SENATE, No. 1415

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Senator STEVEN V. OROHO
District 24 (Morris, Sussex and Warren)
Senator ANTHONY M. BUCCO
District 25 (Morris and Somerset)

SYNOPSIS

Extends certain federal income tax advantages of individual health savings accounts to individual taxpayers under New Jersey gross income tax.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 2/24/2020)

AN ACT extending tax advantages of individual health savings accounts to individual taxpayers under the New Jersey gross income tax, amending P.L.1992, c.161 and amending and supplementing Title 54A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 6 of P.L.1992, c.161 (C.17B:27A-7) is amended to read as follows:

6. The commissioner shall approve the policy and contract forms and benefit levels to be made available by all carriers for the health benefits plans required to be issued pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), and shall adopt such modifications to one or more plans as the board determines are necessary to make available a "high deductible health plan" or plans consistent with **[**section 301 of Title III of the "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191 (26 U.S.C. s.220)**]** paragraph (2) of subsection (c) of section 220 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.220), regarding tax-deductible medical savings accounts, within 60 days after the enactment of P.L.1997, c.414 (C.54A:3-4 et al.), and shall adopt modifications to one or more plans as the board determines necessary to make available a "high deductible health plan" or plans consistent with paragraph (2) of subsection (c) of section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), regarding tax-deductible health savings accounts, within 60 days after the enactment of P.L. , c. (C.) (pending before the Legislature as this bill). The commissioner shall provide the board with an informational filing of the policy and contract forms and benefit levels it approves.

a. The individual health benefits plans established by the board may include cost containment measures such as, but not limited to: utilization review of health care services, including review of medical necessity of hospital and physician services; case management benefit alternatives; selective contracting with hospitals, physicians, and other health care providers; and reasonable benefit differentials applicable to participating and nonparticipating providers; and other managed care provisions.

b. An individual health benefits plan offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall contain a limitation of no more than 12 months on coverage for preexisting conditions. An individual health benefits plan offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall not contain a

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

preexisting condition limitation of any period under the following circumstances:

(1) to an individual who has, under creditable coverage, with no intervening lapse in coverage of more than 31 days, been treated or diagnosed by a physician for a condition under that plan or satisfied a 12-month preexisting condition limitation; or

(2) to a federally defined eligible individual who applies for an individual health benefits plan within 63 days of termination of the prior coverage.

c. In addition to the standard individual health benefits plans provided for in section 3 of P.L.1992, c.161 (C.17B:27A-4), the board may develop up to five rider packages. Premium rates for the rider packages shall be determined in accordance with section 8 of P.L.1992, c.161 (C.17B:27A-9).

d. After the board's establishment of the individual health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), and notwithstanding any law to the contrary, a carrier shall file the policy or contract forms with the commissioner and certify to the commissioner that the health benefits plans to be used by the carrier are in substantial compliance with the provisions in the corresponding approved plans. The certification shall be signed by the chief executive officer of the carrier. Upon receipt by the commissioner of the certification, the certified plans may be used until the commissioner, after notice and hearing, disapproves their continued use.

e. Effective immediately for an individual health benefits plan issued on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.) and effective on the first 12-month anniversary date of an individual health benefits plan in effect on the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), the individual health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), including any plan offered by a federally qualified health maintenance organization, shall contain benefits for expenses incurred in the following:

(1) Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

(2) All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

(3) Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits provided pursuant to this subsection shall be provided to the same extent as for any other medical condition under the health benefits plan, except that a deductible shall not be applied for benefits provided pursuant to this subsection; however, with respect to a health benefits plan that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), a deductible shall not be applied for any benefits provided pursuant to this subsection that represent preventive care as permitted by that federal law, and shall not be applied as provided pursuant to section 14 of P.L.2005, c.248 (C.17B:27A-7.11). This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

f. Effective immediately for a health benefits plan issued on or after the effective date of P.L.2001, c.361 (C.17:48-6z et al.) and effective on the first 12-month anniversary date of a health benefits plan in effect on the effective date of P.L.2001, c.361 (C.17:48-6z et al.), the health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) that provide benefits for expenses incurred in the purchase of prescription drugs shall provide benefits for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the health benefits plan.

This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

g. Effective immediately for an individual health benefits plan issued on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.) and effective on the first 12-month anniversary date of an individual health benefits plan in effect on the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), the health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) that qualify as high deductible health plans for which qualified

medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26U.S.C. s.223), including any plan offered by a federally qualified health maintenance organization, shall contain benefits for expenses incurred in connection with any medically necessary benefits provided in-network which represent preventive care as permitted by that federal law.

The benefits provided pursuant to this subsection shall be provided to the same extent as for any other medical condition under the health benefits plan, except that a deductible shall not be applied for benefits provided pursuant to this subsection. This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

(cf: P.L.2012, c.17, s.57)

2. Section 17 of P.L.1992, c.161 (C.17B:27A-33) is amended to read as follows:

17. Subject to the approval of the commissioner, the board shall formulate the five health benefits plans to be made available by small employer carriers in accordance with the provisions of this act, and shall promulgate five standard forms pursuant thereto. The board may establish benefit levels, deductibles and co-payments, exclusions, and limitations for such health benefits plans in accordance with the law. The board shall ensure that the means exist for a carrier to offer high deductible health benefits plan options that are consistent with **[**section 301 of Title III of the "Health Insurance Portability and Accountability Act of 1996," Pub.L. 104-191,**]** paragraph (2) of subsection (c) of section 220 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.220), regarding tax-deductible medical savings accounts and with paragraph (2) of subsection (c) of section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), regarding tax-deductible health savings accounts.

The board shall submit the forms so established to the commissioner for approval. The commissioner shall approve the forms if the commissioner finds them to be consistent with the provisions of section 3 of P.L.1992, c.162 (C.17B:27A-19). Any form submitted to the commissioner by the board shall be deemed approved if not expressly disapproved in writing within 60 days of its receipt by the commissioner. Such forms may contain, but shall not be limited to, the following provisions:

a. Utilization review of health care services, including review of medical necessity of hospital and physician services;

b. Managed care systems, including large case management;

c. Provisions for selective contracting with hospitals, physicians, and other participating and nonparticipating providers;

d. Reasonable benefits differentials which are applicable to participating and nonparticipating providers;

e. Notwithstanding the provisions of section 4 of P.L.1992, c.162 (C.17B:27A-20) to the contrary, the board may, from time to time, adjust coinsurance and deductibles;

f. Such other provisions which may be quantifiably established to be cost containment devices;

g. The department shall publish annually a list of the premiums charged for each of the five small employer health benefits plans and for any rider package by all carriers writing such plans. The department shall also publish the toll free telephone number of each such carrier.

(cf: P.L.1997, c.146, s.13)

3. N.J.S.54A:3-3 is amended to read as follows:

54A:3-3. Medical expenses. (a) Each taxpayer shall be allowed to deduct from the taxpayer's gross income medical expenses for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents with respect to such expenses that were paid during the taxable year and to the extent that such medical expenses exceed 2% of the taxpayer's gross income. In the case of a nonresident, gross income shall mean gross income which such nonresident would have reported if the taxpayer had been subject to tax during the entire taxable year as a resident.

(b) Special Rule for Decedents.

(1) Treatment of expenses paid after death. Expenses for the medical care of the taxpayer which are paid out of the taxpayer's estate during the one-year period beginning with the day after the day of the death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation. Paragraph (1) shall not apply if the amount paid is not allowable as a deduction in computing medical expense deductions for federal income tax purposes.

(c) Disallowance of amounts allowed for other purposes.

(1) Any expenses allowed as a deduction of expenses for household and dependent care services necessary for gainful employment shall not be allowed as an expense paid for medical care for purposes of this section.

(2) Any amounts paid or distributed out of a medical savings account that are excluded from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-27), or paid or distributed out of a health savings account that are excluded from gross income pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill), shall not be allowed as an expense paid for medical care for purposes of this section.

(3) Any amounts allowed as a deduction for the health insurance costs of the self-employed pursuant to section 1 of P.L.1999, c.222 (C.54A:3-5) shall not be allowed as an expense paid for medical care for purposes of this section.

(cf: P.L.1999, c.222, s.2)

4. N.J.S.54A:5-1 is amend to read as follows:

54A:5-1. New Jersey Gross Income Defined. New Jersey gross income shall consist of the following categories of income:

a. Salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property, and amounts paid or distributed, or deemed paid or distributed, out of a medical savings account that are not excluded from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-27), or out of a health savings account that are not excluded from gross income pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill).

b. Net profits from business. The net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction of the amount of:

(1) taxes based on income;

(2) a civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator; and

(3) treble damages paid to the Department of Environmental Protection pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon the failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, a discharge.

c. Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with the method of accounting allowed for federal income tax purposes. For the purpose of determining gain or loss, the basis of property shall be the adjusted basis used for federal income tax purposes, except as

expressly provided for under this act, but without a deduction for penalties, fines, or economic benefits excepted pursuant to paragraph (2), or for treble damages excepted pursuant to paragraph (3) of subsection b. of this section.

A taxpayer's net gain or loss on the sale, exchange or other disposition of a share of an S corporation shall be calculated by increasing the adjusted basis of the share by an amount equal to the shareholder's net losses and deductions in respect of the share allowed and deducted from income for federal income tax purposes, not including any personal net operating loss deductions, to the extent that such net losses were not offset by the taxpayer's pro rata share of S corporation income otherwise subject to taxation pursuant to subsection p. of this section in respect of another S corporation, subject to rules of priority and assignment determined by the director.

For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of N.J.S.54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or income" shall not include gains or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251) from any sale or assignment of a tax credit issued pursuant to an award of tax credits approved by the New Jersey Economic Development Authority prior to July 1, 2018, regardless of when such sale or assignment occurs. The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For

purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

For purposes of this clause, the term "reorganization" means--

(i) A statutory merger or consolidation;

(ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(iii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(iv) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;

(v) A recapitalization;

(vi) A mere change in identity, form, or place of organization however effected; or

(vii) The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;

(viii) A transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling

corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

For purposes of this clause, the term "control" means the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.

For purposes of this clause, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under subclause (i) by reason of subclause (vii) the term "a party to a reorganization" includes the controlling corporation referred to in such subclause (vii).

Notwithstanding any provisions hereof, upon every such exchange or conversion, the taxpayer's basis for the stock or securities received shall be the same as the taxpayer's actual or attributed basis for the stock, securities or property surrendered in exchange therefor.

d. Net gains or net income derived from or in the form of rents, royalties, patents, and copyrights.

e. Interest, except interest referred to in clause (1) or (2) of N.J.S.54A:6-14, or distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

f. Dividends. "Dividends" means any distribution in cash or property made by a corporation, association or business trust that is not an S corporation, (1) out of accumulated earnings and profits, or (2) out of earnings and profits of the year in which such dividend is paid and any distribution in cash or property made by an S corporation, as specifically determined pursuant to section 16 of P.L.1993, c.173 (C.54A:5-14).

The term "dividends" shall not include distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

g. Gambling winnings.

h. Net gains or income derived through estates or trusts.

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust attributable to contributions to the trust which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey Statutes, amounts rolled over from an IRA, as defined pursuant to subsection (a) of section 408 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as defined pursuant to subsection b. of section 2 of P.L.1998,c.57 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and annuities except to the extent of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51,

P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

k. Distributive share of partnership income, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251) from any sale or assignment of a tax credit issued pursuant to an award of tax credits approved by the New Jersey Economic Development Authority prior to July 1, 2018, regardless of when such sale or assignment occurs.

l. Amounts received as prizes and awards, except as provided in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

m. Rental value of a residence furnished by an employer or a rental allowance paid by an employer to provide a home.

n. Alimony and separate maintenance payments to the extent that such payments are required to be made under a decree of divorce or separate maintenance but not including payments for support of minor children.

o. Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of this State or any other jurisdiction.

p. Net pro rata share of S corporation income, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 P.L.2014, c.63 (C.34:1B-251) from any sale or assignment of a tax credit issued pursuant to an award of tax credits approved by the New Jersey Economic Development Authority prior to July 1, 2018, regardless of when such sale or assignment occurs.

(cf: P.L.2018, c.131, s.8)

5. (New section) A taxpayer may deduct from the taxpayer's gross income an amount equal to the contributions to a health savings account that the taxpayer is allowed for the taxable year as a deduction for federal income tax purposes pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223).

6. (New section) Gross income shall not include contributions to or amounts paid or distributed, or deemed paid or distributed, out of a taxpayer’s health savings account that are excluded from the taxpayer's federal gross income pursuant to section 223 of the federal Internal Revenue Code of 1986 (26U.S.C. s.223).

7. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2020.

STATEMENT

This bill allows gross income tax advantages for Health Savings Accounts in conformity with federal income tax advantages extended to these accounts under federal law. The bill provides a gross income tax deduction for deposits to, and an exemption for withdrawals from, health savings accounts. Individuals can use these accounts to cover out-of-pocket medical care costs under high-deductible medical care plans.

The federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 permits eligible individuals to establish health savings accounts (HSAs) for taxable years beginning on or after January 1, 2004. Under the federal income tax, HSA contributions are deductible from adjusted gross income, contributions grow tax-free, and amounts can be distributed tax-free to pay or reimburse qualified medical expenses. HSAs are similar to Archer medical savings accounts (MSAs) established as tax-advantaged accounts under the federal income tax and provided similar tax-free treatment under the New Jersey gross income tax. However, HSAs are more flexible and available to a greater number of individuals than MSAs.

Eligible individuals are individuals who are covered by a high-deductible health plan. A high-deductible health plan is defined as a health plan that has a deductible that is at least $1,100 for self-only coverage or $2,200 for family coverage. The policy must also have an out-of-pocket maximum that can be no greater than $5,600 for self-only coverage and $11,200 for family coverage. Out-of-pocket expense includes deductibles, copayments, and other amounts (other than premiums) that the individual must pay for covered benefits under their medical care plan.

This bill makes contributions made by or on behalf of an eligible individual that are deductible for federal income tax purposes deductible by the individual for gross income tax purposes. Also, the bill makes employer contributions to an HSA excludible from gross income to the extent the contribution would be deductible if made by the employee. The maximum aggregate annual contribution that can be made to an HSA, as set by federal law, is the lesser of 100 percent of the annual deductible under the high-deductible health plan, or the maximum deductible permitted under an MSA as adjusted for inflation. Contributions can be made to individual HSAs by individuals and their employers. For 2008, the amount of the maximum high deductible is estimated to be $2,900 in the case of self-only coverage and $5,800 in the case of family coverage.

Under the bill, distributions from an HSA for qualified medical expense (most medical expenses defined as deductible for federal income tax purposes) for the taxpayer, the taxpayer's spouse, and dependents generally will be excludable from New Jersey gross income. Distributions from an HSA that are not for qualified medical expenses will be includable in New Jersey gross income. However, distributions that are not for qualified medical expenses will not be includable in gross income if they are made after death or disability, or after the individual attains the age of Medicare eligibility (age 65).

HSAs give workers the opportunity to save tax-free for routine medical bills like doctor visits or medicines, the security of funds to cover out-of-pocket expenses of a major illness, and the freedom of knowing that the account is worker-owned, not under the control of an insurance company, and is portable if a worker changes employers. During years when an individual's family health care spending is low, the money remaining in the HSA earns interest, dividends or gains and is available in the future when unexpected medical expenses arise.

Health savings accounts are a new option which give families access to affordable health care while reducing health insurance premiums. The tax advantages provided under federal law are not currently available under the New Jersey gross income tax. This bill extends that tax conformity.