

Sample **105-HRA Plan Adoption Agreement and Description for One Eligible Employee**

Medical Expense Reimbursement Plan for (name of business or, if no separate business name, your name as shown on your tax return)

This sample plan adoption agreement is for coverage of one eligible employee only and applies to tax years beginning January 1, 2017 and later. With more than one eligible employee, you need a QSEHRA or an HRA integrated with group insurance.

1. PURPOSE: The purpose of the plan is complete and full medical care for one eligible employee of (name of business). The plan is designed and intended to qualify as an accident and health plan within the meaning of Section 105 of the Internal Revenue Code of 1986, as amended, and to comply with the requirements of IRS Notices 2002-45 and 2013-54 as a health reimbursement arrangement under the Affordable Care Act. The Section 105 plan allows the employee to exclude the medical benefits of this plan from his or her gross income.

2. EFFECTIVE DATE: The effective date of this plan is _____ and it operates on a calendar-year basis hereafter. The plan year is the same as the tax year of this business and, like the records of the business; the records of the plan are kept on a calendar-year basis.

3. ELIGIBLE EMPLOYEE: This plan is for one eligible employee only. All full- and part-time employees of (name of business) may participate in this plan, but should there be more than one eligible employee on the plan date, this plan is null and void.

4. BENEFITS: Within 15 days of reimbursement requests, (name of business) shall reimburse the employee for expenses incurred for the medical care of the employee, the employee's spouse, the employee's dependents, and any child of the employee who, as of the end of the taxable year, has not attained age 27. The plan covers only qualified medical expenses incurred by the employee on or after the date of hire.

“Medical care” for the Section 105 plan is defined in Section 213(d), which is the section that authorizes itemized deductions. Thus, the employee may submit for reimbursement any expense incurred that would otherwise qualify as an itemized medical expense deduction on Schedule A of IRS Form 1040. (See IRS Publication 502, *Medical and Dental Expenses*, for a list of qualifying expenses.) In addition, the employee may submit for reimbursement the costs incurred for “prescribed” over-the-counter drugs and medicines used to treat illness or injury.

“Dependents” for Section 105 are defined in Section 152, determined without regard to Subsections (b)(1), (b)(2), and (d)(1)(B). In general, this means the dependents you claim on your tax return. In addition, this means that an individual could be your dependent for the Section 105 plan even though the individual is not your dependent for your Form 1040 because

- the individual is a dependent of another taxpayer—Section 152(b)(1);
- the individual is married and files a joint tax return—Section 152(b)(2); or
- the individual has gross income equal to or above the exemption amount—Section 152(d)(1)(B).

“Child” is defined in Section 152(f)(1) to include the employee’s son, daughter, stepson, stepdaughter, eligible foster child, or legally (or placed) adopted child. The term “eligible foster child” means an individual who is placed with the employee by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Any child of divorced parents to whom Section 152(e) applies shall be treated as a dependent of both parents for purposes of Section 105.

This Section 105 medical reimbursement plan may reimburse a medicine or a drug only if

1. the medicine or drug requires a prescription,
2. it is available without a prescription (an over-the-counter medicine or drug) and the individual obtains a prescription, or
3. it is insulin.

The prescription rules apply to medicines and drugs only. They do not apply to

- equipment (such as crutches),
- supplies (such as bandages), and
- diagnostic devices (such as blood sugar test kits).

(Name of business) shall not reimburse any medical expenses paid to the employee by another employer or by insurance.

(Name of business) may reimburse the employee for the medical expenses, pay the medical expenses directly to the medical provider (such as a hospital) or by purchasing insurance that pays employees’ expenses. In cases where the company pays the expenses, employees shall not seek reimbursement.

Similarly, expenses reimbursed by insurance are not eligible for reimbursement to an employee under this plan.

5. LIMIT ON BENEFITS: The plan ceiling for reimbursements is \$ _____. Amounts in excess of the ceiling shall not be reimbursed by the plan. *(Your plan looks like a medical reimbursement plan that a business would have when you establish a ceiling on the benefits. Most businesses do not want to leave themselves open to unlimited liability. You could allow your plan to carry over unused benefits. We don't recommend this with one eligible employee.)*

6. SUBMISSION OF EXPENSES: The eligible employee must submit claims for reimbursement not less than annually. The employee is encouraged to submit claims more frequently, such as monthly. The employee must submit claims that clearly show that the employee or his or her dependent incurred a valid medical expense. The employee need not have paid the claim for the employer to reimburse such claim, but the evidence must clearly show that the employee is liable for the expenses.

7. ADMINISTRATION: (Name of business) has both the authority and the responsibility to control and manage plan operations and administration. (Name of business) shall keep a copy of this plan document at the office of the business, where employees or participants may inspect and review it during (name of business) regular business hours. Also, should any employee or covered dependent desire a copy of the plan, (name of business) shall provide such copy within a reasonable time of the request.

8. AMENDMENT AND DISCONTINUATION: (Name of business) may amend this document at any time. Any amendment may not retroactively preclude any reimbursement. Similarly, (name of business) may terminate this plan anytime, but any such termination may not retroactively preclude benefits.

9. NOTIFICATION AND ACKNOWLEDGMENT: (Name of business) shall promptly notify all eligible employees that this plan is available and give such employees a copy of the plan for their review. Eligible employees shall acknowledge acceptance or rejection of the plan with a signature, as set forth below.

(Name of business)

For the employer:

By _____

Title _____

Date _____

Acknowledgment by employee

(Circle choice — Accept Reject)

Employee _____

Printed name _____

Date _____

(As a member of the Bradford Tax Institute, you have our permission to copy this plan and use it to help support your medical plan and reimbursements. You should consider asking your tax advisor's or lawyer's assistance in drafting the plan. If you are a tax professional member, you have our permission to use this plan in your tax practice.)