Compliance Bulletin

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Some State Insurance Laws Conflict With Federal HSA Requirements

General rules for contributions to health savings accounts (HSAs) strictly limit the types of health plan coverage that eligible individuals may have. To be eligible for HSA contributions, an individual generally cannot have health coverage other than high deductible health plan (HDHP) coverage. A health plan that provides coverage below the HDHP minimum annual deductible will generally disqualify an individual from HSA eligibility.

However, some states have enacted laws requiring health insurers to count third-party payments—such as discounts, vouchers, financial assistance or other out-of-pocket payments—toward enrollee out-of-pocket expenses before the deductible has been reached. Under existing federal requirements, insurers complying with these state laws will generally make certain enrollees ineligible for HSA contributions. If an enrollee is deemed ineligible for HSA contributions, payments made from an HSA may create a serious tax event for the enrollee.

This Compliance Bulletin provides an overview of the state laws that potentially conflict with federal HSA requirements.

Action Steps

Health plans sold in these states generally must comply with both state and federal law. In many cases, insurance departments of states that have conflicting laws have addressed the conflict in sub-regulatory guidance. Some are actively engaging with their state legislature to attempt to enact new legislation to eliminate the conflict. However, issuers in these states should be proactive in addressing the issue with affected enrollees.

As a best practice, issuers should promptly contact affected members to clearly communicate the effects of applying funds from third parties and their HSA when making payments for prescriptions.

State Law Overview

ARIZONA: Effective Dec. 31, 2019, Arizona HB 2166 requires insurers and pharmacy benefits managers (PBMs) to apply any discount or coupon used by a participant toward their out-of-pocket expenses unless the drug has a generic equivalent or the participant has an exception from using the generic drug. There is no exemption for HDHPs, and the Department of Insurance has not addressed the conflict.

ARKANSAS: Effective Jan. 1, 2022, Arkansas HB 1569 requires insurers to apply any coupon or discount used by a participant toward their cost-sharing requirement, except for brand name drugs with a medically appropriate generic alternative. There is no exemption for HDHPs, and the Arkansas Insurance

Department stated that no rules are needed to address the conflict with HDHPs.

CONNECTICUT: Effective Jan. 1, 2022, Connecticut Public Act No. 21-14 requires individual and group health insurance policies to give participants credit toward their coinsurance, copayment, deductible or other out-of-pocket expenses when they use a drug discount. There is no exemption for HDHPs, and the Connecticut Insurance Department has not addressed the conflict.

ILLINOIS: The Illinois Managed Care Reform and Patient Rights Act (215 ILCS 134/30(d)) requires health plans to apply third-party payments, financial assistance, discounts, product vouchers or any other reduction in out-of-pocket expenses for prescription drugs toward a covered individual's deductible, copay, cost-sharing responsibility or out-of-pocket maximum (OOPM). Federal agencies confirmed to the Illinois Department of Insurance (IDOI) that these discounts would make an individual ineligible for HSA contributions unless the discount was for preventive care (such as insulin) or applied toward cost-sharing after the minimum deductible had been met. **For the 2022 plan year, issuers may not market any plan as designed to be paired with an HSA if it contains policy language in compliance with 215 ILCS 134/30(d)**. The IDOI is working with the Illinois legislature to enact legislation to exempt HDHPs from this requirement to preserve HSA eligibility. Note that self-insured plans are not affected.

NORTH CAROLINA: Effective Oct. 1, 2021, North Carolina SB 257 requires third-party payments to be included toward an insured's OOPM, deductible, copayment, coinsurance or other applicable cost-sharing requirement unless the drug has a generic equivalent or the insured received an exception or prior authorization. There is no exemption for HDHPs, and the Department of Insurance has not addressed the conflict.

OKLAHOMA: Effective Nov. 1, 2021, Oklahoma HB 2678 requires third-party payments to be included toward an enrollee's OOPM, deductible, copayment, coinsurance or other cost-sharing requirement. On Oct. 29, 2021, the Oklahoma Insurance Department issued a bulletin stating that all HDHPs in effect on Nov. 1, 2021, must comply with HB 2678. The Department is actively engaging with the Oklahoma state legislature to seek clarification regarding the conflict.

TENNESSEE: Effective July 1, 2021, Tennessee HB 0619 requires insurance companies to include third-party payments when calculating an enrollee's cost-sharing requirement. This requirement includes all medical and pharmacy benefits, not just prescription drugs. There is no exemption for HDHPs, and the Tennessee Insurance Division has not addressed the conflict.

WEST VIRGINIA: Effective Jan. 2020, West Virginia HB 2770 requires insurers and PBMs to include any third-party payments toward an insured's total cost-sharing requirements. There is no exemption for HDHPs, and the Office of the Insurance Commissioner has not addressed the conflict.

Effective in 2020, ***Georgia* *HB 946 requires PBMs to include any third-party payments, discounts or product vouchers for prescription drugs when calculating an individual's out-of-pocket maximum, deductible or copayment responsibility, unless the drug has a generic equivalent or the individual obtained prior authorization. However, the law states that if any provision is inconsistent or conflicts with federal law, the federal law will apply.*

Effective Jan. 1, 2022, ***Kentucky* *SB 45 prohibits health plans and PBMs from excluding cost-sharing amounts covered by coupons, discounts or vouchers when calculating a participant's total cost sharing. However, the Kentucky Department of Insurance stated that the requirement only applies to the extent permitted by federal law, and do not apply to HDHPs when paired with an HSA.*

Effective June 21, 2021, ***Louisiana* *SB 94 requires issuers to include any third-party payments in a participant's cost sharing. However, the law provides that it should be applied only to the extent permissible under applicable law.*

Effective Jan. 1, 2020, ***Virginia* *HB 2515 requires carriers to include any third-party payments in an enrollee's OOPM or cost-sharing requirement. However, the law states that it should only be applied "to the*

extent permitted by federal law and regulation."

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