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C. 54A:3-4
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C. 54A:6-27
§6
Note To §§1-5

P.L. 1997, CHAPTER 414, *approved January 19, 1998*
Assembly Committee Substitute (*Second Reprint*) for
Assembly Committee Substitute for
Assembly, Nos. 671 and 495

1 AN ACT concerning medical savings accounts, amending P.L.1992,
2 c.161 ¹[and P.L.1992, c.162]¹ and amending and supplementing
3 Title 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 ¹[policies]
12 health benefits plans¹ required to be issued pursuant to section 3 of
13 P.L.1992, c.161 (C.17B:27A-4) , and shall adopt such modifications
14 to one or more plans as the board determines are necessary to make
15 available a "high deductible health plan" or plans ¹[compatible with the
16 medical savings accounts established pursuant to section 220 of the
17 federal Internal Revenue Code of 1986, 26 U.S.C. §220] consistent
18 with section 301 of Title III of the "Health Insurance Portability and
19 Accountability Act of 1996," Pub.L.104-191, regarding tax-deductible
20 medical savings accounts¹, within 60 days after the enactment of P.L.
21 , c. (C.)(now pending before the Legislature as this bill). The
22 board shall provide the commissioner with an informational filing of
23 the policy and contract forms and benefit levels it establishes.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted December 11, 1997.

² Senate SBA committee amendments adopted December 15, 1997.

1 a. ~~1~~¹ ~~[the] The~~¹ individual health benefits plans established by the
2 board may include cost containment measures such as, but not limited
3 to: utilization review of health care services, including review of
4 medical necessity of hospital and physician services; case management
5 benefit alternatives; selective contracting with hospitals, physicians,
6 and other health care providers; and reasonable benefit differentials
7 applicable to participating and nonparticipating providers; and other
8 managed care provisions.

9 b. An individual health benefits plan offered pursuant to section 3
10 of P.L.1992, c.161 (C.17B:27A-4) shall contain a limitation of no
11 more than 12 months on coverage for preexisting conditions¹, except
12 that the limitation shall not apply] . An individual health benefits plan
13 offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall
14 not contain a preexisting condition limitation of any period under the
15 following circumstances:

16 (1)¹ to an individual who has, under ¹[a prior group or individual
17 health benefits plan or Medicaid] creditable coverage¹, with no
18 intervening lapse in coverage of more than ¹[30] 31¹ days, been
19 treated or diagnosed by a physician for a condition under that plan or
20 satisfied a 12-month preexisting condition limitation¹; or

21 (2) to a federally defined eligible individual who applies for an
22 individual health benefits plan within 63 days of termination of the
23 prior coverage¹.

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

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

39 e. Effective immediately for an individual health benefits plan
40 issued on or after the effective date of P.L.1995, c.316
41 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary
42 date of an individual health benefits plan in effect on the effective date
43 of P.L.1995, c.316 (C.17:48E-35.10 et al.), the individual health
44 benefits plans required pursuant to section 3 of P.L.1992, c.161
45 (C.17B:27A-4), including any plan offered by a federally qualified
46 health maintenance organization, shall contain benefits for expenses

1 incurred in the following:

2 (1) Screening by blood lead measurement for lead poisoning for
3 children, including confirmatory blood lead testing as specified by the
4 Department of Health ¹and Senior Services¹ pursuant to section 7 of
5 P.L.1995 , c.316 (C.26:2-137.1); and medical evaluation and any
6 necessary medical follow-up and treatment for lead poisoned children.

7 (2) All childhood immunizations as recommended by the Advisory
8 Committee on Immunization Practices of the United States Public
9 Health Service and the Department of Health ¹and Senior Services¹
10 pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier
11 shall notify its insureds, in writing, of any change in the health care
12 services provided with respect to childhood immunizations and any
13 related changes in premium. Such notification shall be in a form and
14 manner to be determined by the Commissioner of ¹Banking and¹
15 Insurance.

16 The benefits shall be provided to the same extent as for any other
17 medical condition under the health benefits plan, except that no
18 deductible shall be applied for benefits provided pursuant to this
19 section. This section shall apply to all individual health benefits plans
20 in which the carrier has reserved the right to change the premium.
21 (cf: P.L.1997, c.146, s.4)

22

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

25 17. Subject to the approval of the commissioner, the board shall
26 formulate the five health benefits plans, and shall adopt such
27 modifications to one or more plans as the board determines are
28 necessary to make available a "high deductible health plan" or plans
29 compatible with the medical savings accounts established pursuant to
30 section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C.
31 §220, within 60 days after the enactment of P.L. , c. (C.)(now
32 pending before the Legislature as this bill), to be made available by
33 small employer carriers in accordance with the provisions of this act,
34 and shall promulgate five standard forms pursuant thereto. The board
35 may establish benefits levels, deductibles and copayments, exclusions,
36 and limitations for such health benefits plans in accordance with the
37 law.

38 The board shall submit the forms so established to the
39 commissioner for his approval. The commissioner shall approve the
40 forms if he finds them to be consistent with the provisions of section
41 3 of P.L.1992, c.162 (C.17B:27A-19). Any form submitted to the
42 commissioner by the board shall be deemed approved if not expressly
43 disapproved in writing within 60 days of its receipt by the
44 commissioner. Such forms may contain, but shall not be limited to, the
45 following provisions:

46 a. Utilization review of health care services, including review of

1 medical necessity of hospital and physician services;
2 b. Managed care systems, including large case management;
3 c. Provision for selective contracting with hospitals, physicians,
4 and other health care providers;
5 d. Reasonable benefits differentials which are applicable to
6 participating and nonparticipating providers;
7 e. Notwithstanding the provisions of section 4 of P.L.1992, c.162
8 (C.17B:27A-20) to the contrary, the board may, from time to time,
9 adjust coinsurance and deductibles;
10 f. Such other provisions which may be quantifiably established to
11 be cost containment devices;
12 g. The department shall publish annually a list of the premiums
13 charged for each of the five small employer health benefits plans and
14 for any rider package by all carriers writing such plans. The
15 department shall also publish the toll free telephone number of each
16 such carrier.
17 (cf: P.L.1993, c.162, s.8)]¹

18

19 ¹[3.] 2.¹ N.J.S.54A:3-3 is amended to read as follows:

20 54A:3-3. Medical expenses. (a) Each taxpayer shall be allowed to
21 deduct from ~~[his]~~ the taxpayer's gross income medical expenses for
22 ~~[himself]~~ the taxpayer, ~~[his]~~ the taxpayer's spouse, and ~~[his]~~ the
23 taxpayer's dependents with respect to such expenses that were paid
24 during the taxable year and to the extent that such medical expenses
25 exceed 2% of the taxpayer's gross income. In the case of a
26 nonresident, gross income shall mean gross income which such
27 nonresident would have reported if ~~[he]~~ the taxpayer had been subject
28 to tax during the entire taxable year as a resident.

29 (b) Special Rule for Decedents.

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

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

38 (c) ~~[Exclusion]~~ Disallowance of amounts allowed for ~~[care of~~
39 ~~certain dependents]~~ other purposes. Any expenses allowed as a
40 deduction of expenses for household and dependent care services
41 necessary for gainful employment shall not be allowed as an expense
42 paid for medical care for purposes of this section. Any amounts paid
43 or distributed out of a medical savings account that are excluded from
44 gross income pursuant to section ¹[6] 5¹ of P.L. , c. (C.)(now
45 pending before the Legislature as this bill) shall not be allowed as an
46 expense paid for medical care for purposes of this section.

1 (cf: 54A:3-3)

2

3 ¹[4.] 3.¹ (New section) ²a.² A taxpayer may deduct from the
4 taxpayer's gross income an amount equal to the contributions to a
5 medical savings account that the taxpayer is allowed for the taxable
6 year as a deduction for federal income tax purposes pursuant to
7 section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C.
8 s.220.

9 ²b. The deduction provided by subsection a. of this section shall,
10 notwithstanding any amendment or supplement to federal law, be
11 allowed only to "eligible individuals" qualifying under the limitations
12 of subsection (i), and subject to the numerical limits of subsection (j),
13 of section 220 of the federal Internal Revenue Code of 1986, 26
14 U.S.C. s.220, as in effect on January 1, 1997.²

15

16 ¹[5.] 4.¹ N.J.S.54A:5-1 is amended to read as follows:

17 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
18 income shall consist of the following categories of income:

19 a. Salaries, wages, tips, fees, commissions, bonuses, and other
20 remuneration received for services rendered whether in cash or in
21 property , and amounts paid or distributed, or deemed paid or
22 distributed, out of a medical savings account that are not excluded
23 from gross income pursuant to section ¹[6] 5¹ of P.L. , c. (C.
24)(now pending before the Legislature as this bill).

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

31 (1) taxes based on income;

32 (2) a civil, civil administrative, or criminal penalty or fine,
33 including a penalty or fine under an administrative consent order,
34 assessed and collected for a violation of a State or federal
35 environmental law, an administrative consent order, or an
36 environmental ordinance or resolution of a local governmental entity,
37 and any interest earned on the penalty or fine, and any economic
38 benefits having accrued to the violator as a result of a violation, which
39 benefits are assessed and recovered in a civil, civil administrative, or
40 criminal action, or pursuant to an administrative consent order. The
41 provisions of this paragraph shall not apply to a penalty or fine
42 assessed or collected for a violation of a State or federal
43 environmental law, or local environmental ordinance or resolution, if
44 the penalty or fine was for a violation that resulted from fire, riot,
45 sabotage, flood, storm event, natural cause, or other act of God
46 beyond the reasonable control of the violator, or caused by an act or

1 omission of a person who was outside the reasonable control of the
2 violator; and

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

10 c. Net gains or income from disposition of property. Net gains or
11 net income, less net losses, derived from the sale, exchange or other
12 disposition of property, including real or personal, whether tangible or
13 intangible as determined in accordance with the method of accounting
14 allowed for federal income tax purposes. For the purpose of
15 determining gain or loss, the basis of property shall be the adjusted
16 basis used for federal income tax purposes, except as expressly
17 provided for under this act, but without a deduction for penalties,
18 fines, or economic benefits excepted pursuant to paragraph (2), or for
19 treble damages excepted pursuant to paragraph (3) of subsection b. of
20 this section.

21 A taxpayer's net gain or loss on the sale, exchange or other
22 disposition of a share of an S corporation shall be calculated by
23 increasing the adjusted basis of the share by an amount equal to the
24 shareholder's net losses and deductions in respect of the share allowed
25 and deducted from income for federal income tax purposes, not
26 including any personal net operating loss deductions, to the extent that
27 such net losses were not offset by the taxpayer's pro rata share of S
28 corporation income otherwise subject to taxation pursuant to
29 subsection p. of this section in respect of another S corporation,
30 subject to rules of priority and assignment determined by the director.

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

41 The term "net gains or income" shall not include gains or income
42 derived from obligations which are referred to in clause (1) or (2) of
43 N.J.S.54A:6-14 of this act or from securities which evidence
44 ownership in a qualified investment fund as defined in section 2 of
45 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
46 shall not include gains or income from transactions to the extent to

1 which nonrecognition is allowed for federal income tax purposes. The
2 term "sale, exchange or other disposition" shall not include the
3 exchange of stock or securities in a corporation a party to a
4 reorganization in pursuance of a plan of reorganization, solely for
5 stock or securities in such corporation or in another corporation a
6 party to the reorganization and the transfer of property to a
7 corporation by one or more persons solely in exchange for stock or
8 securities in such corporation if immediately after the exchange such
9 person or persons are in control of the corporation. For purposes of
10 this clause, stock or securities issued for services shall not be
11 considered as issued in return for property.

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

13 (i) A statutory merger or consolidation;

14 (ii) The acquisition by one corporation, in exchange solely for all
15 or part of its voting stock (or in exchange solely for all or a part of the
16 voting stock of a corporation which is in control of the acquiring
17 corporation) of stock of another corporation if, immediately after the
18 acquisition, the acquiring corporation has control of such other
19 corporation (whether or not such acquiring corporation had control
20 immediately before the acquisition);

21 (iii) The acquisition by one corporation, in exchange solely for all
22 or part of its voting stock (or in exchange solely for all or a part of the
23 voting stock of a corporation which is in control of the acquiring
24 corporation), of substantially all of the properties of another
25 corporation, but in determining whether the exchange is solely for
26 stock the assumption by the acquiring corporation of a liability of the
27 other, or the fact that property acquired is subject to a liability, shall
28 be disregarded;

29 (iv) A transfer by a corporation of all or a part of its assets to
30 another corporation if immediately after the transfer the transferor, or
31 one or more of its shareholders (including persons who were
32 shareholders immediately before the transfer), or any combination
33 thereof, is in control of the corporation to which the assets are
34 transferred;

35 (v) A recapitalization;

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

38 (vii) The acquisition by one corporation, in exchange for stock of
39 a corporation (referred to in this subclause as "controlling
40 corporation") which is in control of the acquiring corporation, of
41 substantially all of the properties of another corporation which in the
42 transaction is merged into the acquiring corporation shall not
43 disqualify a transaction under subclause (i) if such transaction would
44 have qualified under subclause (i) if the merger had been into the
45 controlling corporation, and no stock of the acquiring corporation is
46 used in the transaction;

1 (viii) A transaction otherwise qualifying under subclause (i) shall
2 not be disqualified by reason of the fact that stock of a corporation
3 (referred to in this subclause as the "controlling corporation") which
4 before the merger was in control of the merged corporation is used in
5 the transaction, if after the transaction, the corporation surviving the
6 merger holds substantially all of its properties and of the properties of
7 the merged corporation (other than stock of the controlling
8 corporation distributed in the transaction); and in the transaction,
9 former shareholders of the surviving corporation exchanged, for an
10 amount of voting stock of the controlling corporation, an amount of
11 stock in the surviving corporation which constitutes control of such
12 corporation.

13 For purposes of this clause, the term "control" means the
14 ownership of stock possessing at least 80% of the total combined
15 voting power of all classes of stock entitled to vote and at least 80%
16 of the total number of shares of all other classes of stock of the
17 corporation.

18 For purposes of this clause, the term "a party to a reorganization"
19 includes a corporation resulting from a reorganization, and both
20 corporations, in the case of a reorganization resulting from the
21 acquisition by one corporation of stock or properties of another. In
22 the case of a reorganization qualifying under subclause (i) by reason
23 of subclause (vii) the term "a party to a reorganization" includes the
24 controlling corporation referred to in such subclause (vii).

25 Notwithstanding any provisions hereof, upon every such exchange
26 or conversion, the taxpayer's basis for the stock or securities received
27 shall be the same as the taxpayer's actual or attributed basis for the
28 stock, securities or property surrendered in exchange therefor.

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

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

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

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

45 g. Gambling winnings.

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

- 1 i. Income in respect of a decedent.
- 2 j. Amounts distributed or withdrawn from an employee trust
3 attributable to contributions to the trust which were excluded from
4 gross income under the provisions of chapter 6 of Title 54A of the
5 New Jersey Statutes and pensions and annuities except to the extent
6 of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the
7 provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41),
8 P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
9 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
10 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
11 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
12 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5
14 (C.43:13-37.5).
- 15 k. Distributive share of partnership income.
- 16 l. Amounts received as prizes and awards, except as provided in
17 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.
- 18 m. Rental value of a residence furnished by an employer or a rental
19 allowance paid by an employer to provide a home.
- 20 n. Alimony and separate maintenance payments to the extent that
21 such payments are required to be made under a decree of divorce or
22 separate maintenance but not including payments for support of minor
23 children.
- 24 o. Income, gain or profit derived from acts or omissions defined
25 as crimes or offenses under the laws of this State or any other
26 jurisdiction.
- 27 p. Net pro rata share of S corporation income.
28 (cf: P.L.1993, c.173, s.9)
- 29
- 30 ¹[6.] 5.¹ (New section) a. Gross income shall not include
31 contributions to a taxpayer's medical savings account that are excluded
32 from the taxpayer's federal gross income pursuant to section 220 of
33 the federal Internal Revenue Code of 1986, 26 U.S.C. s.220.
- 34 b. Gross income shall not include amounts paid or distributed, or
35 deemed paid or distributed, out of a taxpayer's medical savings
36 account that are excluded from the taxpayer's federal gross income
37 pursuant to section 220 of the federal Internal Revenue Code of 1986,
38 26 U.S.C. s.220.
- 39 ²c. The exclusions provided by subsections a. and b. of this section
40 shall, notwithstanding any amendment or supplement to federal law,
41 be allowed only to "eligible individuals" qualifying under the
42 limitations of subsection (i), and subject to the numerical limits of
43 subsection (j), of section 220 of the federal Internal Revenue Code
44 of 1986, 26 U.S.C. s.220, as in effect on January 1, 1997.²
- 45
- 46 ¹[7.] 6.¹ This act shall take effect immediately and sections ¹[3]

1 2¹ through ¹[6] 5¹ shall apply to taxable years beginning on or after
2 January 1 ¹[1997] , 1998¹.

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6

7 Establishes certain standards and provides certain tax advantages for
8 medical savings accounts.