Illinois Department of Insurance

JB PRITZKER
Governor

DANA POPISH SEVERINGHAUS
Acting Director

TO: **All Companies Writing Accident and Health Insurance and Managed Care Plans in Illinois**

FROM: **Dana Popish Severinghaus, Acting Director** dps

DATE: **August 25, 2021**

RE: **Company Bulletin 2021-11**

IMPORTANT NOTICE REGARDING 215 ILCS 134/30(d)

The Illinois Department of Insurance ("Department") has issued this Company Bulletin to provide updated guidance to health insurance issuers about the laws affecting their stance toward discounts and third-parties' assistance to enrollees for out-of-pocket prescription drug expenses.

The Department is currently in the process of reviewing all individual and small group policy forms and rates for those plans wishing to provide such coverage in the State of Illinois for Plan Year 2022. The Department also continues to review plans for the large group market as they are filed.

The Department has received confirmation from both the U.S. Department of Treasury and the U.S. Center for Medicare and Medicaid Services that health plans that count the amount of any discount, voucher, coupon, or third-party payment toward an enrollee's deductible make an individual ineligible to contribute to a health savings account ("HSA") under 26 U.S.C. § 223. This restriction does not apply to payments for any services that the Treasury recognizes as preventive care, such as insulin, nor does it apply to any cost-sharing incurred after the deductible has been reached.

Currently, the Managed Care Reform and Patient Rights Act requires health plans to count third-party payments, financial assistance, discounts, product vouchers, or any other reduction in out-of-pocket expenses for prescription drugs toward all cost-sharing requirements. 215 ILCS 134/30(d). This Illinois requirement prevents any state-regulated private coverage from being a high-deductible health plan as defined in 26 U.S.C. § 223 if it contains policy language in compliance with 215 ILCS 134/30(d), and therefore prevents any individual with such coverage from being eligible to contribute to an HSA.

The Department is conferring with members of the General Assembly about legislation to clarify whether the General Assembly intends to exempt plans designed as high-deductible health plans ("HDHPs") from 215 ILCS 134/30(d) to the extent necessary to allow enrollees to contribute to HSAs. In the meantime, issuers may not expressly indicate in their policy forms, marketing materials, or individual and small group binder filings (including corresponding binder templates) that any plan is designed to be paired with an HSA, whether by reference to an HSA, identifying it as an HDHP, or any other means if it contains policy language in compliance with 215 ILCS 134/30(d). For 2022 plans in the individual and small group markets, such indicators must be removed from their filings before the Department recommends plans to CMS for certification.

HSA-intended policies that have already been filed with the Department should have any policy language in compliance with 215 ILCS 134/30(d) removed. Except for plans only sold off-Exchange, for 2022 plans in the individual and small group markets this removal must be completed before the Department sends its certification recommendations to CMS. The Department is in communication with CMS to understand the marketing options available for HSA-intended plans.

For plans in the large group market and for any individual and small group plans that will be offered only off-Exchange, CMS certification timelines and Healthcare.gov are not at issue. However, the above guidance relating to removing HSA and HDHP indicators from policy forms applies if the plan contains policy language in compliance with 215 ILCS 134/30(d).

If appropriate, the Department will issue additional guidance prior to the January 1, 2022 effective date for plans sold on the marketplace.

Questions regarding this Bulletin should be directed to DOI.InfoDesk@illinois.gov.