five dollars
(\$25.00). The registration fee shall be deposited in the general

. 110358.1

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

WAYS AND MEANS COMMITTEE/H449

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fund. Registration as an account administrator does not affect the regulation of a bank, savings and loan association, credit union, trust company or insurance company as otherwise provided by law.

B. An account administrator shall provide to the department annually a list of the employers for whom it provides account administration and the number of employees and dependents for whom it administers accounts. The information shall be provided in the form requested by the department. The department may request other information it deems appropriate from the account administrator; provided, however, that the department shall not request any information about an individual employee or dependent unless a complaint has been filed with the department by that employee or dependent and the information is required to investigate the complaint.

Underscored material = new
[bracketed material] = delete

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

WAYS AND MEANS COMMITTEE/H449

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

D. The department shall adjust annually the maximum deductible for qualified higher deductible health plans to reflect the last known increase in the medical care component of the consumer price index published by the United States department of labor. For 1995, the maximum deductible shall not be less than one thousand dollars (\$1,000) and not more than three thousand dollars (\$3,000).

E. ~~[The department may adjust annually the maximum employer contribution to reflect the last known increase in the medical care component of the consumer price index. For 1995, the employer's contribution shall not exceed three thousand dollars (\$3,000).]~~ The annual employer contribution per employee shall not exceed two thousand five hundred dollars (\$2,500). Any annual contribution by an employee shall not exceed two thousand five hundred dollars (\$2,500). "

3. Renumber the succeeding sections accordingly.

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

WAYS AND MEANS COMMITTEE/H449

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Respectfully submitted,

TITO D. CHAVEZ, Chairman

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

Date _____

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**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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WAYS AND MEANS COMMITTEE/H449

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The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Wiener

Absent: None

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