

SECTION 13. [35 IAC 23](#) IS ADDED TO READ AS FOLLOWS:

**ARTICLE 23. RETIREE MEDICAL BENEFITS ACCOUNT PLAN**

**Rule 1. Plan Rules**

**[35 IAC 23-1-1](#) Purpose and administration**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8.5](#)

**Sec. 1. (a)** The plan is established as a health reimbursement arrangement for the purpose of funding, on a pre-tax basis, benefits for sickness, accident, hospitalization, and medical expenses for certain retired employees of employers. The purpose of the plan is to reimburse eligible retired employees of employers for certain qualifying medical expenses that the retired employees, their spouses, and their dependent children incur in accordance with [IC 5-10-8.5](#) and this rule.

**(b)** The plan shall be administered by the board of trustees of the Indiana public retirement system (hereinafter referred to as the INPRS board).

**(c)** All assets shall be held in trust for the exclusive benefit of participants of the plan and their beneficiaries and shall only be distributed according to [IC 5-10-8.5](#) and this rule.

**(d)** The plan shall comply with the requirements of Section 105 of the Internal Revenue Code. *(Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-1](#); adopted Sep 10, 2021: [20210915-IR-035210420ONA](#))*

**[35 IAC 23-1-2](#) Definitions**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8.5](#); [IC 5-10.3-2](#); [IC 5-10.3-12-14](#)

**Sec. 2.** The following definitions apply throughout this article, unless the context otherwise clearly requires:

**(1)** "Claims administrator" means the third party administrator appointed by INPRS to handle the administration of the plan.

**(2)** "Covered dependent" means:

**(A)** a surviving spouse legally married to the retired participant on the date of the retired participant's death; or

**(B)** an unmarried person who is a dependent child of the retired participant as defined under the state's health plans.

**(3)** "Employer" means:

**(A)** for an elected officer, appointed officer, or employee of the executive branch of state government who is in a position covered by the plan as described in section 3 of this rule, the state, including any board, commission, department, division, authority, institution, establishment, facility, or governmental unit under the supervision of the state, having a payroll in relation to persons it immediately employs;

**(B)** for a member of the Indiana general assembly or an employee of the legislative branch of state government:

**(i)** the president pro tempore of the senate, for a member or an employee of the senate;

**(ii)** the speaker of the house of representatives, for a member or an employee of the house of representatives; or

**(iii)** the personnel subcommittee of the legislative council, for an employee of the legislative services agency.

(C) the Indiana supreme court, for a member or employee of the judicial branch of state government, including:

- (i) a justice;
- (ii) a judge;
- (iii) a prosecuting attorney;
- (iv) an officer described in section 3(b)(6) of this rule; and
- (v) an employee of the judicial branch of state government, including an employee of any board, commission, department, division, authority, institution, establishment, facility, or governmental unit under the supervision of the judicial branch, having a payroll in relation to persons it immediately employs.

(4) "Plan" means the retirement medical benefits account plan established under IC 5-10-8.5.

(5) "Plan year" means the twelve (12) month period commencing each July 1 and ending the following June 30.

(6) "Qualifying expenses" means:

(A) premiums paid under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged;

(B) contributions under a fully-insured policy or self-funded plan or program providing group or individual coverage to the retired participant or covered dependents covering medical care as defined in section 213(d)(1)(A) and (B) of the Social Security Act for medical, dental, and vision benefits; and

(C) premiums paid for tax-qualified long-term care insurance subject to limitations in section 213(d)(10) of the Internal Revenue Code;

(D) the following amounts that are excluded from qualifying benefits:

(i) expenses paid, reimbursed, or reimbursable by any insurance, accident, health, or workers' compensation plan;

(ii) expenses paid, reimbursed, or reimbursable under an Internal Revenue Code Section 125 plan;

(iii) expenses incurred while the individual was neither a retired participant nor a covered dependent; and

(iv) expenses the individual is not legally obligated to pay; and

(E) expenses for the purchase of a policy, plan, or program providing coverage for expenses in addition to medical care, as defined by section 213(d) of the Internal Revenue Code are qualifying expense only to the extent that such expenses are directly related to the cost of the medical care component. The cost for the medical care component must be reasonable for the type and amount of coverage purchased as determined by the claims administrator and must be separately stated in the insurance contract, billing statement, or other documentation accepted by the claims administrator.

(7) "Retired participant" means:

(A) a participant who is eligible for a normal, an unreduced, or a disability benefit of the public employees' retirement fund established under [IC 5-10.3-2](#) on the participant's last day of service;

(B) a participant who has completed at least ten (10) years of service as an elected or appointed officer on the participant's last day as an elected or appointed officer. For purposes of calculating whether a participant has sufficient years of service under this clause:

(i) if a participant has years of service with more than one (1) employer in a position covered by the plan, the years of service are the sum of all the participant's years of service in a position covered by the plan with all employers; and

(ii) effective July 1, 2013, a partial year of service completed by the participant shall be considered to be one (1) complete year of service; or

(C) a participant who is a member of the public employees' defined contribution plan established under [IC 5-10.3-12](#) who is of normal retirement age as defined by [IC 5-10.3-12-14](#) on their last day of service, and whose last day of service is after June 30, 2021. Years of service that are purchased by or on behalf of a participant in order for the participant to be eligible for a benefit will not be included in determining the participant's eligibility for benefits or amount of benefits under this plan. (*Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-2](#); adopted Sep 10, 2021: [20210915-IR-035210420ONA](#)*)

**35 IAC 23-1-3 Participation in the plan**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8-6](#); [IC 5-10-8.5](#); [IC 10-12-1-3](#); [IC 33-23-5-10](#); [IC 33-38-5-7](#); [IC 33-39-6-2](#)

Sec. 3. (a) Employees eligible to participate in the plan is governed by [IC 5-10-8.5-1](#) and this section.

(b) An employee is eligible to participate in the plan if the employee is classified as a full-time employee by their employer and falls under one (1) of the following categories:

(1) Employees of the executive, legislative, or judicial branch of state government except as provided in subsection (c).

(2) State-elected officers.

(3) Officers appointed to fill state-elected office vacancies.

(4) Members of the general assembly.

(5) Elected officers paid by the state.

(6) Officers paid by the state under [IC 33-23-5-10](#), [IC 33-38-5-7](#), or [IC 33-39-6-2](#).

(7) Employees of the state police department who waived coverage under a common and unified plan of self-insurance provided under [IC 5-10-8-6](#) prior to July 1, 2011.

(8) Employees of the state police department who make a timely election to participate under subsection (d) as provided under [IC 5-10-8.5-9.5](#) or [IC 5-10-8.5-9.6](#).

(c) The following individuals are not eligible to participate in the plan:

(1) Conservation officers of the department of natural resources.

(2) Employees of the state excise police.

(3) Employees of the state police department other than those described in subsection (b)(7) and (b)(8).

(d) State police employees must:

(1) provide INPRS satisfactory evidence of the waiver under (b)(7) [*subsection (b)(7)*];

(2) have made a one (1) time irrevocable election to participate in the plan between July 1, 2011, and August 31, 2011, if the employee:

(A) is a former employee of the executive, legislative, or judicial branch of state government (other than an employee described in subsection (c));

(B) left employment described in subdivision (d)(2)(A) [*clause (A)*] after June 30, 2007, and before July 1, 2011, and was subsequently employed by the state police department in a job classification which precludes eligibility for benefits as defined in [IC 10-12-1-3](#) (related to participation in the state police pension and benefit programs); and

(C) remains employed by the state police department on July 1, 2011, in a job classification which precludes the employee's eligibility for benefits as defined in [IC 10-12-1-3](#), and such individual will be an eligible employee as defined in subsection (b)(8).

If such individual eligible to make the election under this subsection does not make such election in the time prescribed, such individual will not be a participant in the plan with respect to service as an employee of the state police department. Any service with the state police department after June 30, 2011, will not be included for any purpose under this plan. An individual electing to participate in the plan under this subsection cannot also be a participant in any retiree medical benefit plan or program maintained by or under the auspices of the state police department.

(3) make an election to participate in the plan not later than sixty (60) days after the individual becomes an employee of the state police department in a job classification which precludes eligibility for benefits as defined in [IC 10-12-1-3](#) if the person:

(A) is a former employee of the executive, legislative, or judicial branch of state government (other than an employee described in subsection (c));

(B) left employment described in clause (A) after June 30, 2011; and

(C) subsequently becomes employed by the state police department in a job classification which precludes eligibility for benefits as defined in [IC 10-12-1-3](#) (related to participation in the state police pension and benefit programs).

If such election is not made for an individual under this subsection, the right to make the election under subsection (b)(8) shall be forfeited. An individual electing to participate in the plan under this subsection cannot also be a participant in any retiree medical benefit plan or program maintained by or under the auspices of the state police department. (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-3](#); adopted Sep 10, 2021: [20210915-IR-0352104200NA](#))

**[35 IAC 23-1-4](#) Entitlement to receive benefits**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8.5](#)

**Sec. 4. Only a retired participant and the retired participant's covered dependents are entitled to receive benefits from the plan.** (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-4](#); adopted Sep 10, 2021: [20210915-IR-0352104200NA](#))

**[35 IAC 23-1-5](#) Participant accounts; employer contributions**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8.5-15](#)

**Sec. 5. (a) A reimbursement account shall be established for each participant.**

**(b) On or before June 30 of each year, a participant's employer shall allocate contributions to participant accounts as provided in [IC 5-10-8.5-15](#).**

**(c) Effective as of June 30 of each year, participant accounts shall be credited or debited with each account's share of earnings or losses on the investments or deposits of all reimbursement accounts after reduction for the administrative cost of the plan.**

**(d) Maintenance of reimbursement accounts is solely for accounting purposes. Assets are not required to be segregated to any reimbursement account.** (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-5](#); adopted Sep 10, 2021: [20210915-IR-0352104200NA](#))

**[35 IAC 23-1-6](#) Qualifying expenses**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8.5-18](#)

**Sec. 6. Only qualifying expenses are reimbursable from a retired participant's reimbursement account as determined under [IC 5-10-8.5-18](#) and this section.** (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-6](#); adopted Sep 10, 2021: [20210915-IR-0352104200NA](#))

**[35 IAC 23-1-7](#) Payment procedures**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8.5](#)

**Sec. 7. (a) In order to be reimbursed for a qualifying expense, a retired participant or covered dependent must file a written claim on a form approved by INPRS with the claims administrator not later than ninety (90) days after the end of the plan year in which the expense was incurred and paid. Claims shall include appropriate supporting documentation as determined by the INPRS claims administrator.**

**(b) The INPRS claims administrator shall determine whether and the amount of any qualifying expense according to the terms of [IC 5-10-8.5](#) and this rule.** (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-7](#); adopted Sep 10, 2021: [20210915-IR-0352104200NA](#))

**[35 IAC 23-1-8](#) Administrative review**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8.5](#)

**Sec. 8. The provisions of [35 IAC 1.2-7](#) apply to the plan.** (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-8](#); adopted Sep 10, 2021: [20210915-IR-0352104200NA](#))

### **35 IAC 23-1-9 Death of eligible employee**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)  
Affected: [IC 5-10-8.5](#); [IC 5-10.2](#); [IC 5-10.3-12-14](#)

Sec. 9. A participant who dies while in the employ of an employer after the date on which the participant became eligible for a normal, unreduced retirement benefit under [IC 5-10.2](#), [IC 5-10.3](#), and [35 IAC 1.2](#) or was of normal retirement age as defined in [IC 5-10.3-12-14](#) and who had not yet terminated employment, will be treated as a retired participant as of the participant's date of death. (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-9](#); adopted Sep 10, 2021: [20210915-IR-0352104200NA](#))

### **35 IAC 23-1-10 Reemployed participants**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)  
Affected: [IC 5-10-8.5](#)

Sec. 10. (a) A former participant who terminated eligible employment before becoming a retired participant and is reemployed by any state employer shall be treated as a new employee upon such employment. The balance of such employee's reimbursement account shall be zero dollars (\$0) upon reemployment.

(b) A retired participant who is reemployed by any state employer shall not be eligible to receive benefits from the plan during the participant's period of reemployment. Such participant's account shall not be set to zero dollars (\$0) upon reemployment. No additional contributions to the retired participants account shall be made during the period of reemployment. When the retired participant terminates state employment, the retired participant will resume access to the participant's plan account.

(c) INPRS has sole discretion in determining whether the individual is a reemployed participant for purposes of subsections (a) and (b). (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-10](#); adopted Sep 10, 2021: [20210915-IR-0352104200NA](#))

### **35 IAC 23-1-11 Nonalienation of benefits**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)  
Affected: [IC 5-10-8-8.5](#); [IC 5-10-8.5](#)

Sec. 11. All benefits and amounts in the plan are exempt from levy, sale, garnishment, attachment, or other legal process. Any attempt to sell, transfer, assign, pledge, encumber, or otherwise dispose of any right to benefits payable is void. (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-11](#); adopted Sep 10, 2021: [20210915-IR-0352104200NA](#))

### **35 IAC 23-1-12 Cessation of participation; forfeiture**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)  
Affected: [IC 5-10-8.5](#)

Sec. 12. (a) A retired participant's participation will cease when:

- (1) the retired participant's reimbursement account is depleted;
  - (2) there have been no reimbursements made from the retired participant's reimbursement account for at least six (6) months and the balance in the reimbursement account is less than five dollars (\$5);
- or
- (3) the retired participant has died and any and all covered dependents have died or are no longer classified as covered dependents (whichever occurs first).

At such time, the retired participant's reimbursement account will be forfeited.

(b) A participant who is not a retired participant ceases participation when the participant:

- (1) separates from service in a position covered by the plan as described in [35 IAC 21-1-3](#) [sic, [35 IAC 23-1-3](#)] and [IC 5-10-8.5](#); and
- (2) does not become reemployed in a position covered by the plan as described in [35 IAC 21-1-3](#) [sic, [35 IAC 23-1-3](#)] and [IC 5-10-8.5](#) within thirty (30) days with an employer.

**In such case, the amounts credited to the participant's reimbursement account shall be forfeited as of the date of the participant's termination.** (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-12](#); adopted Sep 10, 2021: [20210915-IR-035210420ONA](#))

**[35 IAC 23-1-13](#) Subrogation**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8.5](#)

**Sec. 13. If qualifying expenses are paid under this plan and the retired participant or covered dependent has or asserts a lawful claim against other parties, including, but not limited to, insurance companies and carriers, this plan shall be subrogated to all claims and rights of recovery of the retired participant or covered dependent. The plan shall be entitled to be reimbursed from any judgment, settlement, or payment resulting from the individual's claim or right. The plan shall be reimbursed in full for any qualified expenses paid by the plan before any amounts, including, but not limited to, legal fees incurred by the retired participant or covered dependent, are deducted from the judgment, settlement, or payment and paid to any other person.** (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-13](#); adopted Sep 10, 2021: [20210915-IR-035210420ONA](#))

**[35 IAC 23-1-14](#) Reimbursement**

Authority: [IC 5-10.5-4-2](#); [IC 5-10-8.5-11](#)

Affected: [IC 5-10-8.5](#)

**Sec. 14. Benefits payable to a retired participant or covered dependent may be withheld to offset an overpayment of benefits made by the plan.** (Board of Trustees of the Indiana Public Retirement System; [35 IAC 23-1-14](#); adopted Sep 10, 2021: [20210915-IR-035210420ONA](#))

SECTION 14. [35 IAC 1.2-5-25](#) IS REPEALED.

DATED: September 10, 2021

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Bret Swanson, Chairman  
INPRS Board of Trustees  
Indiana Public Retirement System

Resolution adopted by 9 affirmative, 0 negative votes.

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