

SAMPLE

CORPORATE RESOLUTION AND ANNOUNCEMENT LETTER FOR MEDICAL REIMBURSEMENT PLAN

This sample resolution and announcement letter have been prepared as guides to assist attorneys. The resolution outlines the basic provisions which are usually included in such resolutions. Neither the resolution nor the announcement letter is intended as a final draft. Modifications will be required to fit the particular situation. The attorney will necessarily be responsible for the actual documents and their wording.



Foreword For Counsel

Medical Reimbursement Plans in General

Medical reimbursement plans are designed to reimburse employees for medical expenses incurred. The plans may be insured or uninsured. The sample corporate resolution and announcement letter which follow are appropriate for an uninsured excess medical reimbursement plan established by a closely held corporation.

An excess medical reimbursement plan provides reimbursement to employees for unreimbursed medical and dental expenses not covered by the employer's group medical and dental program. Section 105(b) of the Internal Revenue Code provides that an employee's gross income does not include amounts received under an "accident or health plan for employees." Contributions by an employer to an accident and health plan to provide health or disability benefits (through insurance or otherwise) generally are deductible by the employer as an ordinary and necessary business expense under section 162(a) of the Code. These provisions result in one of the few instances where corporate funds can be used directly for the benefit of employees (including shareholder-employees of regular C corporations) totally tax-free, with the employer obtaining a full income tax deduction for the amount of the reimbursement.

An excess medical reimbursement plan is an attractive fringe benefit for employees because taxpayers are allowed a deduction for family medical expenses only to the extent such unreimbursed medical expenses exceed 7.5% of adjusted gross income.

Nondiscrimination Requirements for Excess Medical Reimbursement Plans

The Tax Reform Act of 1986 added new nondiscrimination requirements for business health insurance plans under section 89 of the Code. Complicated testing of plans was required to determine whether they discriminated against lower-paid employees. In response to pressure from business and labor groups, section 89 was repealed retroactively in 1989. Generally, the nondiscrimination rules applicable before enactment of section 89 have been reinstated. Health benefits provided by an employer under an insured plan are not subject to nondiscrimination tests. However, employer-provided health benefits under an uninsured medical reimbursement plan must satisfy the nondiscrimination requirements of section 105(h) of the Code. Medical reimbursement under such plans are excludible from the taxable income of "highly compensated" individuals only to the extent that the plan does not discriminate in their favor, either as to eligibility to participate or as to benefits. For this reason, such plans will primarily be attractive to smaller corporations in which the owners are willing to provide the benefit for nearly all of the corporation's employees. Family owned businesses and professional corporations often provide medical reimbursement benefits. S corporations, partnerships and sole proprietorships generally do not establish such plans because the owners of the business are not eligible to participate.

A plan discriminates as to eligibility to participate unless the plan benefits:

- (1) Seventy percent or more of all employees, or 80% or more of all the employees who are eligible to benefit under the plan if 70% or more of all employees are eligible to benefit under the plan; or
- (2) Such employees as qualify under a classification set up by the employer and found by the IRS not to be discriminatory in favor of highly compensated participants.

For the purpose of meeting either of the above eligibility requirements, the following employees may be excluded: (1) those who have not completed three years of service; (2) those under age 25; (3) part-time

or seasonal employees; (4) those not included in the plan who are included in a unit of employees covered by a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining; and (5) nonresident aliens who receive no earned income from the employer within the United States. (IRC sec. 105(h)(3)(B)). Employees whose customary weekly employment is less than 35 hours or less than nine months a year will be considered part-time or seasonal if other employees in similar work with the same employer (or, if there are no employees of the employer in similar work, other employees in similar work in the same industry and location) have substantially more hours or months of employment. Notwithstanding the previous statement, a safe harbor rule to apply is: any employee whose customary weekly employment is less than 25 hours or whose customary annual employment is less than seven months may be considered as part-time or seasonal. (Reg. sec. 1.105-11(c)(2)(iii)(C)).

A plan discriminates as to benefits unless “all benefits provided for participants who are highly compensated individuals are provided for all other participants.” (IRC sec. 105(h)(4)).

The waiting period to become eligible for benefits must be identical for all participants. (Let. Ruls. 8411050 and 8336065). Benefits available to dependents of highly compensated employees must be equally available to dependents of all participants. Any maximum limit on reimbursement must be uniform for all participants and for all dependents. A plan is discriminatory if the type or amount of benefits subject to reimbursement is offered in proportion to compensation and highly compensated employees are eligible for benefits. The tests are applied to benefits subject to reimbursement, not to the actual benefit payments or claims. (Reg. sec. 1.105-11(c)(3)).

A “highly compensated individual” is one who (1) is one of the five highest paid officers; (2) is a shareholder who owns (either actually or constructively with the application of Section 318) more than 10% in value of the company’s stock; or (3) is among the highest paid 25% of all employees (other than those who may be excluded for the purpose of meeting eligibility requirements and who are not participants).

An amount paid under a discriminatory self-insured medical expense reimbursement plan to a highly compensated individual which is includible in gross income is called an “excess reimbursement.” If the benefit paid is not available to a broad cross section of employees, the entire benefit paid is an “excess reimbursement.” If the benefit is available to a broad cross-section of employees but the plan fails to meet other nondiscriminatory provisions, a proportion of the benefit, based on the ratio of reimbursements paid to highly compensated individuals for the plan year to all reimbursements paid, will be considered to be an “excess reimbursement.”

Amounts reimbursed to employees (not dependents) for medical diagnostic procedures performed at a facility which provides only medical services are not considered a part of the medical reimbursement plan and do not need to meet the above nondiscrimination requirements. (Reg. sec. 1.105-11(g)).

Contributory Plans

Reimbursements which are attributable to employee contributions are income tax free to the employee, unless the expense was previously deducted. Amounts attributable to employer contributions are determined in the ratio that the employer contributions bear to total contributions for the calendar years preceding the year of receipt, up to three years. (Reg. sec. 1.105-11(i)).

Withholding

Income tax need not be withheld by the employer from any amounts reimbursed under a self-insured medical reimbursement plan as defined in section 105(h)(6) of the Code. (IRC sec. 3401(a)(20)).

The Importance of a Written Plan

Although the Treasury Regulations do not specifically require that accident or health plans be in writing, a number of court decisions have made it clear that it is imperative that a corporation, by a resolution adopted by its Board of Directors, formally establish certain rules and regulations governing payment of benefits and that these rules be communicated to the employees involved as a definite policy of the corporation. Without such a written plan, deductions can be lost, premiums may become taxable income and benefits can lose their tax shelter.

Presumably, all medical reimbursement plans will need to be in writing in order to satisfy the IRS that nondiscrimination requirements have been met. Also, Title I of the Employee Retirement Income Security Act (ERISA) requires that Employee Welfare Plans be established by a written instrument. Any plan providing medical, surgical or hospital care, sickness or accident benefits or disability benefits is an Employee Welfare Plan and is subject to ERISA requirements. Provisions have been included in the sample resolution and plan which are designed to meet ERISA requirements in regard to a named fiduciary, allocation of responsibilities for the operation and administration of the plan, claims procedures and amendment procedures. Such provisions may not be necessary if the corporation has adopted a resolution applicable to all of the corporation's Employee Welfare Plans which incorporates the provisions required by Title I of ERISA.

SAMPLE CORPORATE RESOLUTION FOR UNINSURED EXCESS MEDICAL REIMBURSEMENT PLAN

I, _____ (name) _____, Secretary of _____ (name of corporation) _____, a corporation duly organized and existing under and by virtue of the laws of the state of _____, DO HEREBY CERTIFY:

That on the _____ day of _____, 19____, a meeting of the Board of Directors of said corporation was duly called and held at _____ (address) _____, at which a quorum was present, and the following resolution was unanimously adopted by said Board of Directors, to wit:

WHEREAS, it is the desire of the corporation to assist its employees in defraying medical and dental expenses incurred by them and their dependents by reimbursing the employees for expenses not covered by insurance; and

WHEREAS, it has been determined that an uninsured excess medical reimbursement plan would reward employees for their past service to the corporation and would aid in developing and maintaining a staff which would best advance the long range interests and performance of the corporation by providing present and future eligible employees with additional incentives;

THEREFORE, BE IT RESOLVED that an uninsured Excess Medical Reimbursement Plan is hereby adopted in accordance with the terms of the plan attached hereto in specimen form, incorporated herein by this reference and made a part hereof as if fully set out herein.

BE IT FURTHER RESOLVED, that the appropriate officers of the corporation are hereby authorized and directed to take the necessary steps to institute such a plan and to notify all eligible participants of its existence.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the corporation in the city of _____, State of _____, on the _____ day of _____, 19____.

(Name)

(Corporate Seal and other formalities of execution in compliance with local law.)

UNINSURED EXCESS MEDICAL REIMBURSEMENT PLAN

1. **PURPOSE OF THE PLAN.** The purpose of this Excess Medical Reimbursement Plan, hereafter called the "Plan," is to assist its eligible employees in defraying medical and dental expenses incurred by them and their dependents by reimbursing the employees for certain expenses not covered by insurance or other sources of reimbursement. _____ (name of corporation), hereafter called the "Corporation," intends to reward past loyalty to the Corporation and to improve the efficiency of its employees by providing this valuable fringe benefit.
2. **ELIGIBILITY.** All employees of the Corporation (other than part-time or seasonal employees) who have completed three or more years of service with the Corporation are eligible employees for purposes of the Plan. A part-time employee is any employee whose customary employment is for less than 25 hours per week. A seasonal employee is any employee whose customary annual employment is for less than seven months.
3. **BENEFITS PAYABLE.** The following benefits will be reimbursed:
 - A. The Corporation shall reimburse to each eligible employee medical expenses incurred by the employee for himself or herself, or by the employee's spouse and dependents, such medical expenses to include all amounts paid or accrued for medical treatment, dental care or eye care; such reimbursement to extend to amounts paid or accrued for the diagnosis, cure, mitigation treatment or the prevention of disease, or for the purpose of affecting any structure or function of the body, and for transportation primarily for and essential to such medical, dental and eye care. The term "dependent" shall include all persons coming within the definition provided by section 152 of the Internal Revenue Code of 1986 as amended from time to time, or any successor thereto. The term "spouse" shall not include a spouse from whom the employee is legally separated under a decree of separate maintenance.
 - B. Paragraph A. of this Article 3. shall be subject to the following limitations:
 1. The Corporation shall not reimburse any participating employee for any expenses which would otherwise be reimbursed under paragraph A. of this Article 3. if such employee has received or is entitled to receive reimbursement for such expenses from any other source, including from any medical expense insurance, regardless of the type of insurance, who owns the insurance or who paid the premiums.
 2. The total benefits paid to a participating employee under this Plan in any [fiscal year of the corporation] [calendar year] for the employee, the employee's spouse and the employee's dependents, may not exceed \$_____ in any [fiscal year of the Corporation.] [calendar year.] If the total benefits paid to a participating employee in a [fiscal] [calendar] year do not exceed such maximum amount, then the difference between benefits paid and the maximum amount may not be carried forward to a succeeding year.
 3. Expenses reimbursable under this plan shall include only those incurred while the employee is eligible for the plan, regardless of when the bill for such expenses was rendered, received or paid.

4. **FIDUCIARY PROVISIONS.** The _____ (e.g. - Secretary of Employer) is hereby designated as the “Named Fiduciary” for the Plan established by this resolution and he or she shall have the authority to control and manage the operation and administration of such plan.
5. **ALLOCATION OF FIDUCIARY RESPONSIBILITIES.** The Named Fiduciary may allocate responsibilities for the operation and administration of the Plan, including the designation of persons to carry out fiduciary responsibilities under the plan. The Named Fiduciary shall effect any such allocation of his or her responsibilities by delivering to the Board of Directors of the Corporation a signed written instrument that specifies the nature and extent of the responsibilities allocated, including the persons who are designated to carry out these fiduciary responsibilities under the plan, together with a signed acknowledgement of their acceptance.
6. **PLAN ADMINISTRATOR.** The Named Fiduciary is hereby designated as the “Plan Administrator” of this Plan.
7. **CLAIMS PROCEDURE.** The following claims procedure shall apply to the Plan.
- a. **Filing of a Claim for Benefits.** To receive medical expense reimbursement under the Plan, an eligible employee shall submit suitable proof of expense to the Plan Administrator and the Plan Administrator shall be the sole judge of whether the employee is entitled to reimbursement under the Plan.
 - b. **Claim Approval or denial with Respect to Plan Benefits.** With respect to a claim for benefits, the Plan Administrator shall review and make decisions on claims for benefits. The Plan Administrator shall have complete and sole discretionary authority to determine eligibility for benefits and to construe the terms of the Plan.
 - c. **Notification to Claimant of Decision.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of paragraph d. following shall be furnished to the claimant within a reasonable period of time after the claim has been filed.
 - d. The Plan Administrator shall provide to any claimant whose claim for benefits is denied in whole or in part a written notice setting forth, in a manner calculated to be understood by the claimant, the following:
 - (1) The specific reason or reasons for the denial or partial denial;
 - (2) Specific reference to pertinent Plan provisions on which the denial is based;
 - (3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
 - (4) An explanation of the plan’s claim review procedure, as set forth in paragraphs e. and f. following.
 - e. **Review Procedure.** The purpose of the review procedure set forth in this paragraph and in paragraph f. following is to provide a procedure by which a claimant under the Plan may have a reasonable opportunity to appeal a denial or partial denial of a claim and request a full and fair review. To accomplish that purpose, the claimant or a duly authorized representative:

- (1) may request a review upon written application to the Plan Administrator;
- (2) may review pertinent Plan documents or agreements; and
- (3) may submit issues and comments in writing.

A claimant (or duly authorized representative) shall request a review at any time within sixty days by filing a written application after receipt by the claimant of written notice of the denial of his or her claim.

f. A decision on review of a denial of a claim shall be made in the following manner:

- (1) The decision on review shall be made by the Plan Administrator, which may in his or her discretion hold a hearing on the denied claim. The Plan Administrator shall make his or her decision promptly, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review.
- (2) The decision on review shall be in writing and shall include specific reasons for the decisions, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based.

8. **NONASSIGNABLE.** None of the payments provided for in this Plan shall be subject to seizure for payment of any debts or judgments against a participating employee; nor shall any employee have any right to transfer, modify, anticipate or encumber any rights or benefits hereunder; provided, however, that the undistributed portion of any benefit payable hereunder shall at all times be subject to set off for debts owned by an employee to the Corporation.
9. **TERMINATION OF EMPLOYMENT.** In the event that the employment of an eligible employee is terminated for any reason, his or her eligibility to participate and receive benefits under this Plan shall cease; provided, however, that such termination of employment shall not affect the right of any employee to claim reimbursement hereunder for medical expenses as defined in Article 3. hereof arising prior to the employee's termination of employment.
10. **COMMUNICATION.** The Corporation shall communicate the features of this Plan to all eligible employees by mailing a letter to them which essentially follows the format shown in the sample letter attached, and by enclosing a copy of this Plan with the letter.
11. **EFFECTIVE DATE.** This Plan shall be effective as of _____ (Date) and shall continue in effect until terminated by the Board of Directors.
12. **AMENDMENT AND TERMINATION.** The Corporation, by resolution of the Board of Directors, may amend the Plan at any time, in whole or in part, including any amendments as it shall deem advisable in order that the Plan shall conform to the provisions of sections 105 and 106 of the Internal Revenue Code of 1986, as amended, or to conform to any change in the law. The Plan may be terminated at any time by a resolution of the Board of Directors. If the Plan is amended or terminated, the Plan Administrator shall give written notice to each eligible employee of the action taken by the Board of Directors. Any

such amendments or termination shall not affect any right to benefits arising prior to such amendment or termination.

(Signature of Company President)

Name

(Date)

**SAMPLE LETTER NOTIFYING ELIGIBLE EMPLOYEES OF THE
MEDICAL REIMBURSEMENT PLAN**

WALKER SUPPLY COMPANY
123 MAIN STREET
ANYTOWN, ANystate

October 15, 1991

(Name)
456 - 78th St.
Anytown, Anystate

Dear _____
(Name)

I am pleased to announce that the Company has adopted an Excess Medical Reimbursement Plan for all full-time employees who are over age 25 and who have completed three or more years of service with the Company. The features of the plan are as follows:

- All types of medical expenses not covered by insurance which an eligible employee or the employee's dependents incur will be reimbursed by the Company, up to a maximum of \$ _____ per year.
- To receive reimbursement for medical expenses, suitable proof of expense will need to be submitted to _____
(Name), the Plan Administrator, who will be the sole judge of whether the employee is entitled to reimbursement.
- The Excess Medical Reimbursement Plan will be effective _____ and will continue in effect until otherwise changed or terminated by the Board of Directors. Only medical expenses incurred after the effective date of the plan will be reimbursed.

(First Name), I want you to know that the Company does appreciate the contributions you have made in the past and are continuing to make toward our current success. It is my hope that this plan providing a tax-free benefit will help make life a little more enjoyable for you and your family in these inflationary times. If you have any questions about the plan, please let me know.

Sincerely

(Signature of Company President)