

ASSEMBLY COMMITTEE SUBSTITUTE FOR
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ASSEMBLY, Nos. 671 and 495

STATE OF NEW JERSEY

ADOPTED JANUARY 9, 1997

**Sponsored by Assemblymen BAGGER, ROMA and
Assemblywoman VANDERVALK**

1 AN ACT concerning medical savings accounts, amending P.L.1992,
2 c.161 and P.L.1992, c.162 and amending and supplementing Title
3 54A of the New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 6 of P.L.1992, c.161 (C.17B:27A-7) is amended to
9 read as follows:

10 6. The board shall establish the policy and contract forms and
11 benefit levels to be made available by all carriers for the policies
12 required to be issued pursuant to section 3 of P.L.1992, c.161
13 (C.17B:27A-4) , and shall adopt such modifications to one or more
14 plans as the board determines are necessary to make available a "high
15 deductible health plan" or plans compatible with the medical savings
16 accounts established pursuant to section 220 of the federal Internal
17 Revenue Code of 1986, 26 U.S.C. §220, within 60 days after the
18 enactment of P.L. , c. (C.) (now pending before the Legislature
19 as this bill). The board shall provide the commissioner with an
20 informational filing of the policy and contract forms and benefit levels
21 it establishes.

22 a. the individual health benefits plans established by the board may
23 include cost containment measures such as, but not limited to:
24 utilization review of health care services, including review of medical
25 necessity of hospital and physician services; case management benefit
26 alternatives; selective contracting with hospitals, physicians, and other
27 health care providers; and reasonable benefit differentials applicable to
28 participating and nonparticipating providers; and other managed care

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 provisions.

2 b. An individual health benefits plan offered pursuant to section 3
3 of P.L.1992, c.161 (C.17B:27A-4) shall contain a limitation of no
4 more than 12 months on coverage for preexisting conditions, except
5 that the limitation shall not apply to an individual who has, under a
6 prior group or individual health benefits plan or Medicaid, with no
7 intervening lapse in coverage of more than 30 days, been treated or
8 diagnosed by a physician for a condition under that plan or satisfied a
9 12-month preexisting condition limitation.

10 c. In addition to the five standard individual health benefits plans
11 provided for in section 3 of P.L.1992, c.161 (C.17B:27A-4), the board
12 may develop up to five rider packages. Premium rates for the rider
13 packages shall be determined in accordance with section 8 of
14 P.L.1992, c.161 (C.17B:27A-9).

15 d. After the board's establishment of the individual health benefits
16 plans required pursuant to section 3 of P.L.1992, c.161
17 (C.17B:27A-4), and notwithstanding any law to the contrary, a carrier
18 shall file the policy or contract forms with the board and certify to the
19 board that the health benefits plans to be used by the carrier are in
20 substantial compliance with the provisions in the corresponding board
21 approved plans. The certification shall be signed by the chief
22 executive officer of the carrier. Upon receipt by the board of the
23 certification, the certified plans may be used until the board, after
24 notice and hearing, disapproves their continued use.

25 e. Effective immediately for an individual health benefits plan
26 issued on or after the effective date of P.L.1995, c.316
27 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary
28 date of an individual health benefits plan in effect on the effective date
29 of P.L.1995, c.316 (C.17:48E-35.10 et al.), the individual health
30 benefits plans required pursuant to section 3 of P.L.1992, c.161
31 (C.17B:27A-4), including any plan offered by a federally qualified
32 health maintenance organization, shall contain benefits for expenses
33 incurred in the following:

34 (1) Screening by blood lead measurement for lead poisoning for
35 children, including confirmatory blood lead testing as specified by the
36 Department of Health pursuant to section 7 of P.L.1995, c.316
37 (C.26:2-137.1); and medical evaluation and any necessary medical
38 follow-up and treatment for lead poisoned children.

39 (2) All childhood immunizations as recommended by the Advisory
40 Committee on Immunization Practices of the United States Public
41 Health Service and the Department of Health pursuant to section 7 of
42 P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in
43 writing, of any change in the health care services provided with respect
44 to childhood immunizations and any related changes in premium. Such
45 notification shall be in a form and manner to be determined by the
46 Commissioner of Insurance.

1 The benefits shall be provided to the same extent as for any other
2 medical condition under the health benefits plan, except that no
3 deductible shall be applied for benefits provided pursuant to this
4 section. This section shall apply to all individual health benefits plans
5 in which the carrier has reserved the right to change the premium.
6 (cf: P.L.1995, c.316, s.5)

7

8 2. Section 17 of P.L.1992, c.162 (C.17B:27A-33) is amended to
9 read as follows:

10 17. Subject to the approval of the commissioner, the board shall
11 formulate the five health benefits plans, and shall adopt such
12 modifications to one or more plans as the board determines are
13 necessary to make available a "high deductible health plan" or plans
14 compatible with the medical savings accounts established pursuant to
15 section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C.
16 §220, within 60 days after the enactment of P.L. , c. (C.)(now
17 pending before the Legislature as this bill), to be made available by
18 small employer carriers in accordance with the provisions of this act,
19 and shall promulgate five standard forms pursuant thereto. The board
20 may establish benefits levels, deductibles and copayments, exclusions,
21 and limitations for such health benefits plans in accordance with the
22 law.

23 The board shall submit the forms so established to the
24 commissioner for his approval. The commissioner shall approve the
25 forms if he finds them to be consistent with the provisions of section
26 3 of P.L.1992, c.162 (C.17B:27A-19). Any form submitted to the
27 commissioner by the board shall be deemed approved if not expressly
28 disapproved in writing within 60 days of its receipt by the
29 commissioner. Such forms may contain, but shall not be limited to, the
30 following provisions:

31 a. Utilization review of health care services, including review of
32 medical necessity of hospital and physician services;

33 b. Managed care systems, including large case management;

34 c. Provision for selective contracting with hospitals, physicians,
35 and other health care providers;

36 d. Reasonable benefits differentials which are applicable to
37 participating and nonparticipating providers;

38 e. Notwithstanding the provisions of section 4 of P.L.1992, c.162
39 (C.17B:27A-20) to the contrary, the board may, from time to time,
40 adjust coinsurance and deductibles;

41 f. Such other provisions which may be quantifiably established to
42 be cost containment devices;

43 g. The department shall publish annually a list of the premiums
44 charged for each of the five small employer health benefits plans and
45 for any rider package by all carriers writing such plans. The
46 department shall also publish the toll free telephone number of each

1 such carrier.
2 (cf: P.L.1993, c.162, s.8)

3
4 3. N.J.S.54A:3-3 is amended to read as follows:

5 54A:3-3. Medical expenses. (a) Each taxpayer shall be allowed to
6 deduct from ~~[his] the taxpayer's~~ gross income medical expenses for
7 ~~[himself] the taxpayer, [his] the taxpayer's~~ spouse, and ~~[his] the~~
8 ~~taxpayer's~~ dependents with respect to such expenses that were paid
9 during the taxable year and to the extent that such medical expenses
10 exceed 2% of the taxpayer's gross income. In the case of a
11 nonresident, gross income shall mean gross income which such
12 nonresident would have reported if ~~[he] the taxpayer~~ had been subject
13 to tax during the entire taxable year as a resident.

14 (b) Special Rule for Decedents.

15 (1) Treatment of expenses paid after death. Expenses for the
16 medical care of the taxpayer which are paid out of ~~[his] the taxpayer's~~
17 estate during the one-year period beginning with the day after the day
18 of the death shall be treated as paid by the taxpayer at the time
19 incurred.

20 (2) Limitation. Paragraph (1) shall not apply if the amount paid is
21 not allowable as a deduction in computing medical expense deductions
22 for federal income tax purposes.

23 (c) ~~[Exclusion]~~ Disallowance of amounts allowed for ~~[care of~~
24 ~~certain dependents]~~ other purposes. Any expenses allowed as a
25 deduction of expenses for household and dependent care services
26 necessary for gainful employment shall not be allowed as an expense
27 paid for medical care for purposes of this section. Any amounts paid
28 or distributed out of a medical savings account that are excluded from
29 gross income pursuant to section 6 of P.L. , c. (C.)(now pending
30 before the Legislature as this bill) shall not be allowed as an expense
31 paid for medical care for purposes of this section.

32 (cf: 54A:3-3)

33

34 4. (New section) A taxpayer may deduct from the taxpayer's
35 gross income an amount equal to the contributions to a medical
36 savings account that the taxpayer is allowed for the taxable year as a
37 deduction for federal income tax purposes pursuant to section 220 of
38 the federal Internal Revenue Code of 1986, 26 U.S.C. §220.

39

40 5. N.J.S.54A:5-1 is amended to read as follows:

41 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
42 income shall consist of the following categories of income:

43 a. Salaries, wages, tips, fees, commissions, bonuses, and other
44 remuneration received for services rendered whether in cash or in
45 property , and amounts paid or distributed, or deemed paid or
46 distributed, out of a medical savings account that are not excluded

1 from gross income pursuant to section 6 of P.L. , c. (C.)(now
2 pending before the Legislature as this bill).

3 b. Net profits from business. The net income from the operation
4 of a business, profession or other activity after provision for all costs
5 and expenses incurred in the conduct thereof, determined either on a
6 cash or accrual basis in accordance with the method of accounting
7 allowed for federal income tax purposes but without deduction of the
8 amount of:

9 (1) taxes based on income;

10 (2) a civil, civil administrative, or criminal penalty or fine,
11 including a penalty or fine under an administrative consent order,
12 assessed and collected for a violation of a State or federal
13 environmental law, an administrative consent order, or an
14 environmental ordinance or resolution of a local governmental entity,
15 and any interest earned on the penalty or fine, and any economic
16 benefits having accrued to the violator as a result of a violation, which
17 benefits are assessed and recovered in a civil, civil administrative, or
18 criminal action, or pursuant to an administrative consent order. The
19 provisions of this paragraph shall not apply to a penalty or fine
20 assessed or collected for a violation of a State or federal
21 environmental law, or local environmental ordinance or resolution, if
22 the penalty or fine was for a violation that resulted from fire, riot,
23 sabotage, flood, storm event, natural cause, or other act of God
24 beyond the reasonable control of the violator, or caused by an act or
25 omission of a person who was outside the reasonable control of the
26 violator; and

27 (3) treble damages paid to the Department of Environmental
28 Protection and Energy pursuant to subsection a. of section 7 of
29 P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department
30 in removing, or arranging for the removal of, an unauthorized
31 discharge upon the failure of the discharger to comply with a directive
32 from the department to remove, or arrange for the removal of, a
33 discharge.

34 c. Net gains or income from disposition of property. Net gains or
35 net income, less net losses, derived from the sale, exchange or other
36 disposition of property, including real or personal, whether tangible or
37 intangible as determined in accordance with the method of accounting
38 allowed for federal income tax purposes. For the purpose of
39 determining gain or loss, the basis of property shall be the adjusted
40 basis used for federal income tax purposes, except as expressly
41 provided for under this act, but without a deduction for penalties,
42 fines, or economic benefits excepted pursuant to paragraph (2), or for
43 treble damages excepted pursuant to paragraph (3) of subsection b. of
44 this section.

45 A taxpayer's net gain or loss on the sale, exchange or other
46 disposition of a share of an S corporation shall be calculated by

1 increasing the adjusted basis of the share by an amount equal to the
2 shareholder's net losses and deductions in respect of the share allowed
3 and deducted from income for federal income tax purposes, not
4 including any personal net operating loss deductions, to the extent that
5 such net losses were not offset by the taxpayer's pro rata share of S
6 corporation income otherwise subject to taxation pursuant to
7 subsection p. of this section in respect of another S corporation,
8 subject to rules of priority and assignment determined by the director.

9 For the tax year 1976, any taxpayer with a tax liability under this
10 subsection, or under the "Tax on Capital Gains and Other Unearned
11 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject
12 to payment of an amount greater than the amount he would have paid
13 if either return had covered all capital transactions during the full tax
14 year 1976; provided, however, that the rate which shall apply to any
15 capital gain shall be that in effect on the date of the transaction. To the
16 extent that any loss is used to offset any gain under P.L.1975, c.172,
17 it shall not be used to offset any gain under the "New Jersey Gross
18 Income Tax Act," N.J.S.54A:1-1 et seq. et seq.

19 The term "net gains or income" shall not include gains or income
20 derived from obligations which are referred to in clause (1) or (2) of
21 N.J.S.54A:6-14 of this act or from securities which evidence
22 ownership in a qualified investment fund as defined in section 2 of
23 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
24 shall not include gains or income from transactions to the extent to
25 which nonrecognition is allowed for federal income tax purposes. The
26 term "sale, exchange or other disposition" shall not include the
27 exchange of stock or securities in a corporation a party to a
28 reorganization in pursuance of a plan of reorganization, solely for
29 stock or securities in such corporation or in another corporation a
30 party to the reorganization and the transfer of property to a
31 corporation by one or more persons solely in exchange for stock or
32 securities in such corporation if immediately after the exchange such
33 person or persons are in control of the corporation. For purposes of
34 this clause, stock or securities issued for services shall not be
35 considered as issued in return for property.

36 For purposes of this clause, the term "reorganization" means:

- 37 (i) A statutory merger or consolidation;
- 38 (ii) The acquisition by one corporation, in exchange solely for all
39 or part of its voting stock (or in exchange solely for all or a part of the
40 voting stock of a corporation which is in control of the acquiring
41 corporation) of stock of another corporation if, immediately after the
42 acquisition, the acquiring corporation has control of such other
43 corporation (whether or not such acquiring corporation had control
44 immediately before the acquisition);
- 45 (iii) The acquisition by one corporation, in exchange solely for all
46 or part of its voting stock (or in exchange solely for all or a part of the

1 voting stock of a corporation which is in control of the acquiring
2 corporation), of substantially all of the properties of another
3 corporation, but in determining whether the exchange is solely for
4 stock the assumption by the acquiring corporation of a liability of the
5 other, or the fact that property acquired is subject to a liability, shall
6 be disregarded;

7 (iv) A transfer by a corporation of all or a part of its assets to
8 another corporation if immediately after the transfer the transferor, or
9 one or more of its shareholders (including persons who were
10 shareholders immediately before the transfer), or any combination
11 thereof, is in control of the corporation to which the assets are
12 transferred;

13 (v) A recapitalization;

14 (vi) A mere change in identity, form, or place of organization
15 however effected; or

16 (vii) The acquisition by one corporation, in exchange for stock of
17 a corporation (referred to in this subclause as "controlling
18 corporation") which is in control of the acquiring corporation, of
19 substantially all of the properties of another corporation which in the
20 transaction is merged into the acquiring corporation shall not
21 disqualify a transaction under subclause (i) if such transaction would
22 have qualified under subclause (i) if the merger had been into the
23 controlling corporation, and no stock of the acquiring corporation is
24 used in the transaction;

25 (viii) A transaction otherwise qualifying under subclause (i) shall
26 not be disqualified by reason of the fact that stock of a corporation
27 (referred to in this subclause as the "controlling corporation") which
28 before the merger was in control of the merged corporation is used in
29 the transaction, if after the transaction, the corporation surviving the
30 merger holds substantially all of its properties and of the properties of
31 the merged corporation (other than stock of the controlling
32 corporation distributed in the transaction); and in the transaction,
33 former shareholders of the surviving corporation exchanged, for an
34 amount of voting stock of the controlling corporation, an amount of
35 stock in the surviving corporation which constitutes control of such
36 corporation.

37 For purposes of this clause, the term "control" means the
38 ownership of stock possessing at least 80% of the total combined
39 voting power of all classes of stock entitled to vote and at least 80%
40 of the total number of shares of all other classes of stock of the
41 corporation.

42 For purposes of this clause, the term "a party to a reorganization"
43 includes a corporation resulting from a reorganization, and both
44 corporations, in the case of a reorganization resulting from the
45 acquisition by one corporation of stock or properties of another. In
46 the case of a reorganization qualifying under subclause (i) by reason

1 of subclause (vii) the term "a party to a reorganization" includes the
2 controlling corporation referred to in such subclause (vii).

3 Notwithstanding any provisions hereof, upon every such exchange
4 or conversion, the taxpayer's basis for the stock or securities received
5 shall be the same as the taxpayer's actual or attributed basis for the
6 stock, securities or property surrendered in exchange therefor.

7 d. Net gains or net income derived from or in the form of rents,
8 royalties, patents, and copyrights.

9 e. Interest, except interest referred to in clause (1) or (2) of
10 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
11 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
12 extent provided in that section .

13 f. Dividends. "Dividends" means any distribution in cash or
14 property made by a corporation, association or business trust that is
15 not an S corporation, (1) out of accumulated earnings and profits, or
16 (2) out of earnings and profits of the year in which such dividend is
17 paid and any distribution in cash or property made by an S
18 corporation, as specifically determined pursuant to section 16 of
19 P.L.1993, c.173 (C.54A:5-14).

20 The term "dividends" shall not include distributions paid by a
21 qualified investment fund as defined in section 2 of P.L.1987, c.310
22 (C.54A:6-14.1), to the extent provided in that section.

23 g. Gambling winnings.

24 h. Net gains or income derived through estates or trusts.

25 i. Income in respect of a decedent.

26 j. Amounts distributed or withdrawn from an employee trust
27 attributable to contributions to the trust which were excluded from
28 gross income under the provisions of chapter 6 of Title 54A of the
29 New Jersey Statutes and pensions and annuities except to the extent
30 of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the
31 provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41),
32 P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
33 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
34 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
35 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
36 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
37 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5
38 (C.43:13-37.5).

39 k. Distributive share of partnership income.

40 l. Amounts received as prizes and awards, except as provided in
41 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

42 m. Rental value of a residence furnished by an employer or a rental
43 allowance paid by an employer to provide a home.

44 n. Alimony and separate maintenance payments to the extent that
45 such payments are required to be made under a decree of divorce or
46 separate maintenance but not including payments for support of minor

1 children.

2 o. Income, gain or profit derived from acts or omissions defined
3 as crimes or offenses under the laws of this State or any other
4 jurisdiction.

5 p. Net pro rata share of S corporation income.

6 (cf: P.L.1993, c.173, s.9)

7

8 6. (New section) a. Gross income shall not include contributions
9 to a taxpayer's medical savings account that are excluded from the
10 taxpayer's federal gross income pursuant to section 220 of the federal
11 Internal Revenue Code of 1986, 26 U.S.C. §220.

12 b. Gross income shall not include amounts paid or distributed, or
13 deemed paid or distributed, out of a taxpayer's medical savings
14 account that are excluded from the taxpayer's federal gross income
15 pursuant to section 220 of the federal Internal Revenue Code of 1986,
16 26 U.S.C. §220.

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18 7. This act shall take effect immediately and sections 3 through 6
19 shall apply to taxable years beginning on or after January 1 1997.

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24 Establishes certain standards and provides certain tax advantages for
25 medical savings accounts.