# WEST VIRGINIA
# SECRETARY OF STATE
**KEN HECHLER**
# ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

## NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

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

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

B. Keith Huffman

B. Keith Huffman, General Counsel

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STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner
Legal Division

CECIL UNDERWOOD
Governor

HANLEY C. CLARK
Insurance Commissioner

January 31, 1997

**HAND DELIVERED**

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

Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

(1) Notice of Rule Modification of a Proposed Rule;

(2) Consent to Proposed Rule; and

(3) The modified rule entitled "Individual Medical Savings Accounts." (Series 47)

Please contact me if further information is required.

Very truly yours,

Timothy Hrvnick
Associate Counsel

TH/cjs
Enclosures

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114CSR47
LEGISLATIVE RULES
INSURANCE COMMISSIONER

SERIES 47
INDIVIDUAL MEDICAL SAVINGS ACCOUNTS

Section


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FILED

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

TITLE 114
LEGISLATIVE RULES
INSURANCE COMMISSIONER

SERIES 47
INDIVIDUAL MEDICAL SAVINGS ACCOUNTS

**§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.

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" 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 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, that is excluded from 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 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 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 under section 408 of the Internal Revenue Code, and specifically the requirements in 26 CFR § 1.408-2(e)(5)(vi) and (vii), except that:

1. notwithstanding the requirements contained in 26 CFR § 1.408-2(e)(5)(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 26 CFR § 1.408-2(e)(5)(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, a person must:

a. be a bank as defined in section 408(n) of the Internal Revenue Code and the regulations thereunder, 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 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 person to administer an IMSA may not differ materially from the resources and procedures utilized by the person to administer the IRA trust(s) of which it is trustee.

b. A person 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 person 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 person 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 person shall give rise to a presumption that the person 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.

## §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 the 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 the date of the check is that date or an earlier date, and 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.

a. The amount of the refund may not exceed the available excess contribution. 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 for the refund. Notwithstanding the date of this payment, a refund is regarded as a refund for the year that contains the effective date of the refund request.

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

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 listed 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,

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.

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 throughout 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(s) 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 that the holder requests the withdrawal.

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

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 has not been paid 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 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 the 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.

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, the 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 the 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 withdrawals and contributions 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 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:

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;

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 the statement.

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 the notice.

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.

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 beginning 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 allowed during the year;

6. the date, amount and recipient of each withdrawal after retirement that was allowed during the year;

7. the date, amount and recipient of each withdrawal for a purpose other than the payment of medical expenses that was allowed during the year;

8. the date, amount and recipient of any transfers for rollover that were allowed during the year;

9. the amount of interest or earnings on trust assets during the year;

10. the date, amount and nature of expenses or fees charged by the trustee during the year; and

11. the amount of trust assets as of the end 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 in this section for the delivery of the report, or may utilize such other method of delivery as will place the copy at the holder'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.**

10.1. Documentation and verification in general.

a. The trust instrument must provide that the trustee will transfer IMSA assets only after the requirements set forth in this section have been satisfied. The trust instrument may provide, however, that the trustee shall transfer 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. The trust instrument must provide that the trustee will release any such written records to a third party only at the written request of the holder, or pursuant to an order of a court of competent jurisdiction, or in the event of litigation between the holder and the trustee in which such records are pertinent. In lieu of such a record, the holder's request may clearly identify the recipient of the services and state that medical services were rendered to that individual. 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 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 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 the 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.

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.

## ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Counsel:** Rita A. Pauley

**Agency:** Insurance Commissioner

**Subject:** Individual Medical Savings Accounts, 114CSR47

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## PERTINENT DATES

Filed for public comment: May 31, 1996
Public comment period ended: July 1, 1996
Filed following public comment period: August 29, 1996
Filed LRMRC: August 29, 1996
Filed as emergency: Not Applicable
Fiscal Impact: None

## ABSTRACT

This proposed rule effectuates the provisions of HB 2491, passed during the 1995 Legislative session, which provided for the establishment of Individual Medical Savings Accounts (IMSA). IMSA's are trusts created for the purpose of paying certain medical expenses of an individual or his or her dependents. These trusts are afforded special treatment in determining an individual's West Virginia personal income tax liability. (See WVC §11-21-12.)

The rule complies with the statutory requirement of setting IMSA standards and addressing the following topics: (1) definition of terms; (2) annual contribution minimums and maximums; (3) limitations upon the individual's access to and use of IMSA assets; (4) circumstances under which a benefit plan consisting of IMSAs and an employer offered health plan or group insurance policy may permit reduced contributions; (5) provisions for reporting IMSA withdrawals to an insurer when the IMSA and a group insurance policy are combined in a benefit plan and; (6) provisions relating to the change or redesignation of an IMSA trustee. In addition, the proposed rule clarifies the statutory standards for IMSA trustees and IMSA trust instruments. The rule

also establishes standards for reporting and record keeping by IMSA trustees to facilitate auditing by the Tax Department.

The proposed rule is new. The following is a section by section synopsis of the proposed rule. Please note that an appendix of incorporated federal statutes and regulations has been added by the agency since the rule was filed with the Secretary of State's office.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is the definition section which contains basic definitions for terms such as "child", "dependent" and "individual medical savings account" (IMSA). The only significant definition is for "medical expense".

"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 within the definition of "medical care" in subdivision 213(d)(1)(A) of the Internal Revenue Code. As used in this definition the term "expense for services" includes both expenses for performance of services and for the purchase or use of property (including drugs) that is used by or prescribed by the service provider in connection with provision of services.

However, "medical expense" does not include cosmetic surgery as defined by subdivision 213(d)(9)(B) of the Internal Revenue Code even if it meets the definition of "medical care" previously referred to. Counsel has questioned this exception as going beyond the scope of the statutory limitation. The statute only excludes cosmetic surgery as defined in the Internal Revenue Code, by adding to the rule the further exclusion that such surgery is excluded even if it meets the definition of medical care goes beyond the Internal Revenue Code definition which states: "(B) Cosmetic surgery defined.--For purposes of this paragraph, the term "cosmetic surgery" means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease." Paragraph (A) explains that in general cosmetic surgery is not included in "medical care" unless

the "surgery or procedure is necessary to ameliorate a deformity arising from or directly related to a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease." Counsel has suggested that the rule should use the federal language or delete the additional restrictions.

Other exceptions to the definition of "medical expense" are (1) any expense described in subdivision 213(d)(1)(B) of the Internal Revenue Code and (2) any expense, other than a premium for group accident and sickness insurance that is offered as part of an IMSA benefit plan that is described in subdivision 213(d)(1)(c) of the Internal Revenue Code. The agency wishes to include the relevant federal regulations as an appendix to this rule.

Section 3 sets forth the requirements for an IMSA trust. The IMSA must be a trust which is created and maintained in the United States. It must be controlled by a written trust instrument which meets the requirements of this rule including: (1) trust to be used exclusively for payment of eligible medical expenses; (2) the holder of the IMSA trust is the sole beneficiary of the trust and; (3) commingling of trust assets is prohibited except in a common IMSA investment fund or common trust fund.

This section also defines "common trust fund" and "common IMSA investment fund" as those funds meeting the Internal Revenue Service (IRS) requirements.

Subsection 3.5 contains other basic requirements of the trust. The holder's interest in the IMSA is nonforfeitable, alienable or assignable. Upon the death of the IMSA holder, the assets of the trust, less the expenses of the trustee, are paid to the personal representative of the holder. The trust is then terminated. Counsel has suggested that this subsection be moved to 3.4 or combined with 3.3 so that all of the basic requirements are together for the sake of clarity.

The agency has discovered a potential problem with 3.5.c and has requested a change in the language as follows:

> "Upon the holder's death, the trustee shall transfer all of the assets of the IMSA, less those used to pay the trustee's expenses pursuant to the trust

instrument, under the residuary clause, if any, or the holder's will or, if there is no residuary clause or no will, to the persons who wold succeed to the holder's intestate estate, and in such shares as said persons would take of that estate."

This change in the language of subsection c prevents the personal representative from automatically being viewed as the remainderman of the IMSA trust, and prevents an IMSA from being used as an extra testamentary device. The suggested change will require additional modifications to the rule that allow the IMSA holder to change the remainderman at will, provisions that require certain formalities for such changes, and provisions that require the trustee to retain a record of such changes.

Section 4 sets forth the requirements to be a trustee of an IMSA trust. The Trustee must either be a bank as defined by the IRS or be qualified as a non-bank trustee by the IRS. There are special requirements for non-bank trustees in addition to the IRS requirements. The resources and materials used by the IMSA trustee may not differ materially from those utilized to administer the Individual Retirement Account (IRA) trust(s) for which he is trustee. If an IMSA trustee ceases to be an IRA trustee he may not change any aspect of his organization or operation that may reasonably be expected to preclude his being qualified as a non-bank IRA trustee under the IRS statute. A person who applies for IRS approval to be a non-bank IRA trustee whose application is denied or revoked is presumed not to meet the requirements of this section to be a non-bank trustee for IMSA trusts.

The trust instrument may provide for a change of trustee as long as it requires the new trustee to meet the requirements of this section.

Section 5 establishes the requirements for making contributions to an IMSA. All contributions must be monetary such as cash, check, or electronic fund transfer, they can not be in any other form of property. The trust instrument may limit the methods utilized to make contributions. The amount of contributions to an IMSA is the sum of all contributions made during that year less all refunds of excess contributions made that year.

Generally, contributions are deemed to have been made when the money contributed is actually received by the trustee. The exceptions to this general rule are: (1) contributions made by check are deemed to be made on the date received by the trustee when the check is dated on or before the date received and the check is cashed by the trustee within 15 days of receipt; and (2) contributions made by electronic transfer are deemed to be made on the date that the funds are credited by the bank to the trustee account without restriction. This rule does not place maximum or minimum limits on contributions to an IMSA, however, individual trust instruments may specify maximum or minimum limits.

The trust instrument must provide that an IMSA holder may obtain a refund of excess contributions. To qualify for a refund the trust balance must exceed $2,000.00. The available excess contribution is determined by deducting any other refunds made during the current year from the total contributions made during the current year but prior to the request for refund. The refund may be paid only to the holder by any generally accepted payment method. Refunds must be in money and may not be in any other form of property. Refunds must be made within 30 days of the effective date of the holder's refund request.

The trust instrument may establish effective dates for refund requests. If effective dates are established there must be no fewer than 4 per year and no 2 dates may be separated by more than 98 days.

Section 6 provides the process for making withdrawals from IMSA's. All transfers of IMSA assets by the trustee are regarded as withdrawals except (1) transfer of IMSA assets for investment purposes; (2) payment of reasonable expenses or fees of the trustee; (3) a refund of excess contributions; and transfer of assets pursuant to filing by the holder for protection in bankruptcy. The trust instrument must provide for withdrawals for the payment of medical expenses, withdrawals after retirement, transfers to the personal representative following the holder's death, and payment to the holder upon termination of the trust for any reason. The trust instrument may allow withdrawals of assets not needed for medical expenses. Only those withdrawals listed in this subsection may be made.

Withdrawals to pay medical expenses, withdrawals made after retirement, or death, and withdrawals of amounts not needed to pay medical expenses do not trigger the surtax established by WVC §§33-15-20 and 33-16-15. The surtax applies to all other withdrawals as defined in this section.

In order to qualify as a withdrawal for the payment of medical expenses all of the following conditions must be met. (1) The withdrawal must be to pay or to reimburse the holder for paying incurred medical expenses as defined in this rule. (2) The medical expenses were incurred to provide medical care to the holder, child or dependent. (3) No one other than the holder, the holder's spouse, child or dependent is legally required to pay the medical expenses.

In order to qualify as a withdrawal after retirement the following conditions must be met. (1) The holder must be retired and be at least 59 ½ years of age. (2) The holder is considered retired if he is employed by himself or others an average of 15 hours per week throughout the year in which the withdrawal is made. If the holder is employed by more than one employer, the total time spent providing services for all employers may not exceed 15 hours per week.

The trust instrument may provide for the holder to withdraw a percentage of assets that are not needed to pay medical expenses. Should this occur the following conditions must be imposed: (1) only one such withdrawal per year and (2) the withdrawal may not be more than $2,000.00 or 5% of the assets of the IMSA at the time of the request, which ever is greater.

Section 7 covers the special provisions for IMSA benefit plans. 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: (1) the holder must meet an annual deductible before receiving benefits under the group accident and sickness policy or employer health benefit plan that is part of the IMSA benefit plan; (2) the holder has not met the deductible at the time the withdrawal is requested; (3) the requested withdrawal is not for the payment of 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 the annual deductible; and (4) if the withdrawal were made the

assets remaining in the IMSA would be less than the portion of the annual deductible remaining to be paid by the holder.

The trust instrument may provide for the IMSA trustee to deliver to the insurer or the administrator, a written report showing the date and amount of withdrawals for medical expenses allowed during the current year. The reports may be made periodically or by request.

Policy or health benefit plan contract which are also part of an IMSA plan shall be considered separate and distinct from the trust instrument of an IMSA benefit plan for purposes of determining coverage under the West Virginia Life and Health Insurance Guaranty Association Act (WVC §33-26A-1 *et seq.*).

Section 8 contains the rollover provisions. A rollover occurs when some or all of the assets of an IMSA are withdrawn and, within 60 days, put in another IMSA owned by the same holder or the holder's spouse. If the rollover is incident to a divorce the holder may contribute the assets to the IMSA of a former spouse. Any contribution in excess of the amount withdrawn from the initial IMSA is considered a separate contribution.

The removal of assets from the initial IMSA is not regarded as a withdrawal for purposes of this rule and is not subject to any limitations or conditions imposed on withdrawals. Likewise, the deposit of rollover funds into the successor IMSA is not regarded as a contribution for purposes of this rule and is not subject to any limitations or conditions imposed on contributions.

Section 9 deals with the requirements of the trustee's disclosure statement and annual report. At least 14 days prior to establishing an IMSA the trustee must provide the holder with a written disclosure statement describing the terms and administration of the trust as well as the federal and state tax consequences of utilizing an IMSA. The rule lists twelve areas of information which must be covered in the disclosure statement. The areas to be covered include identifying information about the trustee; limitations on forfeiture, assignment and alienation of the holder's interest in the trust; the procedure for making contributions; procedure and types of

allowable withdrawals; conditions which precipitate transfers, rollovers and termination of the trust; allowable fees and expenses, annual reports; how to obtain additional information about the trust; and the federal tax consequences of participation in a IMSA trust. If the trust instrument states any of the above information in clear nontechnical terms the trustee may disclose that information by providing the trust instrument. Any information not clearly stated in the trust instrument must be supplied in a separate document. The holder may waive the disclosure statement. The waiver must be in writing and be made within the time period the trustee is required to provide the disclosure statement. Any change in information contained in the disclosure statement or which would have been required in the statement if it had not been waived must be provided to the holder within 30 days of the change. The holder may also waive, in writing, notification of changes.

The trust instrument must require the trustee to deliver to the holder within 31 days of the end of the year a report describing the activity of the IMSA during that year. The report must cover eleven areas including information identifying the holder and the trustee; trust assets at the first day of the year; the date, amount and source of each contribution; the date, amount and recipient of each withdrawal; the date, amount and recipient of any transfers for rollover; the interest or earnings on trust assets; the date, amount and nature of fees and expenses charged by the trustee; and the trust assets at the end of the year.

The trustee may mail or otherwise cause the annual report to be timely delivered to the holder. The trust instruments may require the holder to timely notify the trustee of any changes in the holder's mailing address. The trustee may mail the report to the holders last known address without making any further inquiry. The trust instrument must require the trustee to provide the holder with additional copies of any annual report in the trustee's possession if requested to do so. The trust instrument may allow the trustee to charge a reasonable fee for providing the copies. The trust instrument must require the trustee to retain copies of each annual report for as long as the IMSA exists and for ten years thereafter. If the trustee knows of any pending administrative or legal action that potentially concerns the transaction described in any report the

trustee must continue to retain the report.

Section 10 deals with documentation of IMSA transactions. Assets of the IMSA may be transferred if the requirements of the rule are met or pursuant to a court order. Documentation required for withdrawals and transfers must be retained for at least 10 years beyond the existence of the IMSA and longer if any legal action is pending.

In order for a holder to make a withdrawal he must submit a written, signed request. The request must state the type and amount of the withdrawal. Verification of the nature of the request and the eligibility for payment may be required or the holder's clearly stated request may suffice. Counsel believes this section to be confusing. On one hand it states that verification is required but on the other hand the request itself is sufficient. Organizationally, it may be better to have the requirements for withdrawals in the same section as the other trust requirements.

Subsection 10.4 contains the requirements for transferal of assets of the trust upon the holder's death. This subsection will have to be revised in light of the agency's requested change in the language of subsection 3.5.c. Counsel suggests that the requirements for the disbursal of the trust assets upon the death of the holder be put with the new language explaining who is eligible to receive the funds.

Subsection 10.5 provides that the trust instrument may specify the documentation of other transfers that ate allowed by this rule and for any needed verification of the request for transfer by the trustee.

Section 11 provides that an IMSA will be disqualified if the holder uses or attempts to use the IMSA for the purpose of borrowing money or obtaining credit. If disqualification occurs the IMSA becomes a private trust until such time as it is terminated. Its tax status is changed accordingly.

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## AUTHORITY

Statutory authority: W.Va. Code, §33-15-20 (d), which provides, in part, as follows:

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

(d) The insurance commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code to establish specific standards for individual medical savings accounts and for plans in which a policy of insurance is combined with self-insurance under an individual medical savings account. Such standards shall be in addition to and in accordance with the applicable laws of this state. . . .

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## ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No, please see the comments in subsection 2.8.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes, please see the comments in subsection 2.8.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.

FILED

DEC 20 3 41 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

# West Virginia Legislature

## Legislative Rule-Making Review Committee

*Room MB47-State Capitol*
*Charleston, West Virginia 25305*
*(304) 347-4840*

*Senator Mike Ross, Co-Chair*
*Delegate Vicki Douglas, Co-Chair*

*Debra A. Graham, Counsel*
*Joe Altizer, Associate Counsel*
*Marie Nickerson, Admr. Assistant*

December 19, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Timothy Hrynick
Insurance Commission
Legal Division
P. O. Box 50540
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Individual Medical Savings Accounts

The Legislative Rule-Making Review committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate part of the Legislative Rule
   (a) as originally filed
   (b) as modified by the agency [X]

2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. [ ]

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached [ ]

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. [ ]

5. Recommends that the rule be withdrawn; a statement of reason for such recommendation is attached. [ ]

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

H. B. 2347 LTET

Bill-Ins, Individual

(By Delegate(s) Douglas, Hunt, Compton, Faircloth, Linch and Riggs)

[Introduced March 3, 1997; referred to the Committee on Banking and Insurance then the Judiciary.]

A BILL to amend and reenact section three, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the insurance commissioner to promulgate a legislative rule relating to individual medical savings accounts.

*Be it enacted by the Legislature of West Virginia:*

That section three, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-3. Insurance commissioner.



114-47

(a) The legislative ~~rules~~ rule filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article seven, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (actuarial opinion and memorandum rule, 114 CSR 41), ~~are~~ is authorized.

(b) The legislative ~~rules~~ rule filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety-five, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (examiners' compensation, qualifications and classification, 114 CSR 15), ~~are~~ is authorized.

(c) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand

nine hundred ninety-five, authorized under the authority of section eleven, article twelve, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (excess line brokers, 114 CSR 20), ~~are~~ is authorized.

(d) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (continuing education for insurance agents, 114 CSR 42), ~~are~~ is authorized.

(e) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article seven, chapter thirty-three of this

code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (recognizing mortality tables for use in determining reserve liability for annuities, 114 CSR 45), ~~are~~ is authorized.

(f) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section thirty-one-c, article six, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (substandard risk motor vehicle insurance notice requirements, 114 CSR 37), ~~are~~ is authorized.

(g) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article seven, chapter thirty-three of this code, modified by the insurance commissioner to meet the

objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (minimum reserve standards for individual and group health insurance contracts, 114 CSR 44), ~~are~~ is authorized.

(h) The legislative ~~rules~~ rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty, article twenty-five-a, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (filing procedures for health maintenance organizations, 114 CSR 46), ~~are~~ is authorized.

(i) The legislative ~~rules~~ rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty, article twenty-five-a, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review

committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (health maintenance organizations, 114 CSR 43), ~~are~~ is authorized.

(j) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section twenty, article fifteen, chapter thirty-three, of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of January, one thousand nine hundred ninety-seven, relating to the insurance commissioner (individual medical savings accounts, 114 CSR 47), is authorized.

NOTE: The purpose of this bill is to authorize the Insurance Commissioner to promulgate a legislative rule relating to Individual Medical Savings Accounts.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

# Senate Bill No. 185

(By Senator(s) Ross, Anderson, Macnaughtan, Boley and Buckalew)

[Introduced March 3, 1997; referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary.]

A BILL to amend and reenact section three, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the insurance commissioner to promulgate a legislative rule relating to individual medical savings accounts.

*Be it enacted by the Legislature of West Virginia:*

That section three, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-3. Insurance commissioner.



114-97

(a) The legislative ~~rules~~ rule filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article seven, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (actuarial opinion and memorandum rule, 114 CSR 41), ~~are~~ is authorized.

(b) The legislative ~~rules~~ rule filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety-five, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (examiners' compensation, qualifications and classification, 114 CSR 15), ~~are~~ is authorized.

(c) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand

nine hundred ninety-five, authorized under the authority of section eleven, article twelve, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (excess line brokers, 114 CSR 20), ~~are~~ is authorized.

(d) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (continuing education for insurance agents, 114 CSR 42), ~~are~~ is authorized.

(e) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article seven, chapter thirty-three of this

code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (recognizing mortality tables for use in determining reserve liability for annuities, 114 CSR 45), ~~are~~ is authorized.

(f) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section thirty-one-c, article six, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (substandard risk motor vehicle insurance notice requirements, 114 CSR 37), ~~are~~ is authorized.

(g) The legislative ~~rules~~ rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article seven, chapter thirty-three of this code, modified by the insurance commissioner to meet the

objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (minimum reserve standards for individual and group health insurance contracts, 114 CSR 44), ~~are~~ is authorized.

(h) The legislative ~~rules~~ rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty, article twenty-five-a, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (filing procedures for health maintenance organizations, 114 CSR 46), ~~are~~ is authorized.

(i) The legislative ~~rules~~ rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty, article twenty-five-a, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review

committee and refiled in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (health maintenance organizations, 114 CSR 43), ~~are~~ is authorized.

(j) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section twenty, article fifteen, chapter thirty-three, of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of January, one thousand nine hundred ninety-seven, relating to the insurance commissioner (individual medical savings accounts, 114 CSR 47), is authorized.

NOTE: The purpose of this bill is to authorize the Insurance Commissioner to promulgate a legislative rule relating to Individual Medical Savings Accounts.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

February, one thousand nine hundred ninety-seven, relating to the tax division (charitable raffles, 110 CSR 37), is authorized.

**§64-7-3. Insurance commissioner.**

(a) The legislative rule filed in the state register on the second day of July, one thousand nine hundred ninety-six, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred ninety-seven, relating to the insurance commissioner (medicare supplement insurance, 114 CSR 24), is authorized.

(b) The legislative rule filed in the state register on the twentieth day of August, one thousand nine hundred ninety-six, authorized under the authority of section fifteen, article four, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of January, one thousand nine hundred ninety-seven, relating to the insurance commissioner (life and health reinsurance agreements, 114 CSR 48), is authorized.

(c) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section twenty, article fifteen, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of January, one thousand nine hundred ninety-seven, relating to the insurance commissioner (individual medical savings accounts, 114 CSR 47), is disapproved and is not authorized for promulgation.

(d) The legislative rule filed in the state register on the twentieth day of August, one thousand nine hundred ninety-six, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by