



Oklahoma Law (Used To) Affect HSA Eligibility

Updated: May 2023

Update:

While the below article describes an Oklahoma law that initially affected the HSA eligibility of many, the law has since been amended by adding the following language:

“However, if, under federal law, application of this paragraph would result in health savings account ineligibility under Section 223 of the federal Internal Revenue Code, as amended, this requirement shall apply only for health savings accounts with qualified high-deductible health plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible, except with respect to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the federal Internal Revenue Code, as amended, in which case the requirements of this paragraph shall apply regardless of whether the minimum deductible has been satisfied.” 36 O.S. § 1250.5(18).

This added language negates the effect on individuals’ HSA eligibility that is described in the article under the ‘Unintended Consequences for HSAs’ heading. The added language does so by limiting the law’s requirement that any third-party payment be passed on to the insured (rather than being pocketed by PBMs or insurers) only to instances where the individual’s minimum HDHP deductible has been met or where the prescriptions are for preventive care.

Background

On November 1, 2021, House Bill 2678 of Oklahoma became effective and amended 36-1250.5 of the Oklahoma Statutes. This section of Oklahoma’s insurance law contains a list of acts that, if committed by an insurer in a flagrant or consistent manner, constitute an unfair claim settlement practice. HB 2678 added such an act to the list in the below language:

“As a health insurer that provides pharmacy benefits or a pharmacy benefits manager that administers pharmacy benefits for a health plan, failing to include any amount paid by an enrollee or on behalf of an enrollee by another person when calculating the enrollee’s total contribution to an out-of-pocket maximum, deductible, copayment, coinsurance or other cost-sharing requirement.” 36 O.S. § 1250.5(18).

What does that mean?

Pharmacy benefit managers (PBMs) often receive ‘third party payments’ for prescriptions, including discounts, vouchers, financial assistance, or other out-of-pocket payment reductions that are provided by prescription drug manufacturers themselves. HB 2678 now requires that any such third-party payment be passed on to the insured individual receiving the prescription drug, rather than allowing PBMs or insurers to pocket any portion. The third-party payment is passed on to the insured by the PBM applying it to the insured’s out-of-pocket payment, whether that is a deductible, copayment, coinsurance, or other cost-sharing arrangement.

What is the purpose of this new law?

The purpose of HB 2678 was aimed at making pricey prescription drugs more affordable for patients, even those patients with health insurance. The law requires that any discounts given by the drug manufacturer must be passed on to the insured, rather than allowing PBMs or insurers to retain the discounted difference.

Unintended Consequences for HSAs

According to 26 USC § 223, when an HDHP participant receives any third-party payment before their minimum deductible is met, the participant becomes ineligible for an HSA.

As written, the Oklahoma law would require PBMs to render HDHP/HSA participants ineligible for their HSA as third-party payments are applied to their out-of-pocket payment before their deductible is met.

Will there be any changes made?

Potentially. On October 29, 2021, three days before HB 2678’s effective date, the Oklahoma Insurance Department released Bulletin No. LH 2021-05 addressing the issue of the conflicting federal and state laws on HSA eligibility. The bulletin emphasizes that compliance with both state and federal law is expected for the time being, however, the Department is “actively engaging with the Legislature to seek clarification regarding the conflict between the state statute and federal requirements governing HSA eligibility.” Insurers are encouraged to contact their HDHP/HSA participants to communicate the new law’s effect.

For further information, the Oklahoma Insurance Department’s Bulletin No. LH 2021-05 may be found at <https://www.oid.ok.gov/bulletin-no-lh-2021-05/>.

The text of HB 2678 may be found at <https://legiscan.com/OK/text/HB2678/2021>.

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