

EMPLOYEE BENEFITS

New Oklahoma Law Affects Qualified Status of HDHPs for HSA Eligibility

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Oklahoma recently enacted a law, effective November 1, 2021, which requires health insurers that provide pharmacy benefits and pharmacy benefit managers that administer pharmacy benefits for a health plan “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 arrangement.”¹ This means that any “discounts, vouchers, financial assistance or other out-of-pocket reduction payments” used as part of an individual’s pharmacy benefits are required to be counted towards the individual’s deductible.

However, the IRS has clarified that to maintain qualified HDHP status for HSA eligibility purposes, the plan is required to “disregard drug discounts and other manufacturers’ and providers’ discounts in determining if the minimum deductible for an HDHP has been satisfied and only allows amounts actually paid by the individual to be taken into account for that purpose.”² Therefore, HDHPs that comply with the new Oklahoma law will not be qualified HDHPs for HSA eligibility purposes.

ERISA likely preempts the new Oklahoma law and, if preempted, would not apply to self-insured plans that are subject to ERISA. However, the law will apply to fully insured plans issued in the state of Oklahoma regardless

of whether the plan is subject to ERISA. Therefore, fully insured plans issued in Oklahoma that provide pharmacy benefits likely cannot be considered qualified HDHPs, and participants of such plans likely will not be eligible to make HSA contributions. However, an individual is not required to be “HSA eligible” to take tax-free distributions from their HSA. In other words, an individual who is no longer eligible to make or receive HSA contributions may still take distributions from the HSA to reimburse eligible medical expenses on a tax-favored basis.

Employer plan sponsors of HDHPs in Oklahoma should determine whether their plan will still be considered a qualified HDHP after the passage of the new Oklahoma law. If a plan has lost qualified HDHP status, the employer should talk to their legal counsel about no longer making HSA contributions to employee HSAs or permitting employees to make pre-tax contributions to their HSAs through the employer’s Section 125 cafeteria plan. Employer plan sponsors of HDHPs outside of Oklahoma should consider taking this opportunity to review how their insurance carrier or TPA handles discounts, vouchers, financial assistance or other out-of-pocket reduction payments used towards an individual’s pharmacy benefits to ensure the plan’s status as a qualified HDHP is not being jeopardized.

¹ <https://www.oid.ok.gov/hsa-hdhp-alert/>

² <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-40>

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