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## **BULLETIN NO. LH 2021-05**

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**To: All Health Insurance Companies, Health Maintenance Organizations, PBMs and Other Interested Parties**

**Re: Special Notice Regarding 36 O.S. 1250.5 (18)**

**From: Glen Mulready, Commissioner**

**Date: October 29, 2021**

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The Oklahoma Insurance Department (“Department”) is releasing this Bulletin with the purpose of providing information to health insurance issuers regarding HB 2678, a bill enacted during the 2021 Regular Session of the Oklahoma Legislature, amending 36 O.S. § 1250.5 with the effective date of November 1, 2021.

Section 1(18) of HB 2678 (to be codified as 36 O.S. § 1250.5(18)) considers the following to be an unfair claim settlement practice:

As a health insurer that provides pharmacy benefits or a pharmacy benefits manager that administers pharmacy benefits for a health plan, failing to include any amount paid by an enrollee or on behalf of an enrollee by another person when calculating the enrollee’s total contribution to an out-of-pocket maximum, deductible, copayment, coinsurance or other cost sharing arrangement.

Health plan issuers must take notice that when an enrollee’s health plan is a high deductible health plan (“HDHP”) connected to a health savings account (“HSA”), counting third-party payments, such as discounts, vouchers, financial assistance, or other out-of-pocket reduction payments, toward enrollee out-of-pocket expenses will make that enrollee’s contribution ineligible toward their HSA pursuant to 26 U.S.C. § 223.

Beginning November 1, 2021, all existing health plans under an HDHP and associated HSA arrangement or upon issue or renewal of such a health plan must be administrated in compliance with HB 2678 (to be codified as 36 O.S. § 1250.5(18)). The Department is actively engaging with the Legislature to seek clarification regarding the conflict between the state statute and federal requirements governing HSA eligibility. In the interim, the administration of pharmacy claims must be in compliance with state law, which will require the issuer to combine all payments made toward a prescription when calculating the enrollee’s total contribution. The issuer must also comply with federal law, which prohibits any contribution from an HSA from being combined with any third-party payment with exceptions for contributions made toward preventative care and cost-sharing occurring after the deductible is reached.

If payments made from an HSA are deemed ineligible, the tax benefits provided by the HSA could be lost for that payment and potentially create a serious tax event for the enrollee. The Department strongly encourages health plan issuers to promptly contact members enrolled in an HDHP with an associated HSA and clearly communicate the effects of applying funds from third parties and their HSA when making payments for prescriptions.

Questions concerning this bulletin should be directed to Kim Bailey, General Counsel, at [kim.bailey@oid.ok.gov](mailto:kim.bailey@oid.ok.gov) or Molly Clinkscales, Assistant General Counsel at [molly.clinkscales@oid.ok.gov](mailto:molly.clinkscales@oid.ok.gov).