



FREQUENTLY ASKED QUESTIONS ON PROVIDING INSURANCE FOR UTILITY DISTRICT COMMISSIONERS

JUNE 2023

On May 5, 2023, the General Assembly enacted legislation which changed some long-standing provisions governing the ability of a utility district to pay the premiums medical and life insurance coverage for a commissioner under T.C.A. § 7-82-308(a). Under the new T.C.A. § 7-82-308(a)(2), a utility district's board of commissioners can adopt a resolution authorizing the payment of medical insurance and life insurance for the commissioners in the following ways:

- (1) Participation in the group medical insurance plan and group life insurance Plan provided to District employees;
- (2) Reimbursement of premiums paid by the commissioner for equivalent or similar medical insurance coverage and life insurance coverage, provided the premium payments do not exceed the per person cost of the medical insurance coverage and life insurance coverage that the District provides its own employees; or
- (3) Reimbursement of premiums paid by the commissioner for medical insurance coverage under Medicare and any Medicare Supplement Insurance policy.

As a result, TAUD is updating its FAQs on providing commissioner insurance to incorporate the changes now included in T.C.A. § 7-82-308(a)(2).

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 three 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 reimburse a commissioner for the premiums the commissioner pays for equivalent or similar medical insurance coverage and life insurance coverage to another insurance carrier provided the premiums paid to the commissioner do not exceed the per person cost the district pays for group

medical insurance coverage and group life insurance coverage for its own employees.

(3) A utility district can reimburse a commissioner for the premiums the commissioner pays for medical insurance coverage under Medicare and any Medicare Supplement Insurance policy.

Q. May a utility district reimburse a commissioner for premiums paid for an individual medical insurance policy for equivalent or similar medical insurance coverage the utility district provides to its employees?

A. Yes, *but for only one commissioner*. If a utility district reimburses more than one commissioner for premiums paid for individual medical insurance policy, the utility district is subject to an excise tax in the amount of \$100 a day or \$36,500 per year per commissioner imposed by the Affordable Care Act (ACA).

Q. May a utility district reimburse a commissioner for premiums paid for medical insurance coverage for another group plan?

A. Yes, with no conditions if only one commissioner is being reimbursed for medical insurance premiums paid for coverage from another insurance carrier or Medicare. If, however, the utility district wants to reimburse more than one commissioner and the commissioner participates in a group medical plan other than the utility district's plan, it can do so provided the other group plan is "integrated" with the utility district's employee group medical plan. To be integrated, the following five tests must be met 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 the 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. May a utility district reimburse a commissioner for premiums paid by the commissioner for medical insurance coverage under Medicare and Medicare Supplement policies?
- A. Yes, with no conditions if only one commissioner is being reimbursed for medical insurance premiums paid for coverage from another insurance carrier or Medicare. If, however, the utility district want to reimburses more than one commissioner and the commissioner gets medical insurance coverage under Medicare and a Medicare Supplement policy, the reimbursement plan must be “integrated” with the utility district’s group medical insurance plan. To be integrated, the following five tests must be met under the ACA:
- (1) the commissioner must be eligible to participate in the utility district’s group plan which must be ACA-compliant;
 - (2) the utility district must offer participation in the group plan to the commissioner and the commissioner chooses not to participate in the group plan;
 - (3) the commissioner must be actually enrolled in Medicare Parts B and D (or Part C);
 - (4) 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,
 - (5) the reimbursement plan is limited to reimbursement of Medicare Part B or D (or Part C) premiums.

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 reimburses more than one commissioner for premiums paid for participation in other group medical insurance plans or for Medicare and Medicare Supplement policies which are not “integrated” with the utility district’s group medical plan?
- A. The utility district is subject to an excise tax on the utility district in the amount of \$100 a day or \$36,500 per year per commissioner imposed by the ACA.
- Q. Can a utility district provide or pay for medical insurance or life insurance for the spouse and family members of a commissioner?
- A. Yes. 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. In the alternative, a utility district may reimburse a commissioner for the premiums the commissioner pays for medical and life insurance coverage from other insurance plans *provided the utility district has a group insurance plan provides for similar or equivalent coverage*. Again, the premiums paid for the commissioner and family members for coverage in the other insurance 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 pay the premiums for Medicare and Medicare Supplement policies for the spouse of a commissioner?
- A. No. The spouse of a commissioner does not get medical insurance coverage just because a commissioner has turned 65 and is on Medicare. The statute only authorizes the reimbursement of premiums for Medicare and Medicare Supplement policies for the commissioner. Because the spouse of a commissioner only gets Medicare when the spouse turns 65, no reimbursement of the premiums paid by the spouse of a commissioner for Medicare is permitted.
- 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 for medical insurance and life insurance.
- 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 for medical insurance and life insurance.
- 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. 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 in which persons eligible for Medicare may obtain insurance from a private insurance carrier which is financed by the Medicare program. Medicare Part C plans are known as Medicare Advantage Plans and function much like HMO and PPO plans. Medicare Advantage Plans generally provide the same medical insurance coverage as Parts A, B, and sometimes D and provide the coverage normally provided by a Medicare Supplement or Medigap insurance policy. Premiums for a Medicare Advantage Plan are paid to private insurance companies approved by Medicare.

Medicare Part D – Medicare Part D provides 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.

Medicare Supplement or Medigap Policies – These policies provide benefits not covered by Medicare Parts A and B and may cover prescription drugs.

- 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, when the commissioner participates in the utility district's group medical plan and the HRA is set up in connection with district's group medical plan.
- 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 medical insurance plan other than the utility district's group medical and life insurance plans?
- A. When possible, the utility district may pay the commissioner's medical and life insurance premiums directly to the other group plan in which the commissioner participates or to the medical or life insurance carrier which is providing coverage to the commissioner. When direct payment cannot be made or is

impractical to make, the commissioner can be reimbursed for the actual amount the commissioner pays out-of-pocket for medical and life insurance coverage. In either instance, the commissioner must provide the utility district with written documentation from the medical and life insurance companies of the amount of the premiums paid by the commissioner to obtain reimbursement for any qualified medical and life insurance premiums paid. This documentation should be updated at least annually or whenever the commissioner's premiums change for coverage in the other group plan.

Donald L. Scholes, General Counsel

December 2023