

Sample **Plan Adoption Agreement and Description** **Medical Expense Reimbursement Plan for (name of business or, if no separate name, your name)**

NOTE: For plan years beginning after December 31, 2013, see the 2014 version of this sample.
Updated for Health Care Reform, Public Law 111-148, Signed into Law on March 30, 2010.
Updated for IRS Notice 2010-59, issued September 3, 2010.

1. PURPOSE: The purpose of the plan is complete and full medical care for the employees 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. This section of the Code allows employees to exclude the benefits of this plan from their 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 those of the business, the records of the plan shall be kept on a calendar-year basis.

3. ELIGIBLE EMPLOYEES: All full- and part-time employees of (name of business) may participate in this plan.

(If you expect to hire other employees after you hire your spouse or after you form your C corporation, consider these discrimination rules that allow you to deny coverage to those employees who (1) do not have three years of service or (2) are not yet age 25 on the first day of the plan year. To use these requirements, insert them into your plan. For details on these rules, refer to Tax Reduction Letter, January 2009, Vol. 18, No. 1, Discriminate with Your 105 Plan.)

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 expenses incurred that would otherwise qualify as itemized deductions. In addition, for expenses incurred

before 2011, the employee may submit for reimbursement the costs incurred for 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.

The allowance of reimbursements for the qualified medical expenses of the under-age-27 child applies to expenses incurred on or after March 30, 2010 (Public Law 111-148).

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.

2011 Change in Benefits. Effective for expenses incurred after December 31, 2010, the plan will no longer reimburse over-the-counter drugs or medicines except as provided in the new requirement below.

New Requirement for 2011—Reimbursements for Medicine Restricted to Prescribed Drugs and Insulin. For expenses incurred after December 31, 2010, the 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 new 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 expenses paid by another employer.

(Name of business) may pay the medical expenses directly to the medical provider 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. *(When you cover employees other than your spouse, and even with your spouse, you may want to establish a ceiling on plan benefits.)*

6. SUBMISSION OF EXPENSES: Eligible employees must submit claims for reimbursement not less than annually. Employees are encouraged to submit claims more frequently. Employees 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 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 Tax Reduction Letter subscriber, 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.)