

Instructions HRA Plan Document, Adoption Agreement and SPD
for use by
Self-Employed Member with Only One Employee
(including a Married Individual with an Employee-Spouse)*

Plan Documents Limited to Employer with One Employee

* This set of documents is designed for a small family business consisting of a self-employed individual with only one employee, including a married self-employed individual whose spouse is considered an employee of the business will qualify, but in such circumstance the spouse will count as the only employee. This set of documents should not be used by any employer with more than one employee.

New federal regulations limit the use of HRA §105 plans to an employer with only one employee, unless the employer (i) offers a coverage under a group health plan that provides “minimum essential coverage” under the Affordable Care Act (“ACA”) to all employees within the affordability standards of the ACA, or (ii) the HRA plan itself provides at the employer’s expense “minimum essential coverage” under the ACA. This set of documents was not designed or intended for use by any employer with more than one employee, and should not be used for such purposes by any employer with more than one employee. If you are an employer with more than one employee, you are strongly urged to seek advice from your CPA or attorney before considering adopting any HRA plan for your employees.

Instructions for Completing Documents

If you are a self-employed member of the association with only one employee and wish to create and adopt this HRA §105 plan for the benefit of your sole employee, the following steps should be completed:

1. Complete, sign and date the Adoption Agreement;
2. Complete the required information in Part A of the summary plan description (“SPD”) (*note*, this information should correspond to your elections in the Adoption Agreement);
3. Provide the completed documents to your legal counsel for review;
4. Obtain approval of the board of directors for the adoption of the HRA (*note*, you may use the attached board resolutions to formally approve the adoption of the HRA);
4. Distribute the completed SPD to your sole employee who is eligible to participate in the HRA (*note*, the SPD should be distributed as soon as possible after adopting the HRA, but in no event later than 120 days after adoption of the HRA);

5. Implement a HIPAA privacy and security compliance program (*note*, since the HRA is a self-funded health plan, the employer is responsible for implementing HIPAA's privacy and security requirements);
6. In order to satisfy HIPAA's privacy requirements, the following steps must be taken:
 - Perform a gap analysis to compare the company's current privacy practices in relation to HIPAA's privacy requirements;
 - Prepare privacy policies and procedures required by HIPAA to address how protected health information will be used and disclosed;
 - The self-employed individual will serve as the privacy officer and has the overall responsibility for complying with HIPAA's privacy requirements;
 - Identify all business associates (third parties who perform services on behalf of the HRA that involve access to health information such as a third party administrator, accountant or attorney) and prepare required business associate contracts under HIPAA for the business associates to sign; and
 - Sign an "employer certification" in the format required by the HIPAA statute in which the employer agrees to comply with HIPAA's privacy rules.
7. If the self-employed individual stores or transmit any protected health information electronically in relation to the HRA, he must comply with HIPAA's security requirements.
8. In order to satisfy HIPAA's security requirements, the following steps must be taken:
 - The self-employed individual should conduct a risk analysis in which all of the administrative, physical and technical issues must be addressed, as required by HIPAA's security regulations;
 - During the risk analysis process, the security safeguards in place to protect health information from the HRA plan should be documented, and those safeguards should be reasonable and appropriate based on the level of risk to the data;
 - Prepare HIPAA security policies and procedures, as required by the HIPAA regulations;
 - The self-employed individual will be the security officer who will have overall responsibility for complying with HIPAA's security requirements; and