WEST VIRGINIA CODE: §33-16-15

§33-16-15. Individual medical savings accounts; definitions; ownership; contributions; trustees; regulations.

(a) Any insurer issuing group accident and sickness policies in this state, the Public Employees Insurance Agency and any employer offering a health benefit plan pursuant to the Employee Retirement Income Security Act of 1974, as amended, may offer a benefit plan including deductibles or copayments combined with employee self-insurance through the establishment of individual medical savings accounts. An insurer offering a benefit plan consisting of deductibles or copayments combined with employee self-insurance and individual medical savings accounts shall not be deemed to be an insurer offering individual accident and sickness insurance coverage solely because the insurer offers such a benefit plan. Notwithstanding any provision of this section, an employer may not compel an employee as a condition of employment to contribute any amount to an individual medical savings account which has been established for the employee, or to accept contributions to an individual medical savings account in lieu of other compensation or benefits. An employer may not charge an employee a fee, by any name whatsoever, in return for establishing an individual medical savings account for the employee: Provided, That a reasonable fee may be charged for any necessary services rendered in the establishment of the individual medical savings account and which fee is fully disclosed to the employee or account holder: Provided, however, That any qualified person serving as trustee of an individual medical savings account established for any employee or account holder], may impose reasonable fees, charges and expenses for administration.

An employee establishing an individual medical savings account, or for whom an account is established by an employer, may designate a percentage of the employee's contributions, if any, to that account that may be withdrawn by the employee if not needed for the payment of medical expenses: Provided, That any amount remaining in an individual medical savings account on the earlier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at the age of fifty-nine and one-half years or more, of the employee or the date of death of the employee, may be withdrawn by the employee or by his or her personal representative for a purpose other than the payment of medical expenses: Provided, however, That no withdrawal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.

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(b) A benefit plan established pursuant to this section shall provide that medical expenses included within deductible or copayment provisions of the group accident and sickness policy and therefore not payable under the group policy for the employee or for his or her covered dependents be paid by the trustee, either directly or as reimbursement to an employee 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 medical savings account to expenses which are covered services under the group policy. Combined plans are subject to the protections afforded by article twenty-six-a of this chapter.

(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 employees establishing those accounts or for whom those accounts are established: 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 subsection shall be in addition to the rule-making power 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 employee establishing the account or for whom the account is established, 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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