

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§ 33-15-20 (d)
and 33-16-15 (d)
AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 47

TITLE OF RULE BEING PROPOSED: Individual Medical Savings Accounts

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 1, 1996 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Timothy Hrynick

Associate Counsel

WV Insurance Commission

Post Office Box 50540

Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

B. Keith Huffman
General Counsel

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

2.80



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

May 31, 1996

HAND DELIVERED

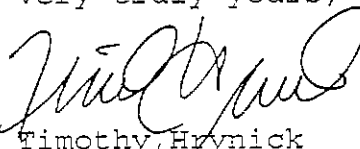
Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, WV 25305

Dear Ms. Cooper:

Enclosed please find for filing one copy of the following:

- (1) Notice of A Comment Period on a Proposed Rule;
- (2) Consent of Tax and Revenue Cabinet Secretary to Proposed Rule;
- (3) Brief Summary of Rule;
- (4) Statement of Circumstances;
- (5) Fiscal Note;
- (6) The proposed rule entitled "Individual Medical Savings Accounts" (Series 47).

Please contact me if further information is required.

Very truly yours,

Timothy Hrynick
Associate Counsel

TH/cjs



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

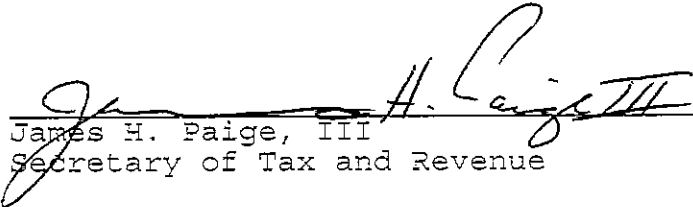
HANLEY C. CLARK
Insurance Commissioner

CONSENT TO PROPOSAL OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent to the proposal of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 47, relating to Individual Medical Savings Accounts.

Signed this 31st day of May, 1996.


James H. Paige, III
Secretary of Tax and Revenue

Insurance Commissioner
Legislative Rule
Title 114, Series 47

INDIVIDUAL MEDICAL SAVINGS ACCOUNTS

Title 114, Series 47

BRIEF SUMMARY OF RULE

On March 11, the West Virginia Legislature passed H.B. 2491, which inter alia added §§ 33-15-20 and 33-16-15 to the West Virginia Code. Both of the aforementioned sections provided for the establishment of Individual Medical Savings Accounts (IMSAs). These IMSAs are trusts created for the purpose of paying certain medical expenses of an individual or the individual's children or dependents. By virtue of amendments to sections of the Code located within Article 21, Chapter 11 of the Code, contributions to or withdrawals from an IMSA are accorded special treatment when determining the individual's West Virginia Personal Income Tax (PIT) liability.

Both W. Va. Code § 33-15-20(d) and W. Va. Code § 33-16-15(d) require the Insurance Commissioner to establish by legislative rule specific standards for IMSAs. The aforementioned subsections contemplate that the legislative rule(s) will comprise, at minimum, the following topics: (1) definition of terms; (2) annual contribution minimums; (3) annual contribution maximums; (4) limitations upon the individual's access to and use of IMSA assets; (5) circumstances under which a benefit plan consisting of IMSAs and an employer-offered health plan or group insurance policy may permit reduced contributions; (6) provisions for reporting IMSA withdrawals to an insurer when the IMSA and a group insurance policy are combined in a benefit plan; (7) provisions relating to the change or redesignation of an IMSA trustee. The list of topics provided by statute is expressly nonexhaustive.

This rule addresses the topics set forth above and in the aforementioned subsections, as well as establishing standards (or, more accurately, clarifying statutory standards) for IMSA trustees and IMSA trust instruments. Additionally, the rule establishes standards for reporting and record keeping by IMSA trustees which facilitate PIT auditing by state tax authorities.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

INDIVIDUAL MEDICAL SAVINGS ACCOUNTS

Title 114, Series 47

STATEMENT OF CIRCUMSTANCES

On March 11, the West Virginia Legislature passed H.B. 2491, which inter alia added §§ 33-15-20 and 33-16-15 to the West Virginia Code. Both of the aforementioned sections provided for the establishment of Individual Medical Savings Accounts (IMSAs). These IMSAs are trusts created for the purpose of paying certain medical expenses of an individual or the individual's children or dependents.

Both W. Va. Code § 33-15-20(d) and W. Va. Code § 33-16-15(d) require the Insurance Commissioner to establish by legislative rule specific standards for IMSAs. This legislative rule will comprise, at minimum, the following topics: (1) definition of terms; (2) annual contribution minimums; (3) annual contribution maximums; (4) limitations upon the individual's access to and use of IMSA assets; (5) circumstances under which a benefit plan consisting of IMSAs and an employer-offered health plan or group insurance policy may permit reduced contributions; (6) provisions for reporting IMSA withdrawals to an insurer when the IMSA and a group insurance policy are combined in a benefit plan; (7) provisions relating to the change or redesignation of an IMSA trustee.

This rule addresses the topics set forth above and in the aforementioned subsections, as well as establishing standards for IMSA trustees and IMSA trust instruments. Additionally, the rule establishes standards for reporting and record keeping by IMSA trustees which facilitate West Virginia Personal Income Tax auditing by state tax authorities.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Individual Medical Savings Accounts
 Title 114, Series 47

Type of Rule: Legislative Interpretive Procedural

Agency: Insurance Commissioner

Address: Post Office Box 50540
 1124 Smith Street, Greenbrooke Building
 Charleston, West Virginia 25305-0540

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	\$ None				
PERSONAL SERVICES	None				
CURRENT EXPENSE	None				
REPAIRS AND ALTERNATIONS	None				
EQUIPMENT	None				
OTHER	None				

2. Explanation of above estimates:

This rule establishes specific standards for individual medical savings accounts, as required by W. Va. Code § 33-15-20 and 33-16-15. The rule does not itself authorize such accounts or significantly expand or limit their availability. Consequently, the rule has no significant fiscal impact over that of the aforementioned code sections themselves.

3. Objectives of these rules:

The objective of this rule is to establish specific standards for individual medical savings accounts as required by W. Va. Code §§ 33-15-20(d) and 33-16-15(d).

Rule Title: Individual Medical Savings Accounts
Title 114, Series 47

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None. See answer to Question 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None. See answer to Question 2.

C. Economic Impact on Citizens/Public at Large.

None. See answer to Question 2.

Date: 5/30/96

Signature of Agency Head or Authorized Representative

Hanley S. Clark

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LEGISLATIVE RULES
INSURANCE COMMISSIONER

SERIES 47
INDIVIDUAL MEDICAL SAVINGS ACCOUNTS

Section

- §114-47-1. General.
- §114-47-2. Definitions.
- §114-47-3. IMSA Trusts.
- §114-47-4. Trustees.
- §114-47-5. Contributions.
- §114-47-6. Withdrawals.
- §114-47-7. Special Provisions for IMSA Benefit Plans.
- §114-47-8. Rollovers.
- §114-47-9. Trustee's Disclosure Statement and Annual Report.
- §114-47-10. Documentation of IMSA Transactions.
- §114-47-11. Disqualification.

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TITLE 114
LEGISLATIVE RULES
INSURANCE COMMISSIONER

SERIES 47
INDIVIDUAL MEDICAL SAVINGS ACCOUNTS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§114-47-1. General.

1.1. Scope. -- This rule applies to all persons who are trustees or beneficiaries of Individual Medical Savings Accounts established pursuant to W. Va. Code §33-15-20 or W. Va. Code §33-16-15.

1.2. Authority. -- W. Va. Code §33-15-20(d) and W. Va. Code §33-16-20(d).

1.3. Filing Date. --

1.4. Effective Date. --

§114-47-2. Definitions.

2.1. "Child" of an IMSA holder means a natural or adopted child of the holder or of the holder's spouse to whom the holder or the holder's spouse owes a duty of support under West Virginia law.

2.2. "Dependent" of an IMSA holder means the holder's spouse or any individual who is a dependent of the holder under section 512 of the Internal Revenue Code.

2.3. "Holder" of an IMSA or "IMSA holder" means an individual who is a resident of this state and the beneficiary of an IMSA.

2.4. "IMSA benefit plan" means the combination of a group accident and sickness policy and IMSAs, or of an employer health benefit plan and IMSAs, that is established and maintained pursuant to W. Va. Code §33-16-15(a).

2.5. "Individual Medical Savings Account" or "IMSA" means a trust established and maintained pursuant to W. Va. Code §33-15-20 or W. Va. Code §33-16-15.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

2.6. "IRA trust" means an Individual Retirement Account trust established pursuant to section 408 of the Internal Revenue Code.

2.7. "Internal Revenue Code" or means the Internal Revenue Code of 1986, as amended.

2.8. "Medical expense" means either a premium for group accident and sickness insurance that is part of an IMSA benefit plan, or an expense for services that is incurred or paid by an IMSA holder and is for services that fall within the definition of "medical care" contained within subdivision 213(d)(1)(A) of the Internal Revenue Code.

a. For purposes of this definition, "an expense for services" includes both expenses for the performance of services and expenses for the purchase or use of property (including, but not limited to, drugs) that either is used or consumed by the service provider in the course of performing the services, or is prescribed by the service provider for use in connection with the services. Expenses for the purchase or use of property that is not used in connection with services that constitute "medical expenses" are not themselves "medical expenses."

b. Notwithstanding any other provision of this rule, "medical expense" does not include:

1. any expense for cosmetic surgery, as defined in subdivision 213(d)(9)(B) of the Internal Revenue Code, even if the expense falls within the definition of "medical care" contained within subdivision 213(d)(1)(A) of the Internal Revenue Code; or

2. any expense described in subdivision 213(d)(1)(B) of the Internal Revenue Code; or

3. Any expense, other than a premium for group accident and sickness insurance that is offered as part of an

Insurance Commissioner
Legislative Rule
Title 114, Series 47

IMSA benefit plan, that is described in subdivision 213(d)(1)(C) of the Internal Revenue Code.

2.9. "Year" means a calendar year.

§114-47-3. IMSA Trusts.

3.1. Trust and written instrument required. -- An IMSA must be a trust that is created and maintained in the United States. The trust must be governed by a written trust instrument that satisfies all of the requirements for such instruments established in this rule.

3.2. Purpose of trust. -- The exclusive purpose of an IMSA shall be to pay medical expenses that have been incurred for the care of the holder or for the care of an individual who was a child or dependent of the holder at the time that the care was rendered.

3.3. Holder as beneficiary. -- The holder of an IMSA shall be the beneficiary of the trust. A holder's spouse, children or dependents may not be beneficiaries of the holder's IMSA notwithstanding that the holder may utilize the trust to pay their medical expenses. Except as otherwise expressly provided in this rule, the trust instrument shall clearly identify the holder as the sole beneficiary of the trust.

3.4. Commingling of assets prohibited. -- Contributions to an IMSA shall not be commingled with other property except in a common IMSA investment fund or a common trust fund. For purposes of this subsection:

a. "common trust fund" means a common trust fund, as defined in section 584 of the Internal Revenue Code, that satisfies all requirements imposed upon such funds by that section and the regulations promulgated thereunder; and

b. "common IMSA investment fund" means a group trust that is created for the purpose of providing a satisfactory

Insurance Commissioner
Legislative Rule
Title 114, Series 47

diversification of investments or a reduction of administrative expenses for the individual participating trusts. All of the individual participating trusts must be IMSAs. A common IMSA investment fund must satisfy the requirements established for common investment funds in the regulations promulgated under section 401 of the Internal Revenue Code, and specifically the requirements in 29 CFR § 1.401-12(n)(vi) and (vii), except that:

1. notwithstanding the requirements contained in 29 CFR § 1.401-12(n)(vi)(A), a copy of the written agreement governing a common IMSA investment fund need be made available, upon request, only to the trustees and holders of the participating IMSAs; and

2. financial reports prepared pursuant to 29 CFR § 1.401-12(n)(vi)(D) need be transmitted and certified only to the trustees of the participating IMSAs.

3.5. Basic terms. -- In addition to such other terms as are required by this rule, an IMSA trust instrument must provide as follows.

a. The holder's interest in the IMSA shall be nonforfeitable.

b. Except as provided in this rule, the holder's interest in the IMSA shall not be alienable or assignable.

c. Upon the death of the IMSA holder, the trustee shall distribute all of the assets of the IMSA, less those used to pay the trustee's expenses pursuant to the trust instrument, to the personal representative of the holder, and the trust then shall terminate.

§114-47-4. Trustees.

4.1. Eligibility. -- To serve as the trustee of an IMSA trust, an entity must:

Insurance Commissioner
Legislative Rule
Title 114, Series 47

a. be a bank as defined in section 401(d)(1) of the Internal Revenue Code, or

b. at the time the IMSA is established, be the trustee of an IRA trust, and have qualified as a non-bank trustee of that trust as required by the regulations promulgated under section 408 of the Internal Revenue Code.

4.2. Special requirements for non-bank trustees. -- The following requirements apply to persons or entities that are eligible to serve as IMSA trustees under subdivision b of subsection 4.1 of this rule.

a. The resources and procedures utilized by the trustee to administer an IMSA may not differ materially from the resources and procedures utilized by the trustee to administer the IRA trust(s) of which it is trustee.

b. A trustee that ceases to be the trustee of IRA trusts may not change its personnel, procedures, holdings, or any other aspect of its organization or operation, in a way that is reasonably likely to preclude the trustee from being qualified as the non-bank trustee of an IRA trust under section 408 of the Internal Revenue Code.

c. A notice of disapproval issued by the Commissioner of Internal Revenue in response to an application by the IMSA trustee to serve as an IRA trustee, or the revocation by the Commissioner of Internal Revenue of any notice of approval to serve as an IRA trustee that earlier had been received by the IMSA trustee shall give rise to a presumption that the IMSA trustee does not satisfy the requirements established by this subsection.

4.3. Change of trustee. -- The trust instrument may provide for a change of trustees so long as it requires that the new trustee satisfies the eligibility requirements established in this section.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

§114-47-5. Contributions.

5.1 Form and amount. -- The trust instrument must provide that contributions to an IMSA shall consist of money and may not comprise any other form of property. Contributions need not be made in cash, and instead may be made using any generally accepted payment method including (but not limited to) checks and electronic fund transfers. The trust instrument, however, may limit the methods that may be utilized to make contributions. The amount of contributions made to an IMSA for a particular year shall be the sum of all contributions made during that year less all refunds of excess contribution made for that year.

5.2. Timing. -- In general, contributions shall be deemed made when the money contributed actually is received by the trustee. Notwithstanding this general rule:

a. contributions made by check are deemed to be made on the date that the check actually is received by the trustee if (1) the date of the check is that date or an earlier date, and (2) the check actually is cashed by the trustee within fifteen (15) days of receipt; and

b. contributions made through an electronic transfer to a bank account that is maintained by the trustee for such contributions are deemed to be made on the date that the institution maintaining the account credits the amount of the contribution to the account without restriction.

5.3. Maximum and minimum contributions. -- No limits on contributions to an IMSA are established by this rule. The trust instrument, however, may specify a maximum and/or minimum annual contribution.

5.4. Refund of excess contribution. -- The trust instrument must provide that an IMSA holder may obtain a refund of excess contribution in accordance with this subsection.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

a. The amount of the refund may not exceed the available excess contribution to the IMSA. The available excess contribution is the amount by which the sum of the contributions that have been made to the IMSA during the current year and on or before the effective date of the request at issue, less all other refunds of excess contributions for the current year that have been requested on or before that effective date, exceeds two thousand dollars (\$2,000).

b. Refunds may be paid only to the holder, and may be paid by any generally accepted payment method. The trust instrument may limit the methods that may be utilized to pay refunds. Refunds must be in money and may not comprise any other form of property.

c. The trustee must pay a refund within thirty (30) days of the effective date of the holder's request. Notwithstanding the date of this payment, a refund is regarded as a refund for the year that contains the effective date of the request for the refund.

d. The trust instrument may establish effective dates for refund requests. If effective dates are established, a holder's written request is deemed to be made on the first such date following the receipt of the request by the trustee. If effective dates are not established, a request is made when actually received by the trustee. If effective dates are established by the trust instrument, there must be no fewer than four such dates per year, and no two dates may be separated by more than ninety-eight (98) days.

§114-47-6. Withdrawals.

6.1. Withdrawal defined. -- Except as otherwise provided in this section, any transfer of IMSA assets by the trustee shall be regarded as a withdrawal for purposes of these rules, regardless of the recipient, purpose and actual use of the payment, and regardless of whether contributions are made before, at the same

Insurance Commissioner
Legislative Rule
Title 114, Series 47

time as, or after the payment. The following transfers, however, shall not constitute withdrawals:

- a. a transfer of IMSA assets that occurs as a step in the investment of those assets by the trustee;
- b. the payment with IMSA assets, pursuant to the trust instrument, of reasonable expenses incurred by the trustee to maintain the IMSA or of a reasonable fee for the trustee's services with respect to the IMSA;
- c. a refund of excess contribution, as described in this rule;
- d. a transfer of assets that occurs as a step in a rollover, as described in this rule; and
- e. a transfer of assets pursuant to a filing by the holder for protection under Title 11 of the United States Code (11 USC §§ 101-1330).

6.2. Types of withdrawals allowed. -- The trust instrument must allow withdrawals for the payment of medical expenses and withdrawals after retirement, and may allow withdrawals of assets not needed for the payment of medical expenses, all as described in this section. In addition, the trust instrument must allow the transfer of all IMSA assets, less those used to pay trustee's expenses pursuant to the trust instrument, to the personal representative of the holder following the holder's death; and the transfer of all IMSA assets, less those used to pay trustee's expenses, to the holder upon the termination of the trust for any other reason. The trust instrument may not allow any type of withdrawal other than those just described in this subsection.

6.3. Application of surtax. -- Withdrawals to pay medical expenses, withdrawals made after retirement, and withdrawals of amounts not needed to pay medical expenses do not trigger the surtax established by W. Va. Code §§33-15-20 and 33-16-15, and defined in W. Va. Code §11-21-9(c). For purposes of the surtax,

Insurance Commissioner
Legislative Rule
Title 114, Series 47

a transfer of IMSA assets to the personal representative of the holder following the holder's death shall be regarded as a withdrawal after retirement, and will not trigger the surtax. The surtax applies to all other withdrawals, but does not apply to transfers that do not constitute withdrawals under this section.

6.4. Withdrawals for the payment of medical expenses. -- A withdrawal shall be regarded as a withdrawal for the payment of medical expenses only if all of the following conditions are satisfied.

a. The withdrawal is to pay, or to reimburse the holder for paying, expenses that constitute medical expenses under this rule. Only withdrawals to pay expenses that have already been incurred may constitute withdrawals for the payment of medical expenses. Payments made in anticipation of future expenses, regardless of whether those future expenses constitute medical expenses, are not withdrawals for the payment of medical expenses.

b. The medical expenses were incurred to provide medical care to the IMSA holder or to an individual who, at the time that the care was rendered to that individual, was the holder's child or dependent.

c. No person other than the holder, the holder's spouse, or the recipient of the services, if the recipient is a child or dependent of the holder, is legally required to pay the medical expenses.

6.5. Withdrawals after retirement. -- Withdrawals after retirement are those made after the holder has reached fifty-nine and one-half (59½) years of age, and in a year in which the holder is retired. The withdrawals may be for any purpose. For purposes of this subsection, a holder shall be regarded as "retired" only if the following conditions are satisfied.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

a. If the holder is not self-employed, the holder shall be considered retired if he or she spends no more than fifteen (15) hours per week, on average throughout the year in which the withdrawal is made, rendering services to his or her employer for compensation.

b. If the holder is self-employed, the holder shall be considered retired if he or she spends no more than fifteen (15) hours per week, on average during the year in which the withdrawal is made, performing services for which he or she is compensated. The holder may be compensated for the services directly, by being paid for the performance of the services themselves, or indirectly, by being paid for selling a product, whether tangible or intangible, that is created or enhanced significantly in value by the performance of the services.

c. If the holder is employed by more than one employer, the amount of time spent performing services to all employers may not exceed fifteen (15) hours per week. If the holder is both employed and self-employed, the total amount of hours spent performing services for which compensation is received, from the holder's employer or from any other source, likewise may not exceed fifteen (15) hours per week.

6.6. Withdrawals of assets not needed for the payment of medical expenses. -- The trust instrument may provide that the holder may withdraw a percentage of assets that are not needed to pay medical expenses. The instrument must impose, however, the following limitations on such withdrawals.

a. The holder may make only one such withdrawal in a single year.

b. The amount of the withdrawal may not exceed the greater of two thousand dollars (\$2,000) or five percent (5%) of the assets of the IMSA at the time of the withdrawal.

§114-47-7. Special Provisions for IMSA Benefit Plans.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

7.1. Withdrawals limited until annual deductible satisfied.
-- If an IMSA is established as part of an IMSA benefit plan, the trust instrument may provide that a withdrawal will not be allowed if:

a. The group accident and sickness policy or employer health benefit plan that is part of the IMSA benefit plan requires the holder to pay an annual deductible before receiving benefits under the policy or plan; and

b. The holder has not paid the annual deductible in full at the time that he or she requests the withdrawals; and

c. The withdrawal is not a withdrawal for the payment of medical expenses that pays or reimburses the holder for paying either a premium for a group accident or sickness policy that is part of the IMSA benefit plan, or expenses that the holder is required to pay as part of his or her annual deductible; and

d. Were the withdrawal allowed, the amount of assets remaining in the IMSA would fall below the portion of the annual deductible that is unsatisfied at the time that the holder requests the withdrawal.

7.2. Notice of withdrawals for the payment of medical expenses. -- The trust instrument may provide that the IMSA trustee shall deliver to the insurer offering the group accident and sickness policy or the administrator of the employer's health benefit plan, a written report showing the date and amount of withdrawals for the payment of medical expenses that have been allowed by the trustee during the current year. The trust instrument may call for reports to be delivered periodically or at the request of the insurer or administrator.

7.3. Coverage by Life and Health Guaranty Association Act.
-- A group accident and sickness insurance policy, or a contract establishing an employer benefit plan, that is a part of an IMSA benefit plan shall not solely by virtue of being a part of that

Insurance Commissioner
Legislative Rule
Title 114, Series 47

plan be beyond the scope of Article 26A, Chapter 33 of the West Virginia Code.

a. For the purpose of determining coverage under Article 26A, Chapter 33 of the West Virginia Code, the policy or health benefit plan contract shall be considered separate and distinct from the trust instrument of an IMSA established as a part of the IMSA benefit plan, notwithstanding that:

1. the insurer offering the policy or employer extending the contract also is the IMSA trustee, or

2. some or all of the provisions of the trust instrument appear in a written document that also contains some or all of the provisions of the policy or contract, or

3. the holder executes both the instrument and the policy or contract simultaneously or with the same signature, or

4. the instrument and the policy or contract are otherwise related to one another.

b. When a policy or contract falls within limits of coverage established by W. Va. §33-26A-3, a trust instrument for an IMSA that also is a part of the IMSA benefit plan shall not itself fall within the limits of coverage established by the aforementioned section.

§110-47-8. Rollovers.

8.1. Rollover defined. -- A rollover consists of the following component events.

a. Some or all of the assets of an IMSA (the "initial IMSA") are withdrawn by the holder in a single withdrawal. The withdrawal may be incident to the voluntary or involuntary termination of the IMSA.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

b. Within sixty (60) days of making the withdrawal, the holder contributes an equal amount to another IMSA of which he or she is a holder or of which his or her spouse is a holder (the "successor IMSA"). In addition, if the contribution is incident to divorce, holder may contribute the assets to an IMSA of which the holder's former spouse is the holder. If the holder contributes more than the amount withdrawn earlier from initial IMSA, the excess of the contribution over that amount shall be regarded as a separate contribution to the successor IMSA and not as part of the rollover.

8.2. Treatment of rollovers. -- Notwithstanding any other provision of this rule, the following provisions apply to a rollover. The trust instrument must provide that limitations upon the transfer and contributions that constitute a rollover are suspended as required by this subsection:

a. The withdrawal of assets from the initial IMSA shall not be regarded as a withdrawal for purposes of this rule, and is not subject to any of the limitations imposed upon withdrawals by this rule or by the trust instrument.

b. The contribution to the successor IMSA, to the extent that it is regarded as a part of the rollover, shall not be regarded as a contribution to an IMSA for purposes of this rule, and is not subject to any limitations on contributions imposed by this rule or by the trust instrument.

§114-47-9. Trustee's disclosure statement and annual report.

9.1. Disclosure statement. -- At least fourteen (14) days prior to establishing an IMSA for a holder, the trustee must deliver to the holder a written disclosure describing the terms and administration of the trust, and the federal income tax consequences, and West Virginia Personal Income Tax consequences of utilizing the IMSA.

a. The disclosure must contain, at minimum, the following information:

Insurance Commissioner
Legislative Rule
Title 114, Series 47

1. the trustee's name, any identification numbers used by the trustee to file federal tax returns, the trustee's mailing address, and the trustee's telephone number;
2. the basis of the trustee's eligibility to serve as an IMSA trustee;
3. the limitations on the forfeiture, assignment and alienation of the holder's interest in the trust;
4. if the trust is part of an IMSA benefit plan, the contributions (if any) to be made on the holder's behalf by the holder's employer and any conditions under which such contributions will not be made;
5. the procedure by which the holder may contribute to the trust, and any limitations upon contributions by the holder;
6. the types of withdrawals allowed; the conditions under which each type of withdrawal is allowed, the procedures by which the holder may request withdrawals of each type, and any additional limitations upon withdrawals imposed by the trust instrument;
7. the conditions under which a transfer for rollover or a transfer after death are allowed, the procedures by which such transfers may be requested, and any additional limitations on such transfers imposed by the trust instrument;
8. the types of transfers of IMSA assets, other than withdrawals, that are allowed by the trust instrument, and the conditions under which each type of transfer is allowed;
9. the fees and expenses that may be charged to the trust by the trustee;
10. the timing and contents of the trustee's annual report to the holder;

Insurance Commissioner
Legislative Rule
Title 114, Series 47

11. the procedures by which the holder may obtain additional information about trust activities;

12. the treatment for federal income tax purposes of contributions to the IMSA, of various types of withdrawals from the IMSA, and of various types of transfers of IMSA assets other than withdrawals;

b. In describing the procedures by which the holder may make a contribution to or a withdrawal or transfer from the IMSA, the trustee must describe with specificity any documentation that the holder must submit to the trustee, and any forms developed by the trustee that the holder is required to use.

c. If the trust instrument states any of the aforementioned information clearly and in nontechnical terms, the trustee may disclose that information to the holder by providing the holder with a copy of the instrument. Any information that is not adequately stated in the trust instrument must be supplied to the holder by the trustee in a separate written document. A holder may waive the disclosure statement, in writing, within the period during which the trustee must provide it.

9.2. Notice of changes in disclosure information. -- If any of the information that is contained in a disclosure statement or that would have been required in a disclosure statement had the statement not been waived by the holder, changes, the trustee shall provide the holder with the new information, in writing, within thirty (30) days of the change. A copy of the trust instrument may be used to provide such information if the instrument states the information clearly and in nontechnical terms. The holder may waive notice of the changes, in writing, within the period during which the trustee must provide it.

9.3. Annual reports. -- The trust instrument must require the trustee to deliver to the IMSA holder, no later than thirty one (31) days following the end of a year, a report describing the activity of the IMSA during that year.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

a. The trustee's report must contain, at minimum, the following information:

1. the holder's name, social security number, mailing address, and telephone number;
2. the trustee's name, any identification numbers used by the trustee to file federal tax returns, the trustee's mailing address, the trustee's office address, and the trustee's telephone number;
3. the amount of trust assets as of the opening of the first day of the year;
4. the date, amount and source of each contribution to the IMSA that was made during the year;
5. the date, amount and recipient of each withdrawal to pay medical expenses that was made during the year;
6. the date, amount and recipient of each withdrawal after retirement that was made during the year;
7. the date, amount and recipient of each withdrawal for a purpose other than the payment of medical expenses that was made during the year;
8. the date, amount and recipient of any transfers for rollover made during the year;
9. the date, amount and recipient of any transfers incident to divorce made during the year;
10. the amount of interest or earnings on trust assets during the year;
11. the date, amount and nature of expenses or fees charged by the trustee during the year; and

Insurance Commissioner
Legislative Rule
Title 114, Series 47

12. the amount of trust assets as of the closing of the last day of the year.

b. In describing a particular withdrawal from the IMSA or a particular transfer of IMSA assets, the trustee shall clearly identify the nature of the withdrawal or transfer.

c. The trustee may mail a copy of the annual report by first class mail, postage prepaid, to the holder by the date specified above for the delivery of the report, or may utilize such other method of delivery as will place the copy at the trustee's mailing address or in the holder's possession by that date. The trust instrument may provide that the holder will timely notify the trustee of any change in the holder's mailing address and that in delivering an annual report, the trustee, without further inquiry, may use the mailing address last provided by the holder.

d. The trust instrument must provide that, at the holder's request, the trustee will provide the holder with additional copies of any annual report in the trustee's possession. The trust instrument may allow the trustee to charge a reasonable fee for providing such additional copies.

e. The trust instrument must require the trustee to retain copies of each annual report for as long as the IMSA is in existence and for ten years after the IMSA is terminated. The trustee must retain the annual report beyond that time if the trustee is aware of any pending administrative action or litigation that potentially concerns the transactions described in the report including, but not limited to, any administrative or court proceeding that has been initiated by the holder, the United States Internal Revenue Service or the West Virginia Department of Tax and Revenue, concerning the federal or state tax consequences of those transactions.

§114-47-10. Documentation of IMSA transactions.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

10.1. Documentation and verification in general. -- The trust instrument must provide that the trustee will allow transfers or withdrawals only after the trustee has satisfied the requirements set forth in this section.

a. The trust instrument may provide that the trustee may transfer or allow withdrawals of IMSA assets pursuant to an order of a court of competent jurisdiction notwithstanding that the trustee has not documented or verified the transfer or withdrawal as described in this subsection.

b. The trust instrument must require the trustee to retain any documentation that is required pursuant to this section for as long as the IMSA is in existence and for ten (10) years after the IMSA is terminated. The trustee will retain the documentation beyond that time if the trustee is aware of any pending administrative action or litigation that potentially concerns the transactions described in the report including, but not limited to, any administrative or court proceeding that has been initiated by the holder, the United States Internal Revenue Service or the West Virginia Department of Tax and Revenue, concerning the federal or state tax consequences of those transactions.

10.2. Withdrawals. -- Except as expressly provided below, before allowing any withdrawal, the trustee must receive from the holder a written and signed request for the withdrawal. The request must indicate the type and amount of the withdrawal.

a. If the withdrawal is for the payment of medical expenses that have been incurred for services, the trustee also must receive a written record that has been generated by the provider of the services and that indicates the nature of the services and the identity of the recipient. In lieu of such a record, the holder's request may clearly identify the services and the recipient. Before allowing the withdrawal, the trustee must verify: that the expense constitutes a medical expense, as defined in this rule; that the recipient of the services, at the time that the services were rendered, was the holder, or a child

Insurance Commissioner
Legislative Rule
Title 114, Series 47

or dependent of the holder; and that no person other than the holder, the holder's spouse, or the recipient of the services if the recipient is a child or dependent of the holder, or this state under its Medicaid program, is required to pay the expense. The trust instrument may provide that in verifying these facts, the trustee is entitled to rely, without further investigation, upon statements of these facts contained within the holder's request.

b. If the withdrawal is for the payment of premiums for a group accident and sickness policy that is part of an IMSA benefit plan, the trustee must receive from the insurer or employer written documentation of the holder's coverage by the policy or plan and the amount of the premium that is due or has been paid for such coverage. If the premiums are to be paid by the trustee directly to the insurer or employer, the trustee need not receive a written request from the holder prior to allowing the withdrawal.

c. If the withdrawal is one following retirement, the trustee must verify that the holder is age fifty-nine and one-half or older, and that the holder is retired, as defined in this rule. The trust instrument may provide that in verifying these facts, the trustee is entitled to rely, without further investigation, upon statements of these facts contained within the holder's request.

d. If the withdrawal is for a purpose other than the payment of medical expenses, the trustee must verify that the trust instrument allows such withdrawals; that no withdrawals of this type were allowed earlier in the year; and that the amount of the withdrawal does not exceed the maximum amount allowed by this rule.

10.3. Refund of Excess Contribution. -- Before allowing a refund of excess contribution, the trustee must receive from the holder a written and signed request for the refund. The request must state that it is a request for a refund of excess contribution and must either state the amount of the refund

Insurance Commissioner
Legislative Rule
Title 114, Series 47

requested or request the refund of all available excess contribution. The trust instrument may provide, however, that any request for a refund that exceeds the available excess contribution shall be regarded by the trustee as a request for a refund of all available excess contribution. Before allowing the refund, the trustee must verify that the refund requested does not exceed the available excess contribution.

10.4. Transfer of Assets Upon Death of Holder. -- Before transferring IMSA assets to the personal representative of the holder following the holder's death, the trustee must receive from the personal representative a written and signed request for the transfer. In addition, the trustee must receive, from the personal representative or any other source, a copy of a death certificate documenting the holder's death and filed pursuant to W. Va. Code §16-5-19, or if that certificate is not required by law, of a comparable official record of the holder's death issued pursuant to applicable law. The trustee also must receive a copy of the probate or letters of administration by which the personal representative is empowered, or of such other documents as under applicable law serve the same purpose as the probate or letters.

10.5. Other Transfers. -- The trust instrument may provide for the documentation of other transfers of IMSA assets that are allowed by this rule, and for the verification by the trustee of the conditions for such transfers.

§114-47-11. Disqualification.

11.1. Grounds for Disqualification. -- An IMSA shall be disqualified if the holder uses or attempts to use his or her IMSA for the purpose of borrowing money or obtaining credit. The transactions prohibited by this section include, but are not limited to, transferring or attempting to transfer some or all of the holder's interest to serve as security for a debt; otherwise pledging to use IMSA assets to satisfy a debt; and contracting to contribute funds to the IMSA and later withdrawing or transferring those funds to satisfy a debt.

Insurance Commissioner
Legislative Rule
Title 114, Series 47

11.2. Effects of Disqualification. -- An IMSA that is disqualified shall for all purposes cease to be regarded as an IMSA as of the first day of the year in which the transaction triggering disqualification occurs. For West Virginia personal income tax purposes, the assets of the IMSA at the time the transaction takes place shall be deemed withdrawn and recontributed by the holder on the date of the transaction. The trust shall not be regarded as an IMSA in any subsequent year, and instead shall be regarded as a private trust until such time as it is terminated.