WEST VIRGINIA CODE: §33-15-20

§33-15-20. Individual medical savings accounts; definitions; ownership; trustees; regulations.

(a) Any individual resident of this state may establish an individual medical savings account to serve as self-insurance for the payment of medical expenses: Provided, That an individual establishing an individual medical savings account may designate a percentage of the account assets that may be withdrawn by the individual if not needed for the payment of medical expenses: Provided, however, That any amount remaining in an individual medical savings account on the earlier of the date of retirement, at the age of fifty-nine and one-half years or more, of the individual who established the account, or the date of death of that individual, may be withdrawn by the individual or by his or her personal representative for a purpose other than the payment of medical expenses: Provided further, That no withdrawal pursuant to this subsection shall be subject to the additional twenty percent tax as provided in subsection (d) of this section. As used in this section, "individual medical savings account" means a trust that meets the definition of "medical savings account" set forth in paragraph (1), subsection (d), section 220 of the Internal Revenue Code of 1986, as amended, when that definition is applied without regard to sub-subparagraph (ii), subparagraph (A) of that paragraph. "Medical expenses" means expenses that fall within the definition of "qualified medical expenses" set forth in paragraph (2), subsection (d), section 220 of the Internal Revenue Code of 1986, as amended, when that definition is applied without regard to subparagraph (C) of that paragraph.

(b) Any insurer issuing accident and sickness policies in this state in accordance with the provisions of this article may offer a benefit plan including deductibles or copayments combined with individual self-insurance through the establishment of individual medical savings accounts. A benefit plan established pursuant to this subsection shall provide that medical expenses included within deductible or copayment provisions of the accident and sickness policy for the individual or for his or her covered dependents and therefore not payable under that policy be paid by the trustee, either directly or as reimbursement to an individual who has previously paid medical expenses, from the individual medical savings account. A benefit plan may limit payment of medical expenses until the group plan annual deductible is met from the individual medical savings account to expenses which are covered services under the policy.

(c) Within one hundred eighty days of the passage of this legislation, the Tax Commissioner may promulgate emergency rules as to the keeping of records, the content and form of returns and statements, and the filing of copies of income tax returns and determination by trustees of individual medical savings accounts and by individuals establishing individual medical savings accounts: Provided, That for purposes of sections fifteen, fifteen-a and fifteen-b, article three, chapter twenty-nine-a of this code, a sufficient emergency to justify the promulgation of those rules shall be deemed to exist. The power granted by this

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subsection shall be in addition to the rule-making powers granted to the Tax Commissioner elsewhere in this code.

(d) If any amount distributed out of an individual medical savings account is used for any purpose other than to defray medical expenses, except as specifically provided in subsection (a) of this section or except for a distribution of account assets pursuant to order of a federal bankruptcy court, the West Virginia personal income tax of the individual establishing the account, for the taxable year in which the distribution is made shall be increased by an amount equal to twenty percent of the distribution.

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