

State of Wisconsin



1995 Assembly Bill 545

Date of enactment: **June 26, 1996**

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1995 WISCONSIN ACT 453

AN ACT to repeal 632.745 (1) (f) 2.; to renumber 635.02 (5m); and to create 71.05 (6) (a) 19., 71.05 (6) (b) 22., 71.07 (5) (a) 7., 71.10 (4) (j), 71.83 (1) (c), 632.745 (1) (f) 2., 632.898 and 635.02 (5m) (b) of the statutes; relating to: tax-exempt individual employe medical savings accounts established by employers or self-employed persons with the difference between the cost of low-cost, high cost-share health care coverage and more costly health care coverage, excluding coverage that is linked to a medical savings account from certain coverage portability provisions and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.05 (6) (a) 19. of the statutes is created to read:

71.05 (6) (a) 19. Any principal that is withdrawn, and any accumulated interest, dividends or other gain that accrues, from an account described under s. 632.898 during the taxable year in which a withdrawal occurs from such an account if any amount of the money or other assets in the account is withdrawn for any reason other than the payment of medical care expenses or long-term care expenses or the purchase of long-term care insurance, as defined in s. 146.91 (1), for the account holder, his or her spouse and all nonspouse dependents, as defined in s. 632.898 (1) (b), except that this subdivision does not apply after the death of the account holder.

SECTION 2. 71.05 (6) (b) 22. of the statutes is created to read:

71.05 (6) (b) 22. Any amount that is deposited by an employer on behalf of that employer's employe, or by a self-employed person on his or her own behalf, in an account described under s. 632.898, up to \$2,000 each year for an individual, up to \$2,000 each year for his or her

spouse and up to \$1,000 each year for each nonspouse dependent, as defined in s. 632.898 (1) (b), and any interest, dividends or other gain that accrues in the account if the interest, dividends or other gain is redeposited in the account, if the account is used exclusively to pay the medical care expenses and long-term care expenses of the individual, his or her spouse and each minor dependent, or to purchase long-term care insurance, as defined in s. 146.91 (1), for such individuals. The maximum amount of a deposit to an account that is created under this subdivision shall be increased each year, beginning in 1998, by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of June of the current year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of June of the previous year, as determined by the U.S. department of labor. The revised amounts shall be rounded to the nearest whole number. The department of revenue shall adopt by rule the changes in dollar amounts required under this subdivision every year, and incorporate the changes in the income tax forms and instructions.

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 3. 71.07 (5) (a) 7. of the statutes is created to read:

71.07 (5) (a) 7. The amount claimed as a deduction for unreimbursed medical care expenses under section 213 (a) of the internal revenue code to the extent that the funds used to pay for the unreimbursed expenses for which the deduction was claimed were withdrawn from an account described under s. 71.05 (6) (b) 22.

SECTION 4. 71.10 (4) (j) of the statutes is created to read:

71.10 (4) (j) Any amount of money or other assets computed under s. 71.83 (1) (c).

SECTION 5. 71.83 (1) (c) of the statutes is created to read:

71.83 (1) (c) *Medical savings account withdrawals.*

1. Except as provided in subd. 2., if a person is required to add any amount to federal adjusted gross income under s. 71.05 (6) (a) 19., the person shall pay an amount equal to 10% of the amount that is withdrawn from the account that results in a person making a payment under s. 71.05 (6) (a) 19.

2. The penalty under subd. 1. does not apply and up to 25% of the balance in the account described under s. 632.898 may be withdrawn each year if any of the following occurs:

a. The account holder or his or her spouse reaches the age of 59.5 years during the year in which the withdrawal occurs.

b. The balance in the account exceeds \$100,000.

SECTION 5c. 632.745 (1) (f) 2. of the statutes is created to read:

632.745 (1) (f) 2. Notwithstanding subd. 1. b. and c., “qualifying coverage” does not include a high cost–share health plan, as defined in s. 632.898 (1) (c), that is linked to a medical savings account, as described in s. 632.898, if the employer that provides the individual’s new coverage offers its eligible employees a choice of health benefit plan options that includes a high cost–share health plan, as defined in s. 632.898 (1) (c), and the individual’s new coverage is not a high cost–share health plan.

SECTION 5g. 632.745 (1) (f) 2. of the statutes, as created by 1995 Wisconsin Act ... (this act), is repealed.

SECTION 6. 632.898 of the statutes is created to read:

632.898 Medical savings accounts. (1) In this section:

(a) “Account administrator” means any of the following:

1. A financial institution, the accounts of which are insured by the Federal Deposit Insurance Corporation or the national credit union share insurance fund.

2. A trust company bank organized under ch. 223.

3. An insurer authorized to do business in this state.

4. A broker–dealer licensed under subch. III of ch. 551.

5. A plan administrator licensed under ch. 633.

6. A certified public accountant licensed to practice in this state.

7. An employer that has a self–insured health plan.

8. An employer that participates in the program under this section.

(b) “Dependent” has the meaning given in s. 635.02 (3c).

(c) “High cost–share health plan” means any health insurance policy, certificate or contract with deductibles, copayments or other cost–sharing provisions of at least \$1,500 if the insured’s coverage is single or at least \$3,000 if the insured’s coverage is family.

(2) (a) An employer that, in providing health insurance coverage for its employees, offers its employees a choice of health benefit plan options that includes a high cost–share health plan may establish a medical savings account for an employee who chooses a high cost–share health plan.

(b) The medical savings account shall be established as a separate account in the employee’s name and shall be the employee’s property. The account may be established with any account administrator that is approved by the commissioner to administer medical savings accounts. The commissioner shall approve an account administrator to administer medical savings accounts if the account administrator insures the principal of the medical savings account against loss from any cause, including loss due to market fluctuation. Whenever an employer establishes a medical savings account on behalf of an employee, the employer shall notify the department of revenue, in the manner prescribed by the department of revenue, of the establishment of the account, the employee’s name and social security number, the name and address of the account administrator and any other information that the department of revenue may require.

(c) Only an employer under par. (a), whether that employer established the account or is a succeeding employer of an employee for whom a medical savings account has been established, may make deposits in the medical savings account of an employee who chooses a high cost–share health plan. Except as provided in par. (d), such an employer shall deposit in the account the difference between what the employer pays on behalf of the employee, or the employee and his or her dependents, for the high cost–share health plan and what the employer would pay on behalf of the employee, or the employee and his or her dependents, for the most expensive health benefit plan that the employer offers that is not a high cost–share health plan. Except as provided in sub. (4) (a), no other deposits may be made in the account.

(d) An employer that establishes a medical savings account on behalf of an employee is not required to deposit in the account more than \$2,000 per year for the employee if the employee’s coverage is single, or more than \$2,000 per year for the employee, \$2,000 per year for the

employee's spouse or \$1,000 per year for each nonspouse dependent of the employee if the employee's coverage is family. Beginning in 1998, the amounts specified in this paragraph shall be increased each year in the manner provided in s. 71.05 (6) (b) 22.

(e) An employee who chooses a high cost-share health plan and for whom a medical savings account is established is not eligible for coverage under a different health benefit plan offered by the employer before the end of the policy term of the high cost-share health plan.

(3) (a) A self-employed person who purchases a high cost-share health plan may establish a medical savings account in his or her name. Upon establishing a medical savings account, a self-employed person shall notify the department of revenue, in the manner prescribed by the department of revenue, of the establishment of the account, the self-employed person's name and social security number, the name and address of the account administrator and any other information that the department of revenue may require.

(b) Except as provided in par. (c), a self-employed person who establishes a medical savings account shall deposit in the account the difference between what the self-employed person pays for the high cost-share health plan, including coverage for his or her dependents, and what the self-employed person would pay for a more expensive health benefit plan, including coverage for his or her dependents. Except as provided in sub. (4) (b), no other deposits may be made in the account.

(c) A self-employed person who establishes a medical savings account is not required to deposit in the account more than \$2,000 per year for himself or herself if the self-employed person's coverage is single, or more than \$2,000 per year for himself or herself, \$2,000 per year for his or her spouse or \$1,000 per year for each nonspouse dependent if the self-employed person's coverage is family. Beginning in 1998, the amounts specified in this paragraph shall be increased each year in the manner provided in s. 71.05 (6) (b) 22.

(4) (a) If an employee with a medical savings account under this section becomes self-employed and purchases a high cost-share health plan, he or she may make deposits in the account as provided in sub. (3).

(b) If a self-employed person with a medical savings account under this section becomes employed by an employer described in sub. (2) (a) and chooses a high cost-share health plan, the employer may make deposits in the account as provided in sub. (2).

(5) (a) Amounts deposited in an account under this section and any interest, dividends or other gain that accrues on amounts deposited in the account may be used only for any of the following:

1. To pay expenses for medical care, as defined in 26 USC 213 (d) (1) and as limited in 26 USC 213 (b), including amounts treated as paid for medical care under 26 USC 213 (d) (2).

2. To pay long-term care expenses of the employee or self-employed person or any of the employee's or self-employed person's dependents.

3. To purchase a long-term care insurance policy for the employee or self-employed person or any of the employee's or self-employed person's dependents.

(b) An employee or self-employed person with a medical savings account shall provide information about the use of the account funds, in the manner prescribed by the department of revenue, in conjunction with the filing of his or her Wisconsin income tax return.

(c) Paragraph (a) does not apply after the death of the employee or self-employed person.

(6) (a) A person that provides medical care, long-term care or a long-term care insurance policy, the cost of which is to be paid with funds in a medical savings account, shall bill the employee or self-employed person who is the holder of the account directly, rather than billing the account administrator of the medical savings account.

(b) The account administrator of a medical savings account shall do all of the following:

1. Permit withdrawals from the account at least once a month.

2. Issue an account statement to the holder of the account at least quarterly.

(7) If the federal government enacts legislation providing for a federal income tax exemption for amounts deposited in an account established under this section and for any interest, dividends or other gain that accrues in the account if redeposited in the account, the commissioner shall conduct a study, to be completed within 4 years after the enactment of the federal legislation, of individuals and groups that had coverage under a high cost-share health plan and that terminated that coverage in order to enroll in a health benefit plan that was not a high cost-share health plan. If as a result of the study the commissioner determines that s. 632.745 (1) (f) 2. is not necessary for the purpose for which it was intended, the commissioner shall certify that determination to the revisor of statutes. Upon the certification, the revisor of statutes shall publish notice in the Wisconsin administrative register of the determination, the date of the certification and that after 30 days after the date of the certification s. 632.745 (1) (f) 2. is not effective.

SECTION 7. 635.02 (5m) of the statutes is renumbered 635.02 (5m) (a).

SECTION 9. 635.02 (5m) (b) of the statutes is created to read:

635.02 (5m) (b) Notwithstanding par. (a) 2. and 3., "qualifying coverage" does not include a high cost-share health plan, as defined in s. 632.898 (1) (c), that is linked to a medical savings account, as described in s. 632.898, if any of the following applies:

1. The health benefit plan that is the individual's new coverage and the health benefit plan that is the individu-

al's previous coverage are provided by the same small employer.

2. The health benefit plan that is the individual's new coverage is provided by a small employer that is not the same employer that provided the health benefit plan that was the individual's previous coverage, the small employer that provides the individual's new coverage offers its eligible employees a choice of health benefit plan options that includes a high cost-share health plan, as defined in s. 632.898 (1) (c), and the individual's new coverage is not a high cost-share health plan.

SECTION 11. Initial applicability.

(1) TAX-EXEMPT MEDICAL SAVINGS ACCOUNTS.

(a) The treatment of sections 71.05 (6) (a) 19. and (b) 22., 71.07 (5) (a) 7., 71.10 (4) (j), 71.83 (1) (c) and 632.898 of the statutes, the renumbering of section 635.02 (5m) of the statutes and the creation of section 635.02 (5m) (b) of the statutes first apply to taxable years beginning on January 1 of the year in which the federal

government enacts a broad-based medical savings account program, as certified by the secretary of revenue.

(b) The creation of section 632.745 (1) (f) 2. of the statutes first applies to taxable years beginning on January 1, 1997, or to taxable years beginning on January 1 of the year in which the federal government enacts a broad-based medical savings account program, as certified by the secretary of revenue, whichever is later.

SECTION 12. Effective dates. This act takes effect on the day after publication, except as follows:

(1) QUALIFYING COVERAGE DEFINITION.

(a) The creation of section 632.745 (1) (f) 2. of the statutes takes effect on May 1, 1997.

(b) The repeal of section 632.745 (1) (f) 2. of the statutes takes effect on the 31st day after the day on which the commissioner of insurance certifies to the revisor of statutes under section 632.898 (7) of the statutes, as created by this act, that section 632.745 (1) (f) 2. of the statutes, as created by this act, is not necessary for the purpose for which it was intended.