

FREQUENTLY ASKED QUESTIONS ON PROVIDING INSURANCE FOR UTILITY DISTRICT COMMISSIONERS

JUNE 2016

TAUD has prepared these FAQs which address when and how a utility district can provide medical or life insurance to its commissioners. The legal authority for a utility district to pay the premiums for a commissioner for medical or life insurance is governed by T.C.A. § 7-82-308(a)(1). The Affordable Care Act (ACA)(Obamacare) includes provisions which must be considered in deciding whether a utility district can provide medical insurance to a commissioner.

- Q. What insurance has the legislature authorized a utility district to provide to its commissioners?
- A. The legislature has authorized a utility district to provide medical and life insurance to its commissioners in the following two ways.
- (1) A commissioner can participate in the district's group medical insurance plan and group life insurance plan as other district employees.
- (2) A utility district can pay the premiums of a commissioner who is a part of a group medical insurance plan or life insurance group medical plan other than the district's group plans (such as the group plan of commissioner's employer) provided that: (a) the premiums paid for such other group medical insurance coverage and group life insurance coverage do not exceed the per person cost of the district's group medical insurance coverage and group life insurance coverage for its employees; and (b) the other group medical plan is "integrated" with the utility district's group plan as defined by the ACA.
- Q. What is required for the other group medical plan to be "integrated" with the district's group medical plan to allow the utility district to pay the premiums of the other group medical plan in which the commissioner participates?
- A. The payment of the premiums for a commissioner who participates in a group medical plan other than the utility district's plan must meet the following five tests under the ACA:
- (1) the utility district must offer an ACA-compliant group medical insurance plan for its employees and commissioners;
- (2) the other group medical plan must be ACA-compliant;
- (3) the commissioner must actually be enrolled in the other group medical insurance plan;
- (4) the premium payments are only for the other group medical insurance; and

- (5) at least annually premium reimbursement plan must permit the commissioner to permanently opt out or waive future reimbursements.

Important: *Consult the utility district's legal counsel to determine whether the commissioner's other group medical plan is "integrated" with the utility district's group medical plan as set forth by the IRS for the purposes of the ACA.*

- Q. What happens if the utility district pays the premiums for another group medical plan which is not "integrated" with the utility district's group medical plan?
- A. Utility districts which pay the premiums for a commissioner's coverage in another group medical plan which is not integrated face the payment of an excise tax in the amount of \$100 a day or \$36,500 per year per commissioner.
- Q. Can a utility district provide or pay for medical insurance or life insurance for the spouse and family members of a commissioner?
- A. The spouse and family members of a utility district commissioner may participate in the district's group medical and group life insurance plans to the same extent as the spouses and family members of district employees. A utility district may pay the premiums for group medical and group life insurance coverage for the spouse and family members of a commissioner when the other group plan covers the spouse and family members of the commissioner and is "integrated" with the district's group medical plan. Again, the premiums paid for the commissioner and family members for coverage in the other group plan may not exceed the per person cost of the district's group medical insurance coverage and group life insurance coverage for its employees and family members.
- Q. Can a utility district reimburse a commissioner for the premiums he or she pays for an individual medical insurance policy or life insurance policy?
- A. No. The statute only authorizes the payment of premiums for **group** medical or **group** life insurance for utility district commissioners.
- Q. Can a utility district provide or pay for dental insurance for a commissioner?
- A. No. The statute only authorizes a utility district to pay for a commissioner's coverage in a group medical insurance plan and group life insurance plan.
- Q. Can a utility district provide or pay for disability or long term care insurance for a commissioner?
- A. No. The statute only authorizes a utility district to pay for a commissioner's coverage in a group medical insurance plan and group life insurance plan.

- Q. May a utility district provide or pay for cancer or vision care insurance for a commissioner?
- A. A utility district can only provide or pay for cancer or vision care insurance for a commissioner when such coverage is included in the district's group medical insurance plan. If a utility district offers individual cancer or vision insurance policies to its employees, the utility district cannot provide such insurance to a commissioner because such cancer or vision insurance is not a part of the district's group medical insurance plan.
- Q. May a utility district reimburse a commissioner for the payment of his or her Medicare insurance premiums?
- A. (1) When the utility district reimburses only one commissioner for his or her Medicare premiums (and no employees), the utility district can reimburse the commissioner for the payment of the premiums of Medicare Parts B and D (or Part C).
- (2) When the utility district reimburses more than one commissioner (or employee), the utility district can reimburse the commissioner for the premiums of Medicare Parts B and D (or Part C) provided the Medicare reimbursement plan meets the following requirements:
- (a) the commissioner must be eligible to participate in the utility district's group plan which must be ACA-compliant;
 - (b) the utility district must offer participation in the group plan to the commissioner and the commissioner chooses not to participate in the group plan;
 - (c) the commissioner must be actually enrolled in Medicare Parts B and D (or Part C);
 - (d) the reimbursement plan is only available to officials or employees who are enrolled in Medicare Part A and B or Part D (or in Part C); and,
 - (e) the reimbursement plan is limited to reimbursement of Medicare Part B or D (or Part C) premiums.

While the IRS will allow an employer's Medicare premium reimbursement plan to pay for Medigap premiums and premiums for excepted benefits such vision and dental insurance, Tennessee law will not allow a commissioner to be reimbursed for these premiums unless they are part of a group plan.

Important: Consult the utility district's legal counsel to determine whether the utility district's Medicare premium reimbursement plan meets the four IRS requirements to avoid the potential large excise tax imposed upon the utility district should its plan not meet these requirements.

- Q. What Medicare insurance premiums can a utility district pay for a commissioner?
- A. When a utility district's Medicare premium reimbursement plan meets the IRS requirements for the ACA as previously described, the utility district can pay the following Medicare insurance costs:

Medicare Part A – Medicare Part A is the hospital part of Medicare insurance and has no premium.

Medicare Part B – Medicare Part B covers doctor visits and other medical costs and requires the payment of a premium which a utility district can reimburse. Medicare Part B premiums are paid to the federal government.

Medicare Part C - Medicare Part C is an option which persons eligible for Medicare have to obtain insurance through the Medicare program. Medicare Part C plans are known as Medicare Advantage Plans and function much like HMO and PPO plans. Medicare Advantage Plans include Medicare Parts A, B and usually D and provide the coverage normally provided by a Medigap insurance policy. Premiums for a Medicare Advantage Plan are paid to private insurance companies approved by Medicare.

Medicare Part D – Medicare Part D which is the prescription drug coverage which may be selected by a person eligible for Medicare. The Medicare Part D premium is paid to a private insurance company approved by Medicare.

- Q. Can a utility district reimburse a commissioner for the premiums paid for a Medicare supplement insurance policy also known as a Medigap insurance policy?
- A. No, a utility district can only pay the premiums for a commissioner to participate in another group plan. Medigap insurance policies are individual policies for persons on Medicare who choose to have the additional coverage afforded by such policies. Medigap policies do not cover spouses or family members.

[Caveat: If a commissioner is receiving Medicare supplementary coverage through the State of Tennessee Local Government Insurance Plan, such coverage is from self-funded group plan by the State known as "The Tennessee Plan." This coverage is under a group plan sponsored by the State and is not coverage provided under a standard individual Medicare Supplement policy sold by a private insurer.]

- Q. Can a utility district set up a health reimbursement account (HRA) for a commissioner when it has set up these accounts for its employees?
- A. Yes. Because an HRA is set up in connection with a group medical plan and can only be used to pay medical expenses, an HRA can be considered part of the utility district's group medical plan in which a commissioner may participate.
- Q. Can a utility district set up a health savings account (HSA) for a commissioner when it has set up these accounts for its employees?
- A. No. Unlike an HRA the contributions by a utility district to an HSA vest in the account holder when the contribution is made. The owner of an HSA may take a distribution from the HSA at any time (although any distribution not for medical expenses will not be tax free). Therefore, contributions to an HSA would be considered compensation to a commissioner which is not authorized by statute.
- Q. How should a utility district pay the medical and life insurance premiums for a commissioner who participates in a group plan other than the utility district's group medical and life insurance plans?
- A. Preferably, the utility district should pay the commissioner's group medical and life insurance premiums directly to the commissioner's employer or group medical and life insurance companies. When direct payment cannot be made or is impractical to make, the commissioner must provide the utility district with written documentation from the group medical and life insurance companies of the amount of the premiums paid by the commissioner to obtain reimbursement for any qualified group medical and life insurance premiums paid. This documentation should be updated whenever the commissioner's premiums change for coverage in the other group plan.

LANGUAGE IN T.C.A. § 7-82-308(a)(1) ON COMMISSIONER INSURANCE

In addition, group medical insurance coverage and group life insurance coverage as may be provided other employees, or payment of premiums for an equivalent or similar group medical coverage and group life insurance coverage that a commissioner may be participating in on April 18, 1985, or that a commissioner may have been participating in on May 25, 1984, or a group plan entered into subsequent thereto; provided, that such payment of such medical coverage and group life insurance coverage does not exceed the per person cost of the district's group medical insurance coverage and group life insurance coverage for its employees.