



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

BULLETIN 2022-01

TO: ALL HEALTH INSURANCE INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: POTENTIAL UNINTENDED TAX CONSEQUENCES FOR INDIVIDUALS WITH HEALTH SAVINGS ACCOUNTS WHEN USING PHARMACY DISCOUNT CARDS

DATE: FEBRUARY 14, 2022

The Louisiana Department of Insurance hereby issues this bulletin to inform health insurance issuers offering high-deductible health plans (HDHPs) with a health savings account (HSA) of the existence of La. R.S. 22:976.1, enacted through Act 431 of the 2021 Regular Session of the Louisiana Legislature, and the potential tax consequences created by this statute in conjunction with 26 U.S.C. §223 and Internal Revenue Service (IRS) Notice 2004-50.

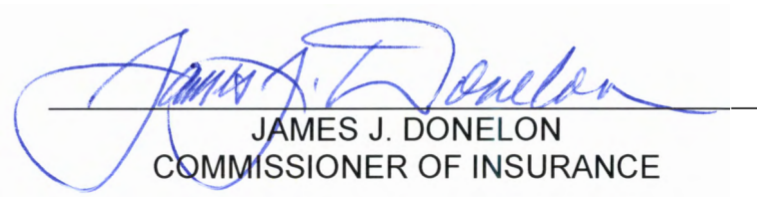
La. R.S. 22:976.1(B) provides that “[w]hen calculating an enrollee’s contribution to any applicable cost-sharing requirement, a health insurance issuer shall include any cost-sharing amounts paid by the enrollee or on behalf of the enrollee by another person.” Specifically, the value of third-party payments, such as discounts, vouchers, financial assistance, pharmacy discount cards, or other out-of-pocket reduction payments used for the purchase of prescription drugs must be applied toward satisfaction of an insured individual’s annual deductible. This requirement is mandatory and may not be waived by either party or through agreement between the parties.

Guidance given by the IRS regarding 26 U.S.C. §223 explains that an HDHP may not provide benefits for any year until the minimum deductible for that year is satisfied. Further, the application of the value of third-party payments deemed ineligible toward satisfaction of an individual’s HDHP annual deductible could render that individual ineligible to contribute to an HSA for that tax year. This restriction does not apply to third-party payments made toward preventative care or any cost-sharing occurring after the annual deductible has been reached. If third-party payments are applied before the individual’s HDHP annual deductible is met, with the exception of third-party payments made toward preventative care, the tax benefits provided by the HSA could be lost and potentially create a serious tax event for the individual.

For the foregoing reasons, consumers enrolled in HDHPs with HSAs are advised to avoid the use of third-party payments, such as pharmacy discount cards. Employers offering state-regulated HDHPs to their employees and all health insurance issuers carrying HDHP products in Louisiana are advised to notify insureds enrolled in HDHPs with HSAs to avoid such use.

If there are any concerns regarding Bulletin 2022-01, please contact the Deputy Commissioner of the Office of Health, Life and Annuity at 225-219-1688 or electronically at public@ldi.la.gov.

Baton Rouge, Louisiana, this 14th day of February, 2022.



JAMES J. DONELON
COMMISSIONER OF INSURANCE