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Tax Free Individual Health Insurance in Tennessee Using HRAs, POPs and Payroll Reimbursement Arrangements

Note: This should not be taken as tax or legal advice

HRAs, POPs and tax free individual health insurance are 100% allowed in Tennessee if administered the correct way.

Nothing in Tennessee insurance code restricts an employer (small or large) from offering HRAs and POPs that reimburse individual health insurance plans. HRAs and POPs are federal plans that are not regulated by the Tennessee Department of Insurance.

However, there exists confusion with regard to the state insurance code that regulates insurance companies insuring small employers (i.e. companies with 2-50 employees). It is important to realize that the insurance code applies to insurance companies and does not restrict a small employer from offering employees the ability to reimburse themselves for individual health insurance costs tax free.

According to [Tennessee Insurance Code Section 56-7-2206](#):

56-7-2206. Applicability. —

(a) A health benefit plan is subject to this part if it provides health benefits for small employers and if either of the following conditions is met:

(1) Any part of the premiums or benefits is paid by a small employer, or any covered individual is reimbursed, whether through wage adjustments or otherwise, by a small employer for any portion of the premium, or for which the small employer has permitted payroll deduction for the covered individual, whether or not the coverage is issued through a group or individual policy of insurance, and whether or not the small employer pays any part of the premium; or

(2) The health benefit plan is treated by the employer or any of the covered individuals as part of a plan or program for the purpose of § 106 or § 162 of the Internal Revenue Code, compiled in 26 U.S.C. §§ 106 and 162, respectively.

(b) Chapter 5, part 3 of this title does not apply to individual accident and health insurance policies or contracts to the extent they are subject to this part.

[Acts 1992, ch. 808, § 6.]

Individual policies reimbursed by [ZanePOP](#) cannot be made subject to the requirements of Section 56-7-2206 because, with ZanePOP:

1. The employer does not pay a portion of the premium or benefits for the individual health insurance policy.
2. The employer does not reimburse the employee for any portion of the premium.
3. The employer/employees do not treat specific individual health insurance plans as a part of a plan or program for purposes of Section 106 or 162

The non-applicability of 56-7-2206 to individual policies reimbursed by ZanePOP should be straightforward. Please post questions in the comment section.

Similarly, individual policies reimbursed by [ZaneHRA](#) cannot be made subject to the requirements of Section 56-7-2206 because, with ZaneHRA:

1. The employer does not pay a portion of the premium or benefits for the individual health insurance policy;
2. The employer does not limit reimbursement to specific individual health insurance premiums and never knowingly or directly reimburses individual health insurance premiums;
3. The employer/employees do not treat specific individual health insurance plans as a part of a plan or program for purposes of Section 106 or 162.

The ZaneHRA itself is the "Plan", not the health care items reimbursed by the "Plan". In other words, ZaneHRAs are qualified ERISA- and HIPAA-compliant employee welfare benefit plans. However the medical items (e.g. pharmacy, insurance policy costs, doctor visits, etc.) for which each employee chooses to seek reimbursement from their ZaneHRA, are not part of an employee welfare benefit plan.

The federal government has guidelines for employers who want to allow insurers or their representatives access to their employees without triggering ERISA plan status and the associated liabilities. ZaneHRA is designed to comply with these guidelines.

Compliance includes the following restrictions on the actions of employers:

1. Employers must not be involved in employees' decision to purchase individual health insurance, or their decision on which insurer or plan to use. They must not get involved in any negotiations with an insurance carrier over price or benefits of individual health insurance plans, and must not provide employees with claim forms or other materials related to their individual health insurance policies.
2. Employers may not directly pay premiums on individual health insurance policies. They must not receive any compensation from an insurance carrier in connection with an employee's individual health insurance policy. Employers must not

become involved in any claim dispute between an employee and an insurance carrier; all inquiries must be directed to the insurer.

To comply with point (1) above, while still making contributions to an HRA that can reimburse for individual health insurance premiums, employers must follow these additional guidelines:

1. Employers must not pressure employees to use the money in their HRA to pay for [individual insurance](#) coverage. Employers may require HRA participants to have health insurance coverage to participate in their HRA provided this requirement is waived for participants medically unqualified to obtain health insurance (e.g. rejected, uprated, excluded).
2. In addition to reimbursing for health insurance premiums, employers should also allow the use of HRA funds for qualified medical expenses.
3. Employers must limit their role to simply reimbursing qualified medical expenses as directed by the ZaneHRA plan.