

SENATE BILL NO. 345

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A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO HIGH-DEDUCTIBLE HEALTH INSURANCE PLANS
 AND EMPLOYER HEALTH REIMBURSEMENT ARRANGEMENTS; PROVIDING VARIOUS TAX INCENTIVES;
~~PROVIDING EXCEPTIONS TO CERTAIN UNFAIR TRADE PRACTICES; LIMITING PROVISIONS FOR~~
~~REIMBURSEMENT OF PREFERRED AND NONPREFERRED PROVIDERS; PROVIDING THAT CERTAIN~~
~~EMPLOYER REIMBURSEMENT ARRANGEMENTS ARE NOT CONSIDERED INSURANCE; IMPOSING~~
 DUTIES ON THE COMMISSIONER OF INSURANCE; PROVIDING RULEMAKING AUTHORITY TO THE
 COMMISSIONER OF INSURANCE; ALLOWING AN INCOME TAX CREDIT FOR CERTAIN EMPLOYER
 CONTRIBUTIONS TO HIGH-DEDUCTIBLE HEALTH INSURANCE PREMIUMS AND HEALTH
REIMBURSEMENT ARRANGEMENT-ONLY PLANS; ALLOWING A REDUCTION IN ADJUSTED GROSS
 INCOME TO CERTAIN TAXPAYERS FOR HEALTH REIMBURSEMENT ARRANGEMENT-ONLY BENEFITS
AND HIGH-DEDUCTIBLE HEALTH INSURANCE PREMIUMS; PROVIDING RULEMAKING AUTHORITY TO
 THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-30-2110, ~~33-18-206~~, AND 33-18-208
~~15-30-2131, AND 33-22-1706~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE DATES AND A
 RETROACTIVE AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 8 5 3] may be cited as the "Affordable
 High-Deductible Health Insurance Plan Act".

1 NEW SECTION. Section 2. Purpose. It is the intent of the legislature to:

2 ~~———(1) authorize the commissioner to establish flexible guidelines for high-deductible health plan designs~~
3 ~~that are affordable to citizens of this state and to increase the availability of these types of plans by disability~~
4 ~~insurance insurers licensed in this state;~~

5 ~~———(2) encourage the offering of affordable high-deductible health plans and health reimbursement~~
6 ~~arrangement-only plans with the specific intent of reaching many otherwise uninsured citizens of this state and~~
7 ~~the general intent of creating affordable comprehensive health insurance for all citizens of this state; and~~

8 ~~———(3) enhance the affordability of insurance with flexible high-deductible health plans by allowing rewards~~
9 ~~and incentives for participation in and adherence to health behaviors that recognize the value of the personal~~
10 ~~responsibility of each citizen to maintain good health, seek preventive care services, and comply with approved~~
11 ~~treatments.~~

12
13 ~~———~~ NEW SECTION. Section 3. Definitions. As used in [sections 1 through 8 5], unless the context requires
14 otherwise, the following definitions apply:

15 ~~———(1) "Health reimbursement arrangement-only plan" means an arrangement under which employees~~
16 ~~receive tax-free reimbursements for qualified medical expenses up to a maximum dollar amount for a coverage~~
17 ~~period, that meets the requirements of sections 105 and 106 of the Internal Revenue Code, 26 U.S.C. 105 and~~
18 ~~106, and as part of which the plan is not sold in connection with or packaged with health insurance coverage.~~

19 ~~———(2) "High-deductible health plan" means a health plan with an annual deductible of not less than a~~
20 ~~specific amount under the Internal Revenue Code and has the same meaning as a high-deductible health plan~~
21 ~~under section 223 of the Internal Revenue Code, 26 U.S.C. 223.~~

22 ~~———(3) "Internal Revenue Code" means the Internal Revenue Code as defined in 15-30-2101.~~

23 ~~———(4) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate~~
24 ~~for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted~~
25 ~~standards of medical practice and that are not provided only as a convenience.~~

26 ~~———(5) "Plan coinsurance percentage" means the percentage of the covered expenses that the insurer will~~
27 ~~pay after all deductibles and copayments are made.~~

28 ~~———(6) "Preferred provider" means a provider or group of providers who have contracted to provide specified~~
29 ~~health care services.~~

30 ~~———(7) "Provider" means an individual or entity licensed or legally authorized to provide health care services.~~

1
 2 ~~NEW SECTION. Section 4. Wellness programs not considered unfair trade practices.~~ Insurers that
 3 include and operate wellness and health promotion programs, disease and condition management programs,
 4 health risk appraisal programs, and similar provisions in their high-deductible health plan policies in keeping with
 5 federal requirements may not be considered to be engaging in unfair trade practices under 33-18-206(2) and
 6 33-18-208(2) with respect to the practices of illegal inducements, unfair discrimination, and rebating.

7
 8 ~~NEW SECTION. Section 5. Preferred and nonpreferred providers -- prohibited provisions.~~ There
 9 may not be a required monetary-based or percentage-based relationship between preferred provider plan
 10 reimbursements and nonpreferred provider plan reimbursements for high-deductible health plans using
 11 nonpreferred provider reimbursements. A nonpreferred provider may not be required to base a benefit level or
 12 coinsurance percentage on amounts established by a preferred provider. The plans may not:

- 13 ~~(1) deny health benefits for medically necessary covered services;~~
 14 ~~(2) have differences in benefit levels payable to preferred providers compared to other providers that~~
 15 ~~unfairly deny benefits for covered services;~~
 16 ~~(3) have a plan coinsurance percentage applicable to benefit levels for services provided by nonpreferred~~
 17 ~~providers that is less than 60% of the benefit levels under the policy for those services; or~~
 18 ~~(4) have an adverse effect on the availability or the quality of services.~~

19
 20 ~~NEW SECTION. Section 6. Health cost reimbursement arrangements.~~ (1) The commissioner shall
 21 allow health reimbursement arrangement-only plans that encourage employer financial support of health
 22 insurance or health-related expenses recognized under the Internal Revenue Code.

23 ~~(2) A health reimbursement arrangement-only plan may not be considered insurance under this title and~~
 24 ~~the laws of this state.~~

25 ~~(3) Individual health insurance policies funded through health reimbursement arrangement-only plans~~
 26 ~~may not be considered employer-sponsored or group coverage under this title and the laws of this state, and~~
 27 ~~nothing in this section may be interpreted to require an insurer to offer an individual health insurance policy for~~
 28 ~~sale in connection with or packaged with a health reimbursement arrangement-only plan or to accept premiums~~
 29 ~~from health reimbursement arrangement-only plans for individual health insurance policies.~~

30

1 NEW SECTION. Section 3. Duties of commissioner -- rulemaking authority. (1) ~~The commissioner~~
 2 ~~shall develop flexible guidelines for coverage and approval of high-deductible health plans that are designed to~~
 3 ~~qualify under federal and state requirements as high-deductible health plans.~~

4 ~~———(2)~~ The commissioner may encourage and promote the marketing of high-deductible health plans by
 5 disability insurance insurers in this state. However, nothing in this section may be construed to authorize the sale
 6 of insurance in violation of the requirements of law relating to the transaction of insurance in this state or
 7 prohibiting the interstate sale of insurance.

8 ~~(3)~~(2) The commissioner may conduct a national study of high-deductible health plans available in other
 9 states and determine if and how these products serve the uninsured and whether they should be made available
 10 to the citizens of this state.

11 ~~(4)~~(3) The commissioner may develop an automatic or expedited approval process for high-deductible
 12 health plans already approved under the laws of this state or other states.

13 (4) FOR THE PURPOSE OF [SECTION 2] AND THIS SECTION, "HIGH-DEDUCTIBLE HEALTH PLAN" HAS THE MEANING
 14 PROVIDED IN [SECTION 5].

15 ~~(5)~~(4)(5) The commissioner may adopt rules regarding the implementation of [sections 1 through 8 5 3],
 16 including rules regarding the design, promotion, advertisements and solicitations, expedited review of
 17 standardized policies, and regulation of high-deductible health plans.

18
 19 ~~———NEW SECTION. Section 8. Income tax credit and deduction.~~ An employer may be entitled to receive
 20 ~~income tax credits pursuant to [sections 9 and 10] for making high-deductible health plans available to~~
 21 ~~employees. Individuals may be entitled to a reduction in adjusted gross income for certain premium payments~~
 22 ~~made for a high-deductible health plan as provided in 15-30-2110(14).~~

23
 24 NEW SECTION. Section 4. Employer tax credit for high-deductible health insurance premiums
 25 AND HEALTH REIMBURSEMENT ARRANGEMENT-ONLY PLAN CONTRIBUTIONS. There is a credit against the taxes
 26 imposed by this chapter for eligible employers for certain qualified health insurance expenses paid by the
 27 employer for coverage of qualifying employees. The credit must be computed and administered as provided in
 28 [section ~~40~~ 7 5].

29
 30 NEW SECTION. Section 5. Employer tax credit for high-deductible health insurance premiums

1 **AND HEALTH REIMBURSEMENT ARRANGEMENT-ONLY PLAN CONTRIBUTIONS.** (1) (a) Subject to the provisions of this
 2 section, there is a credit against the tax imposed by this chapter for qualified health insurance expenses paid by
 3 an employer for qualifying employees during the tax year.

4 (b) The amount of the credit an employer may claim is limited to \$250 for each qualifying employee and
 5 is not available to an employer with more than 50 qualifying employees. An employer is not eligible for the credit
 6 if a high-deductible health plan OR HEALTH REIMBURSEMENT ARRANGEMENT-ONLY PLAN is not made available to all
 7 qualifying employees pursuant to the applicable provisions of section 125 of the Internal Revenue Code, 26
 8 U.S.C. 125, regarding nondiscrimination in favor of highly compensated individuals or participants.

9 (2) A qualifying employee means a Montana resident employed directly by the employer.

10 (3) "Qualified health insurance expenses" means expenses:

11 ~~(a) incurred for a high-deductible health plan as defined by section 223 of the Internal Revenue Code,~~
 12 ~~26 U.S.C. 223 (i) INCURRED BY THE EMPLOYER FOR THE EMPLOYER'S SHARE OF THE COST OF A HIGH-DEDUCTIBLE~~
 13 ~~HEALTH PLAN AND FOR CONTRIBUTIONS TO THE EMPLOYEE HEALTH SAVINGS ACCOUNTS, AS DEFINED BY SECTION 223 OF~~
 14 ~~THE INTERNAL REVENUE CODE, 26 U.S.C. 223; OR~~

15 (ii) INCURRED BY THE EMPLOYER FOR CONTRIBUTIONS TO HEALTH REIMBURSEMENT ARRANGEMENT-ONLY PLANS
 16 MEETING THE REQUIREMENTS OF SECTIONS 105 AND 106 OF THE INTERNAL REVENUE CODE, 26 U.S.C. 105 AND 106;

17 (b) of at least \$250 annually; and

18 (c) paid for 12 consecutive months.

19 (4) The credit allowed under this section may not be claimed as a carryback and may not exceed the
 20 employer's tax liability under chapter 30 or this chapter. The credit allowed under this section may be used as
 21 a carryforward against the taxes imposed by chapter 30 or this chapter for 5 succeeding tax years.

22 (5) An exclusion, deduction, or credit is not allowed under any other provision of chapter 30 or this
 23 chapter with respect to any amount for which a credit is allowed under this section. This section does not prevent
 24 an employer from claiming an exclusion, deduction, or credit for qualified health insurance expenses that exceed
 25 the amount for which the credit is allowed under this section.

26 ~~(6) A tax credit is not allowed under this section if the employer receives premium assistance payments~~
 27 ~~under Title 33, chapter 22, part 20.~~

28 ~~(7)~~(6) If the credit allowed under this section is claimed by a small business corporation, as defined in
 29 15-30-3301, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or
 30 partners using the same proportion as used to report the entity's income or loss for Montana income tax

1 purposes.

2 ~~(8)(7)~~ "Montana resident", for FOR the purpose of determining eligibility for the tax credit provided in this
3 section, THE FOLLOWING DEFINITIONS APPLY:

4 (A) "EMPLOYEE HEALTH SAVINGS ACCOUNTS" MEANS A HEALTH SAVINGS ACCOUNT, AS DEFINED IN SECTION 223
5 OF THE INTERNAL REVENUE CODE, 26 U.S.C. 223.

6 (B) "HEALTH REIMBURSEMENT ARRANGEMENT-ONLY PLAN" MEANS A QUALIFIED SMALL EMPLOYER HEALTH
7 REIMBURSEMENT ARRANGEMENT, AS DEFINED IN SECTION 9831 OF THE INTERNAL REVENUE CODE, 26 U.S.C. 9831, THAT
8 IS NOT SOLD IN CONNECTION WITH OR PACKAGED WITH HEALTH INSURANCE COVERAGE.

9 (C) "HIGH-DEDUCTIBLE HEALTH PLAN" MEANS A HEALTH PLAN WITH AN ANNUAL DEDUCTIBLE OF NOT LESS THAN
10 A SPECIFIC AMOUNT UNDER THE INTERNAL REVENUE CODE AND HAS THE SAME MEANING AS A HIGH-DEDUCTIBLE HEALTH
11 PLAN, AS DEFINED IN SECTION 223 OF THE INTERNAL REVENUE CODE, 26 U.S.C. 223.

12 (D) "MONTANA RESIDENT" means a resident as defined in 15-30-2101.

13 ~~(9)(8)~~ The department may adopt rules, prepare forms, maintain records, and perform other duties
14 necessary to implement this section.

15

16 **Section 6.** Section 15-30-2110, MCA, is amended to read:

17 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection ~~(14)~~ (15), adjusted gross income is
18 the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C.
19 62, and in addition includes the following:

20 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
21 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
22 under federal law;

23 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
24 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

25 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
26 reduction of Montana income tax liability as determined under subsection ~~(15)~~ (16);

27 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
28 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

29 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

30 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the

1 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

2 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
3 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
4 of the same estate or trust for the same tax period; and

5 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend
6 to the extent that the dividend is not included in federal adjusted gross income.

7 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
8 include the following, which are exempt from taxation under this chapter:

9 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
10 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
11 from taxation by Montana under federal law;

12 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
13 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

14 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
15 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

16 (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection ~~(16)~~ (17), the first \$4,070 of
17 all pension and annuity income received as defined in 15-30-2101;

18 (ii) subject to subsection ~~(16)~~ (17), for pension and annuity income described under subsection (2)(c)(i),
19 as follows:

20 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
21 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
22 excess of \$33,910 as shown on the taxpayer's return;

23 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
24 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
25 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910
26 as shown on their joint return;

27 (d) all Montana income tax refunds or tax refund credits;

28 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

29 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
30 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January

1 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
2 or lodging;

3 (g) all benefits received under the workers' compensation laws;

4 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
5 employee under federal law;

6 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
7 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

8 (j) principal and income in a medical care savings account established in accordance with 15-61-201
9 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
10 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

11 (k) principal and income in a first-time home buyer savings account established in accordance with
12 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
13 of a single-family residence;

14 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
15 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
16 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
17 a designated beneficiary;

18 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
19 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

20 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
21 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
22 of the same estate or trust for the same tax period;

23 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
24 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
25 is not provided for federal income tax purposes;

26 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
27 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
28 taxpayer meet the filing requirements in 15-30-2602.

29 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
30 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

1 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero;
2 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
3 15-31-163; ~~and~~

4 (t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to
5 15-30-3104; AND

6 (U) ALL BENEFITS RECEIVED BY AN EMPLOYEE FROM A HEALTH REIMBURSEMENT ARRANGEMENT-ONLY PLAN, AS
7 DEFINED IN [SECTION 5], IF THE BENEFITS WERE USED FOR MEDICAL CARE, AS DEFINED BY 26 U.S.C. 213(D), OR
8 INSURANCE FOR MEDICAL CARE FOR THE EMPLOYEE OR THE EMPLOYEE'S SPOUSE OR DEPENDENTS, AND ATTRIBUTED AS
9 INCOME TO THE EMPLOYEE UNDER FEDERAL LAW.

10 (3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall
11 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
12 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
13 is effective.

14 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
15 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
16 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
17 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
18 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
19 be made to determine the amount of income or loss of the partnership or small business corporation.

20 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
21 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
22 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
23 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
24 Montana return.

25 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
26 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
27 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
28 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
29 must be split equally on each return.

30 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and

1 who file separate Montana income tax returns are not required to recompute allowable passive losses according
2 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
3 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
4 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

5 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
6 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
7 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
8 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

9 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
10 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
11 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
12 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
13 gross income.

14 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and
15 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana
16 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The
17 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross
18 income.

19 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
20 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
21 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
22 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
23 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
24 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
25 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
26 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
27 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
28 or expected to last at least 12 months.

29 (11) (a) An individual who contributes to one or more accounts established under the Montana family
30 education savings program or to a qualified tuition program established and maintained by another state as

1 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted
2 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
3 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses
4 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
5 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
6 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
7 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
8 to withdrawals of contributions that reduced adjusted gross income.

9 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
10 15-62-208.

11 (12) (a) An individual who contributes to one or more accounts established under the Montana achieving
12 a better life experience program or to a qualified program established and maintained by another state as
13 provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), may reduce adjusted gross
14 income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse
15 is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may
16 jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The
17 reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an
18 account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild
19 if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with
20 respect to withdrawals of contributions that reduced adjusted gross income.

21 (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in
22 53-25-118.

23 (13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection
24 (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

25 (i) is a health care professional licensed in Montana as provided in Title 37;

26 (ii) is serving a significant portion of a designated geographic area, special population, or facility
27 population in a federally designated health professional shortage area, a medically underserved area or
28 population, or a federal nursing shortage county as determined by the secretary of health and human services
29 or by the governor;

30 (iii) has had a student loan incurred as a result of health-related education; and

1 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment
2 program described in subsection (13)(b) as an incentive to practice in Montana.

3 (b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or
4 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
5 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
6 as a licensed health care professional.

7 ~~(14) A taxpayer may reduce adjusted gross income by the entire amount of premium payments made~~
8 ~~by the taxpayer for a high-deductible health plan, as defined in section 223 of the Internal Revenue Code, 26~~
9 ~~U.S.C. 223, that provides coverage for the taxpayer or the taxpayer's spouse or dependents to the extent that~~
10 ~~the premiums were not deducted in calculating federal adjusted gross income and the expenses are not covered~~
11 ~~or reimbursed by other sources, including but not limited to a health reimbursement arrangement-only plan as~~
12 ~~defined in [section 3] TO THE EXTENT THAT THE TAXPAYER, OR ANOTHER INDIVIDUAL ON BEHALF OF THE TAXPAYER, MADE~~
13 ~~CONTRIBUTIONS OTHER THAN THROUGH A CAFETERIA PLAN UNDER 26 U.S.C. 125, TO THE TAXPAYER'S HEALTH SAVINGS~~
14 ~~ACCOUNT DURING THE TAX YEAR, SUBJECT TO THE CONTRIBUTION LIMITATIONS SET FORTH IN 26 U.S.C. 223. THE~~
15 ~~TAXPAYER MAY NOT REDUCE ADJUSTED GROSS INCOME TO THE EXTENT OF CONTRIBUTIONS MADE TO THE TAXPAYER'S~~
16 ~~HEALTH SAVINGS ACCOUNT BY THE TAXPAYER'S EMPLOYER DURING THE TAX YEAR BY THE ENTIRE AMOUNT OF PREMIUM~~
17 ~~PAYMENTS MADE BY THE TAXPAYER FOR A HIGH-DEDUCTIBLE HEALTH PLAN, AS DEFINED IN [SECTION 5], THAT PROVIDES~~
18 ~~COVERAGE FOR THE TAXPAYER OR THE TAXPAYER'S SPOUSE OR DEPENDENTS TO THE EXTENT THAT THE PREMIUMS WERE~~
19 ~~NOT DEDUCTED IN CALCULATING FEDERAL ADJUSTED GROSS INCOME.~~

20 ~~(14)(15)~~ Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40%
21 of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are
22 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

23 ~~(15)(16)~~ A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the
24 following order as applicable:

25 (a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax
26 year;

27 (b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year
28 but did not result in a reduction in state income tax liability in that prior tax year; and

29 (c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year
30 and that reduced the taxpayer's state income tax liability in that prior tax year.

1 ~~(16)~~(17) By November 1 of each year, the department shall multiply the amount of pension and annuity
 2 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
 3 by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective
 4 for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c).
 5 (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates
 6 on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates December 31, 2023--sec.
 7 33, Ch. 457, L. 2015.)"

8

9 **SECTION 7. SECTION 15-30-2131, MCA, IS AMENDED TO READ:**

10 **"15-30-2131. Deductions allowed in computing net income.** (1) In computing net income, there are
 11 allowed as deductions:

12 (a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and
 13 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not
 14 deductible:

15 (i) items provided for in 15-30-2133;

16 (ii) state income tax paid;

17 (iii) premium payments for medical care as provided in subsection (1)(g)(i);

18 (iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); ~~and~~

19 (v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift
 20 annuity as defined in 33-20-701; and

21 (vi) medical care benefits deducted in determining Montana adjusted gross income under
 22 15-30-2110(2)(u);

23 (b) federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head
 24 of household, or married filing separately or \$10,000 if married and filing jointly;

25 (c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through
 26 (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as
 27 follows:

28 (i) expenses for household and dependent care services necessary for gainful employment incurred for:

29 (A) a dependent under 15 years of age for whom an exemption can be claimed;

30 (B) a dependent as allowable under 15-30-2114(5), except that the limitations for age and gross income

- 1 do not apply, who is unable to provide self-care because of physical or mental illness; and
- 2 (C) a spouse who is unable to provide self-care because of physical or mental illness;
- 3 (ii) employment-related expenses incurred for the following services, but only if the expenses are incurred
- 4 to enable the taxpayer to be gainfully employed:
- 5 (A) household services that are attributable to the care of the qualifying individual; and
- 6 (B) care of an individual who qualifies under subsection (1)(c)(i);
- 7 (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household
- 8 is furnished by an individual or, if the individual is married during the applicable period, is furnished by the
- 9 individual and the individual's spouse;
- 10 (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:
- 11 (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during
- 12 the year only to the extent that the expenses do not exceed \$4,800;
- 13 (B) expenses for services in the household are deductible under subsection (1)(c)(i) for
- 14 employment-related expenses only if they are incurred for services in the taxpayer's household, except that
- 15 employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if
- 16 incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the
- 17 expenses incurred during the year do not exceed:
- 18 (I) \$2,400 in the case of one qualifying individual;
- 19 (II) \$3,600 in the case of two qualifying individuals; and
- 20 (III) \$4,800 in the case of three or more qualifying individuals;
- 21 (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during
- 22 which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by
- 23 one-half of the excess of the combined adjusted gross income over \$18,000;
- 24 (vi) for purposes of this subsection (1)(c):
- 25 (A) married couples shall file a joint return or file separately on the same form;
- 26 (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred
- 27 are deductible only if:
- 28 (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent
- 29 that they are a direct result of the employment; or
- 30 (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

1 (C) an individual legally separated from the individual's spouse under a decree of divorce or of separate
2 maintenance may not be considered as married;

3 (D) the deduction for employment-related expenses must be divided equally between the spouses when
4 filing separately on the same form;

5 (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year
6 and payments made to an individual with respect to whom a deduction is allowable under 15-30-2114(5) are not
7 deductible as employment-related expenses;

8 (d) in the case of an individual, political contributions determined in accordance with the provisions of
9 section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year
10 that ended December 31, 1978;

11 (e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed
12 as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

13 (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to
14 the conditions set forth in 15-30-2143;

15 (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in
16 determining Montana adjusted gross income, or for which a credit was claimed under 15-30-2366, for:

17 (i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the
18 taxpayer's dependents, and the parents and grandparents of the taxpayer; and

19 (ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified
20 long-term care services, as defined in 26 U.S.C. 7702B(c), for:

21 (A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

22 (B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the
23 taxpayer for tax years beginning after December 31, 1996;

24 (h) light vehicle registration fees, as provided for in 61-3-321(2) and 61-3-562, paid during the tax year;
25 and

26 (i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,
27 81-7-118, or 81-7-201.

28 (2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home
29 or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child
30 and at least one unrelated child in the ordinary course of business may deduct employment-related expenses

1 considered to have been paid for the care of the child.

2 (b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal
3 to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of
4 care. The employment-related expenses apply regardless of whether any expenses actually have been paid.
5 Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

6 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the
7 deduction under this subsection (2)."

8

9 ~~Section 9.~~ Section 33-18-206, MCA, is amended to read:

10 ~~"33-18-206. Unfair discrimination prohibited -- life insurance, annuities, and disability insurance.~~

11 ~~(1) No A person shall may not make or permit any unfair discrimination between individuals of the same class~~
12 ~~and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the~~
13 ~~dividends or other benefits payable thereon on the contract or in any other of the terms and conditions of such~~
14 ~~the contract.~~

15 ~~(2) No Except as provided in [section 4] regarding high-deductible health plans, a person shall may not~~
16 ~~make or permit any unfair discrimination between individuals of the same class and of essentially the same~~
17 ~~hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance~~
18 ~~or in the benefits payable thereunder under the contract or in any of the terms or conditions of such the contract~~
19 ~~or in any other manner whatever.~~

20 ~~(3) An insurer may not refuse to consider an application for life or disability insurance on the basis of a~~
21 ~~genetic condition, developmental delay, or developmental disability.~~

22 ~~(4) The rejection of an application or the determining of rates, terms, or conditions of a life or disability~~
23 ~~insurance contract on the basis of genetic condition, developmental delay, or developmental disability constitutes~~
24 ~~unfair discrimination unless the applicant's medical condition and history and either claims experience or actuarial~~
25 ~~projections establish that substantial differences in claims are likely to result from the genetic condition,~~
26 ~~developmental delay, or developmental disability.~~

27 ~~(5) As used in this section, the following definitions apply:~~

28 ~~(a) "Developmental delay" means a delay of at least 1 1/2 standard deviations from the norm.~~

29 ~~(b) "Developmental disability" means the singular of developmental disabilities as defined in 53-20-202.~~

30 ~~(c) "Genetic condition" means a specific chromosomal or single-gene genetic condition."~~

1
 2 ~~Section 10.~~ Section 33-18-208, MCA, is amended to read:
 3 ~~"33-18-208. Contract to contain agreements -- rebates prohibited -- life, disability, and annuity~~
 4 ~~contracts.~~ Except as otherwise expressly provided by law, no a person shall may not knowingly:
 5 ~~(1) permit, or offer to make, or make any a contract of life insurance, life annuity, or disability insurance~~
 6 ~~or an agreement as to such regarding the contract other than as plainly expressed in the contract issued thereon;~~
 7 ~~(2) pay, or allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to such an~~
 8 ~~insurance or annuity contract any a rebate of premiums payable on the contract or any special favor or advantage~~
 9 ~~in the dividends or other benefits thereon or any paid employment or contract for services of any kind or any~~
 10 ~~valuable consideration or inducement whatever not specified in the contract, except as provided in [section 4]~~
 11 ~~regarding high deductible health plans;~~
 12 ~~(3) directly or indirectly give, or sell, or purchase, or offer or agree to give, sell, purchase, or allow as~~
 13 ~~inducement to such an insurance or annuity contract or in connection therewith with the contract and whether or~~
 14 ~~not to be specified in the policy or contract, any an agreement of any form or nature promising returns and profits~~
 15 ~~or any stocks, bonds, or other securities or interest present or contingent therein or as measured thereby of any~~
 16 ~~an insurance company or other corporation, association, or partnership or any dividends or profits accrued or to~~
 17 ~~accrue on the stocks, bonds, or other securities or interest thereon; or~~
 18 ~~(4) offer, promise, or give anything of value whatsoever not specified in the an insurance, annuity, or~~
 19 ~~disability contract."~~

20
 21 ~~Section 14.~~ Section 33-22-1706, MCA, is amended to read:
 22 ~~"33-22-1706. Permissible and mandatory provisions in provider agreements, insurance policies,~~
 23 ~~and subscriber contracts.~~ (1) A provider agreement, insurance policy, or subscriber contract issued or delivered
 24 in this state may contain components designed to control the cost and improve the quality of health care for
 25 insureds and subscribers as provided in this part.
 26 ~~(2) All terms or conditions of an insurance policy or subscriber contract, except those already approved~~
 27 ~~by the commissioner, are subject to the prior approval of the commissioner.~~
 28 ~~(3) Provisions designed to control cost and improve the quality of health care under this section include~~
 29 ~~but are not limited to those that set a payment difference for reimbursement of a nonpreferred provider as~~
 30 ~~compared to a preferred provider and those designed to give policyholders or subscribers an incentive to choose~~

1 a particular provider consistent with the other provisions of this part.

2 ~~—— (4) Provisions in high-deductible health plans that do not require a relationship between preferred~~
3 ~~providers and nonpreferred providers that comply with [section 5] are permissible.~~

4 ~~—— (4)(5) (a) A health benefit plan that contains a payment difference provision and that the commissioner~~
5 ~~has determined to have an adequate provider network is not subject to subsection (4)(b) (5)(b).~~

6 ~~—— (b) A With the exception of high-deductible health plans, a health benefit plan that contains a payment~~
7 ~~difference provision and has not been determined to have an adequate provider network may not exceed a 25%~~
8 ~~payment difference in the reimbursement level for a preferred provider, and the commissioner shall review~~
9 ~~differences between copayments, deductibles, and other cost-sharing arrangements under this subsection (4)(b)~~
10 ~~(5)(b).~~

11 ~~—— (c) For the purposes of this subsection (4) (5), a provider network is adequate if:~~

12 ~~—— (i) the network includes at least 80% of the licensed individual physicians actively practicing in the state~~
13 ~~of Montana;~~

14 ~~—— (ii) the network includes at least 80% of the licensed individual nonphysician health care providers actively~~
15 ~~practicing in the state of Montana; and~~

16 ~~—— (iii) the network includes at least 90% of those facilities licensed and operating as hospitals in the state~~
17 ~~of Montana.~~

18 ~~—— (5)(6) A health benefit plan or other plan offering prepaid dental services under this part shall offer its~~
19 ~~insureds the right to obtain dental care from any licensed dental care provider of their choice subject to the same~~
20 ~~terms and conditions imposed under this section."~~

21
22 **NEW SECTION. Section 8. Codification instruction.** (1) [Sections 1 through 8 ~~5~~ 3] are intended to
23 be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [sections
24 1 through 8 ~~5~~ 3].

25 (2) [Section 9 ~~6~~ 4] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions
26 of Title 15, chapter 30, apply to [section 9 ~~6~~ 4].

27 (3) [Section 40 ~~7~~ 5] is intended to be codified as an integral part of Title 15, chapter 31, and the
28 provisions of Title 15, chapter 31, apply to [section 40 ~~7~~ 5].

29
30 **NEW SECTION. Section 9. Effective date DATES.** ~~[This act]~~ (1) EXCEPT AS PROVIDED IN SUBSECTION (2),

1 [THIS ACT] is effective on passage and approval.

2 (2) [SECTIONS 4 THROUGH 7] ARE EFFECTIVE JANUARY 1, 2019.

3

4 NEW SECTION. Section 10. ~~Retroactive applicability~~ APPLICABILITY. ~~[This act] applies retroactively;~~
5 ~~within the meaning of 1-2-109; [SECTIONS 4 THROUGH 7] APPLY~~ to tax years beginning after December 31, ~~2016~~
6 2018.

7 - END -