

**\*\*\*ATTACHMENTS\*\*\***

**CITY OF SHEBOYGAN**

**REQUEST FOR SALARIES & GRIEVANCE COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Part-Time Camera Operator Hourly Pay Rate

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**REPORT PREPARED BY:** Sandy Rohrick, Director of Human Resources & Labor Relations

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**REPORT DATE:** July 20, 2016

**MEETING DATE:** July 25, 2016

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

The City of Sheboygan operates a full-service television production studio (WSCS). Part-time camera operators are hired as-needed to support this program. Heavy turnover in the position warranted an evaluation of comparable wages. This evaluation revealed that an increase in pay is warranted.

**STAFF COMMENTS:**

Due to the sporadic employment opportunities of this part-time position, as well as the low wages, turnover was quite prevalent. \$8 per hour minimum is not enough for these positions. The needs of the position have remained unchanged and will continue to be sporadic. However, an increase in pay to a minimum \$10 per hour is an appropriate increase to both attract potential applicants to retain employees.

**ACTION REQUESTED:**

Motion to recommend the Common Council approve General Ordinance Number 33-06-07, modifying the minimum starting pay to \$10 with a range from \$10 - \$15 per hour.

**ATTACHMENTS:**

- I. Gen. Ord. No. 13-16-17.

X

7.1

Gen. Ord. No. 13 - 16 - 17. By Alderperson Donohue. July 18, 2016.

AN ORDINANCE amending Gen. Ord. No. 33-06-07 establishing the salaries of the part-time Cable TV Operators at WSCS.


THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. The salary for the part-time Cable TV Operators at WSCS is hereby amended as follows:

Minimum starting wage: \$10.00 per hour  
Maximum wage: \$15.00 per hour

Section 2. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

*Sal & Drew*

  
\_\_\_\_\_

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

**CITY OF SHEBOYGAN**

**REQUEST FOR SALARIES & GRIEVANCE COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Police Department Table of Organization Change: Community Service Officer

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**REPORT PREPARED BY:** Sandy Rohrick, Director of Human Resources and Labor Relations

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**REPORT DATE:** July 20, 2016

**MEETING DATE:** July 25, 2016

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

The Table of Organization recently changed for the Police Department Community Service Officer positions, modifying one of the two full-time positions to one full-time, equivalent position (1 or more part-time employees). This transition recognizes that the part-time positions would be entry-level, trainee positions. The labor grade needs to reflect the duties of the trainee positions.

**STAFF COMMENTS:**

The hope for this newly-created position is for the Police Department to utilize this opportunity to recruit employees who aspire to become a full-time police officer and are either enrolled or planning on enrolling in an educational program that supports that goal. As such, this position is entry-level. The new employee would need to be trained. An appropriate salary range for a new employee-in-training would be \$15.00 per hour, which is a salary grade 2. Upon being fully-trained (approximately six months), the part-time status would remain, but the employee would be promoted to the Community Service Officer position, salary grade 4, with minimum pay of \$17.27 per hour.

**ACTION REQUESTED:**

Motion to recommend the City Council approve General Ordinance No. 14-16-17, with the correction of adding the job title, "Community Service Officers In-Training" with a class grade 2, and allowing the department to fill "As Needed".

**ATTACHMENTS:**

- I. G.O. 14-16-17
- II. Draft Job Description Community Service Officer Trainee

DRAFT

X

7.2

Gen. Ord. No. 14 - 16 - 17. By Alderperson Donohue. July 18, 2016.

AN ORDINANCE amending Gen. Ord. No 3 -16-17, so as to change the part-time Community Services Officers Class Grade 4 to a part-time Community Services Officers In-Training, Class Grade 2, in the Police Department's Table of Organization.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Section 82-33 of the Sheboygan Municipal is hereby amended so that Section D.3 is amended as follows:

Class Title	Class Grade	NO. of Employees
D. POLICE DEPARTMENT		
Delete:		
D3. Patrol Division Community Service Officers	4	"As Needed" (equal to 1 full-time equivalent)
Add:		
D3. Police Department Community Service Officers In-Training	2	"As Needed" (equal to 1 full-time equivalent)

Section 2. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance and attached job description shall be in effect from and after its passage and publication.

*Sal & Grace*

  
\_\_\_\_\_

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Dated \_\_\_\_\_ 20\_\_, \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_, \_\_\_\_\_, Mayor



## **Job Description**

<b>Job Title:</b>	Community Service Officer in Training	<b>Department:</b>	Police Department
<b>Reports To:</b>	Sergeant of Administration	<b>Classification:</b>	
<b>Wage:</b>	Salary Grade 2	<b>Date Issue:</b>	July 11, 2016

## **Position Summary**

Under general supervision, patrols assigned areas to check parking violations, issues parking violation tickets and notices, and perform related work as required. After training and demonstrated ability, while under close supervision, will perform routine clerical related and law enforcement duties not requiring oath of office.

## **Essential Duties & Responsibilities**

1. Patrols assigned areas during designated periods to check for general parking violations, including meter parking, school, timed, and impact zones.
2. Issues parking violation tickets or violation notices on forms prescribed by the Police Department.
3. Answers inquiries and gives directions to the public.
4. Observes, records, and reports defective or damaged parking meters.
5. Performs routine clerical work as required.
6. Performs maintenance and minor repair of parking meters.
7. Attends training classes as required.
8. Performs routine report writing.
9. Replaces School Crossing-Guards when required.
10. Handles bicycle complaints including recovery, impoundment and return of stolen bicycles.
11. Assists with Snow Emergency enforcement operations, including ticketing, towing, impoundment, and release of vehicles
12. Responsible for the up keep and proper use of all assigned department equipment and vehicles.
13. Handles abandoned vehicle enforcement by locating, identifying vehicles in violation, preparing reports that support their removal, and towing them when directed.
14. Makes appropriate reports to the Building inspectors of code violations.
15. \* Assists the Property Officer when needed to prepare items for auction and disposal and assist in their disposal through a manner prescribed by the department.
16. When needed, assists Patrol during 4<sup>th</sup> of July or other major events to barricade intersections and enforce parking violations during this event.
17. Assists department personnel with traffic surveys for potential parking zones as directed.
18. Assists department personnel with parade preparations as directed.
19. Performs duties in addition to the above as may be prescribed by the administration of the department.

## **Qualification Requirements**

1. Ability to learn the laws, ordinances, and regulations with respect to the functions performed within six months.
2. Ability to obtain a passing grade on the Civil Service examination.
3. Ability to exercise good judgment, courtesy, and tact in maintaining effective public and employee relations.
4. Ability to communicate effectively in written and verbal form.
5. Ability to keep accurate records and make reports.
6. A high sense of responsibility and initiative to work independently and productively without supervision and to work for oral and written instructions.
7. Above average physical stamina and mobility, including the ability to work outdoors under all climatic conditions.
8. Ability to lift and manipulate bicycles to check serial numbers, transport them, impound and hang them in the police garage.
9. Ability to communicate effectively with the public and members of the department, both orally and in written form.

## **Education / Experience / Certifications**

Requires high school diploma or GED certificate recognized by the Wisconsin Department of Public Instruction.

Requires the completion of or current enrollment in a police science or criminal justice degree program at an accredited institution.

## **Pre-employment Requirement**

Job offers for this position are contingent on the individual passing a pre-employment background investigation and drug screen.

## **Physical Demands**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable qualified individuals with disabilities to perform the essential functions.

Possession of a valid Wisconsin Motor Vehicle Operator's license in good standing.

The City of Sheboygan, Wisconsin is an Equal Opportunity Employer  
In compliance with the Americans with Disabilities Act, the City of Sheboygan will provide reasonable accommodations to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the employer.

**CITY OF SHEBOYGAN**

**REQUEST FOR SALARIES & GRIEVANCE COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Possible ordinance identifying a 4-tier employee premium contribution rates for health insurance effective January 2017.

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**REPORT PREPARED BY:** Sandy Rohrick, Director of Human Resources and Labor Relations

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**REPORT DATE:** July 22, 2016

**MEETING DATE:** July 25, 2016

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

The City of Sheboygan has traditionally offered employees a 2-tier premium option for health insurance. In addition, in 2015, the City started to offer employees a consumer driven plan option, which incentivized employees to be better consumers. The next logical step would be to offer a 4-tier premium option, allowing employees to elect the benefit category that best fits their need and that of their family.

**STAFF COMMENTS:**

Employees currently cover approximately 8.13% of the health insurance premium, whether they choose employee only or family coverage. "Family" coverage currently includes employees with or without children and with or without a spouse. In order to offer employees the option of purchasing coverage that best fits their needs, a 4-tier premium option is being introduced for consideration. This option would continue to hold the same premium contribution percentage for all employees but would allow employees with limited family members to choose an option that best fits their needs.

**ACTION REQUESTED:**

Motion to recommend the City Attorney's office draft an ordinance that identifies a 4-tier health insurance premium option, as well as approved additional fees and/or incentive applicable for 2017 health insurance costs or incentives available for employees.

**ATTACHMENTS:**

- I. Draft ordinance

An ORDINANCE adopting certain changes to the City's Medical Benefit Plan effective for calendar year 2017 coverage and establishing the monthly premium equivalent rates effective for January 2017 coverage and thereafter.

RESOLVED: That the following changes to the City of Sheboygan's Medical Benefit Plan effective for calendar year 2017 are hereby adopted:

A) Effective January 1, 2017, all eligible employees will have an option to participate in a Qualified High Deductible Health Plan:

1) \$1500 Single / \$3000 Family Qualified High Deductible/HSA Plan. In this plan, the family deductible must be met by one or more members in the family before co-pays apply, including pharmacy benefits.

2) The monthly employee premium equivalent rates for permanent, full-time employees who participate in the Health Risk Assessment and Bioscreen shall be:

\$ 54.80 for single coverage  
\$103.94 for employee plus spouse  
\$ 94.02 for employee plus child/ren  
\$144.34 for family coverage

3) The monthly employee premium equivalent rates for employees who do not participate in the Health Risk Assessment and Bioscreen shall be:

\$109.60 for single coverage  
\$207.88 for employee plus spouse  
\$188.08 for employee plus child/ren  
\$288.68 for family coverage

4) The monthly employee premium equivalent rates for permanent, part-time employees who work between 20-39 hours per week shall be:

\$337.18 for single coverage  
\$639.39 for employee plus spouse  
\$578.49 for employee plus child/ren  
\$888.00 for family coverage

B) In 2017, the City will partially fund a Health Savings

Account (HSA) for employees and/or family members to assist in the transition to a high deductible plan. The funding amounts will be \$750 for single and \$1500 for employee plus spouse, employee plus child/ren, and employee plus family. Employee Health Savings Accounts will be funded in January 2017.

- C) A spousal surcharge will continue to apply for employees who cover their spouses on the City's Medical Benefit Plan when that spouse is eligible for insurance through their employer but chooses to remain on the City's insurance. In 2017 the spousal surcharge will be \$100 per month (\$50 per payroll for the first two payrolls each month).
- D) Full-time, eligible employees who opt-out of participating in the City's Medical Benefit Plan shall receive \$100 per month they elect to opt-out (\$50 per payroll for the first two payrolls each month).
- E) Retiree rates applicable for the 2017 calendar year, identifying the premium equivalent rates for those on the plan who are and are not Medicare eligible, are to be determined.

**CITY OF SHEBOYGAN**

**REQUEST FOR SALARIES & GRIEVANCE COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Classic 105 Plan

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**REPORT PREPARED BY:** Sandy Rohrick, Director of Human Resources and Labor Relations

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**REPORT DATE:** July 20, 2016

**MEETING DATE:** July 25, 2016

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

In 2016, the Total Financial Group, LLC ("TTFG") introduced the City of Sheboygan to a program called The Classic 105 Plan. As the City of Sheboygan evaluated the program, a decision was made to engage outside counsel to obtain a more in-depth analysis of the program prior to making a determination of whether or not to move forward or discontinue consideration. A decision was made to request a written *consulting opinion* from which the City could render a recommendation on a proper course of action. The Phia Group, a highly respected organization specializing in employee benefits and taxation, including ERISA, provided the consulting opinion .

**STAFF COMMENTS:**

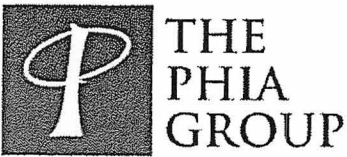
The opinion provided by the Phia Group identified various areas of concern with the Total Financial Group's Classic 105. Accordingly, City Attorney, Charles Adams, Director of Human Resources & Labor Relations, Sandy Rohrick, City Administrator, Darrell Hofland, and Mayor Mike Vandersteen unanimously recommend discontinuing consideration of this program. No further action is needed.

**ACTION REQUESTED:**

For informational purposes only.

**ATTACHMENTS:**

1. Opinion memo from The Phia Group, dated June 23, 2016.



EMPOWERING PLANS

163 Bay State Drive · Braintree, MA 02184 · [www.phiagroup.com](http://www.phiagroup.com)

To: Charles C. "Chuck" Adams, Esq., City Attorney, City of Sheboygan, WI

From: The Phia Group, LLC

Cc: Sandy Rohrick, Human Resources Director, City of Sheboygan, WI

Re: Classic 105 Plan Issue Spotting Memorandum

Date: June 23, 2016

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## OVERVIEW

Thank you for the opportunity to provide our thoughts on the Classic 105 Employee Health Plan (the Classic 105) offered by The Total Financial Group, LLC (TTFG).

The City of Sheboygan ("City") asked The Phia Group ("Phia") to render a consulting opinion which identifies areas of concern with the Total Financial Group's Classic 105. Please note that this memorandum identifies potential issues that should be addressed or otherwise resolved prior to adopting this arrangement. This is not intended to be an exhaustive list of issues, as previously discussed. The City may choose to engage counsel to obtain a more in-depth analysis of these items prior to making a determination.

Additionally, in Phia's review of the materials it appears that the law firm of Holifield, Janich and Associates, PLLC provided a letter of compliance for the Employee Sponsored Reimbursements Account; however, Phia was not provided a copy of this letter.

## DOCUMENTS REVIEWED

- Total Financial Group, LLC – The Classic 105 Plan PowerPoint Presentation
- Total Financial Group, LLC - Zero Net Cost Plan Tax Code Flyer
- Total Financial Group, LLC – The Classic 105 (video <https://vimeo.com/162623541>)
- Total Financial Group, LLC – SBC for the Classic 105 Self-Funded Reimbursement Plan
- Sheboygan Press – *City to Pay Consultant to Weigh in on Health Plan* (May 24, 2016)
- Sheboygan Press – *Sheboygan Questions Legality of Health Costs Plan* (March 17, 2016)
- Legal Benefits Group, Inc. – The Employee Sponsored Section 105b
- Legal Benefits Groups, Inc. – Employee Sponsored Reimbursement 105 Account "Technology Driven Cafeteria Plan"

## POTENTIAL ISSUES, BY TOPIC

### I. ERISA Plan Requirements

#### *Rule*

Under ERISA, the term “group health plan” means an “employee welfare benefit plan” that provides “medical care” to employees or their dependents directly through insurance, reimbursement, or otherwise.

The term “employee welfare benefit plan” includes plans providing “(i) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services.”<sup>1</sup>

The term “medical care” means amounts paid for: (A) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body; (B) amounts paid for transportation primarily for and essential to medical care referred to in (A); and (C) amounts paid for insurance covering medical care referred to in (A) and (B).<sup>2</sup>

The IRS, via Notice 2013-54, and the DOL, via Technical Release 2013-03, clearly state that “employer payment plans” (including § 105 plans) are in-and-of-themselves considered group health plans under ERISA. Group health plans that are subject to ERISA are required to maintain both a Plan Document and a Summary Plan Description (SPD).<sup>3</sup> It is also acceptable under ERISA to combine the Plan Document and SPD into one document. The main difference between the requirements for the two documents is that the Plan Document is not required to be distributed to plan participants unless requested, whereas the SPD is required to be distributed to all plan participants.

In addition, group health plans that are subject to ERISA are required to comply with the Form 5500 filing requirements (subject to certain exceptions).

#### *Issues*

The applicability of ERISA should be clarified. See below for a discussion of why this should be examined.

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<sup>1</sup>9 U.S. Code § 2510.3-1

<sup>2</sup> U.S. Code § 300gg-91

<sup>3</sup>9 U.S. Code § 1102, see also 29 U.S. Code § 2520.102-2



The Legal Benefits Group presentation on “The Employee Sponsored §105(b)” notes that the Classic 105 is *employee*-funded not *employer*-funded. Yet, in the same presentation, Legal Benefits Group states that the “[e]mployer is required to contribute to the program . . .”<sup>4</sup>

In addition, TTFG’s video and PowerPoint presentations note that employers are required to fund the §105 plan. Employer participation comes in the form of a fee of up to 5% of the employees’ §125 contributions. This employer contribution requirement may qualify the Classic 105 as a “group health plan” under ERISA.

Under ERISA, TTFG’s reimbursements under §105 may be subject to the written plan document requirement. Whether or not a plan document is required, it is advisable to have a written document that details the rules and reimbursement requirements of such a plan. Should questions to a reimbursement arise, a written document would help the plan withstand such challenges.

It should also be noted that in addition to ERISA requirements, if a §105 plan is considered to be a group health plan, it is also subject to other federal laws, such as:

- Affordable Care Act (ACA);
- Consolidated Omnibus Budget Reconciliation Act (COBRA);
- Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules;
- Americans with Disabilities Act (ADA); and
- Genetic Information Nondiscrimination Act (GINA)

## II. Internal Revenue Code (IRC) §§ 105 and 125 Considerations

### *Rule*

As mentioned earlier, §105 plans are subject to the ERISA documentation requirements for a Plan Document and SPD.

With respect to IRC §125, a §125 plan (also called a cafeteria plan) needs to be established in order to take advantage of pre-tax contributions. IRC §125 also requires a cafeteria plan to be in writing.<sup>5</sup> Whether subject to ERISA or not, a cafeteria plan document must describe plan terms, election rules, and plan administration procedures.

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<sup>4</sup>Legal Benefits Group, Inc. – The Employee Sponsored Section 105b, Slide 18.  
[https://www.irs.gov/irb/2007-39\\_IRB/ar14.html](https://www.irs.gov/irb/2007-39_IRB/ar14.html)

### *Issues*

The application of the IRC should be clarified. See below for a discussion on this issue.

The TTFG PowerPoint presentation states that “[employers] are required to have a [§]125 (Premium Only Plan) in place – which is included by TTFG.”<sup>6</sup> Employers deduct §105 contributions from their employees’ income and convert them to benefits. TTFG has clarified that §105 reimbursements for this program are not reimbursed by the employer; however, the employer is required to contribute at least a 5% fee per plan document toward the §105 plan.

Since TTFG requires clients to maintain IRC §§ 105 and 125 programs, the client would likely be held responsible for ensuring the programs satisfy the IRC and, if applicable, ERISA plan requirements. For example, the client may need to ensure that the §125 plan was in writing and described the plan terms, election rules, and plan administration procedures. With respect to the §105 reimbursements specifically, as noted above, TTFG has clarified that the employer is not providing such reimbursements; instead these reimbursements come directly from a third-party. Nevertheless, these third-party reimbursements may be subject to ERISA’s written plan document requirement. The client may need to ensure that a written plan document for the §105 plan sufficiently detailed the rules and reimbursement requirements of the Classic 105.

### **III. Requirements under the Affordable Care Act (ACA)**

#### *Background*

It has been argued that, “... under current code and regulations, employers are allowed to use a limited-purpose §105 medical reimbursement plan to reimburse employees for individual health insurance premiums;” and that, “Tax-free reimbursement of individual health insurance is allowed under Internal Revenue Code (IRC) Section 105, IRC Section 106, IRC Section 213(d), and IRC Section 162,” (<http://www.zanebenefits.com/blog/faq-can-employers-reimburse-employees-individual-health-insurance-in-2015>). The challenge, however, is not to determine whether an employer may use an otherwise legal §105 plan to reimburse employees for individual health insurance premiums, but rather, whether that satisfies the employer’s responsibilities as set forth within the ACA.

#### *Rule*

This issue has been presented to the IRS, DOL, and HHS. “In a series of notices and frequently asked questions (FAQs) the IRS has made it clear that an employer may not either directly pay premiums for individual policies or reimburse employees for individual premiums on either an after-tax or pre-tax basis. This is the case whether payment or reimbursement is done through a health reimbursement

arrangement (HRA), a §125 plan, a §105 plan, or another mechanism;" (<http://megrobenefits.com/2015/03/19/irs-provides-details-on-reimbursing-premiums-for-individual-health-coverage-or-medicare-part-b-part-d-or-medigap-for-active-employees-conshohocken-benefit-broker/>).

The IRS, via Notice 2013-54, and the DOL, via Technical Release 2013-03, clearly state that “employer payment plans” (achieved via a §105 plan as discussed above) are in-and-of-themselves considered group health plans under ERISA. In other words, the §105 plan must itself be adequate in the eyes of the ACA, and cannot rely upon the benefits offered by the individual policy (purchased by the employee for which the §105 plan will reimburse them) to achieve adequate coverage. Recent guidance (IRS Notices 2013-54, 2015-17, and 2015-87) confirms that a §105 plan cannot comply with the ACA on its own and thus is required to be integrated with an employer group health plan that satisfies ACA requirements.<sup>7</sup>

A §125 plan allows employees to pay for individual health insurance premiums on a pretax basis. The IRS treats these salary reduction contributions as employer contributions excluded from income under §106. Since the employee contributions are treated as employer contributions, the §125 plan is considered a group health plan and is thus subject to ACA provisions.

The ACA requires group health plans to provide certain preventive services with no cost sharing. A §125 plan fails this preventive services requirement. The only way a §125 plan could satisfy the ACA’s no cost-sharing for preventive services rule would be if the §125 plan was “integrated” with another group health plan that met this new requirement.<sup>8</sup>

### *Issues*

The Classic 105 combines §105 reimbursements with a §125 Premium Only Plan (which TTFG offers to administer). Recognizing that neither §105 plans nor §125 plans can meet ACA requirements on their own, TTFG requires its groups to establish an ACA-compliant employer-sponsored group plan.<sup>9</sup>

The Legal Benefits Group presentation explains that the ACA compliance health care plan can be obtained through a group at work, a spouse, *or through an individual plan*. This seems to conflict with both the Summary of Benefits and Coverage and the video presentation, both of which require an *employer-sponsored plan*. More importantly, the IRS has made it clear that an employer may not either directly pay premiums for individual policies or reimburse employees for individual premiums

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<https://www.irs.gov/pub/irs-drop/n-13-54.pdf>; <https://www.irs.gov/pub/irs-drop/n-15-17.pdf>; <https://www.irs.gov/pub/irs-drop/n-15-87.pdf>

Notice 2013-54, Section III.A.1, Q&A-3.

The Classic 105: Self-Funded Reimbursement Plan – Summary of Benefits and Coverage (2016).

on either an after-tax or pre-tax basis.<sup>10</sup> If the Classic 105 does allow employers to reimburse or directly pay for individual premiums, that arrangement could be out of compliance with federal law and lead to penalties imposed upon the employer.

#### IV. Potential Tax/Insurance Problems

In addition to facing potential compliance issues with both ACA and IRS regulations, the Classic 105 offered by TTFG also raises potential tax and state insurance compliance issues. Under this arrangement, TTFG is essentially attempting to combine the benefits of IRC §105 and §125. The Classic 105 Plan requires employees to make large pre-tax payroll contributions (up to \$12,600 per year for an employee who files taxes individually and up to \$19,200 per year for an employee who files jointly) to their own medical reimbursement account under a §125 plan (administered by TTFG). TTFG would then distribute up to 75% of that money back to the employees under §105 in the form of a loan secured by a life insurance policy on the employee, held by TTFG. The lender accepts the prepaid credit life insurance policy as collateral on the loan.

For example, TTFG would take roughly \$1,400 pre-tax per month from an employee and issue \$1,000 back to the employee in the form of a loan which is secured by a credit life insurance policy. The owner of the policy (a third-party investor) essentially loans the plan participant a portion of the policy each month. TTFG maintains that the loan is not a reimbursement or advance for medical expenses; rather, it is simply a loan. Interest on the loan is paid by the administrator (TTFG) from the fees already paid into the program. The program is renewed each year, and any money left over in the employees medical reimbursement account is kept by TTFG.

Phia has very limited information regarding the details of the loan option, and Phia does not provide tax advice. Based on the tax issues in play here, the City may wish to consult a tax attorney or consultant to provide additional assistance on the specific tax implications of TTFG's arrangement. Nevertheless, Phia identified a number of potential issues regarding the loan component of the Classic 105 Plan.

- TTFG makes no mention of an insurance company application for insurance. Instead, TTFG provides clients with its own form on which the employee signs over the life insurance policy to a third-party creditor. This may run afoul of state department of insurance regulations.
- It is unclear who this policy is paid by, to whom, and what happens when an employee leaves the employer or dies. TTFG maintains that employees assume no liability for paying the life insurance premiums. Yet, if an employee were to leave the company and no longer pays the life insurance premium, the loan would be in default.
- If loans are in an employee's name and the employee is paying off the loan, this may be considered taxable income for the employee.

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<http://megrobenefits.com/2015/03/19/irs-provides-details-on-reimbursing-premiums-for-individual-health-coverage-or-medicare-part-b-part-d-or-medigap-for-active-employees-conshohocken-benefit-broker/>.

- TTFG makes no mention of what happens to the money that employees contribute to their medical reimbursement accounts at the end of the year. IRS regulations require the unused portion of a medical reimbursement account to be used for health care. Does TTFG keep this money? If so, this could be a violation of federal law.
- The third-party lender would seem to be assuming a large risk by issuing loans to employees that are secured by life insurance policies. Is there clear documentation that the employee will not be held responsible for paying back the loan? What might default do to the employee's credit rating? Note the documentation provided indicates that the simple signature loan is not reported to credit agencies and does not count on an individual's credit report. Additionally, the presentation by TTGF viewed online (Vimeo) indicated that the participant will not be responsible for repayment of the loan. It's unclear how this can be classified as a loan if no repayment is required.
- An employee cannot contribute to a Classic 105 Plan and a Health Savings Account (HSA) at the same time. As noted in the internal City emails, it appears the employees of the City do utilize HSAs and thus the implementation of the Classic 105 Plan would require modification to current contributions and/or would require the employee select participation in only one plan. This is potentially a concern as it appears TTFG requires a minimum of 70% participation.
- The Classic 105 Plan is a unique plan that Phia has not previously reviewed. Phia reviewed similar programs and noted concerns with Revenue Ruling 2002-03. A tax professional associated with the program identified potential distinctions between the proposed programs and Revenue Ruling 2002-03 as support for the program. Phia has not fully reviewed this ruling with respect to the Classic 105 Plan at issue; however, it appears this ruling may be a concern. The City may wish to further investigate this issue.
- The Classic 105 Plan does not reimburse prescription drug expenses. The City may wish to review applicable claims analysis to determine the participant costs associated with prescription drugs vs. medical claims which may impact the buy-in of participants with high prescription drug costs.
- The City may consider asking for references of employers who are utilizing the Classic 105 Plan.

#### **V. Summary of Benefits and Coverage (SBC)**

It appears TTFG provides an SBC for the Classic 105 Plan. In Phia's review of the sample SBC, please note the following concerns:

- The summary information indicates claims must be submitted to TTFG within 60 days of the date of service and that claims submissions must include an E.O.B. Depending on the medical plan administrator and the applicable administrative services agreement, this time limit may create administrative issues with respect to timing and eligibility of claims resulting in denials. For example, some administrators produce E.O.B.s on a monthly basis instead of

immediately upon payment or denial of the claim. Additionally, this timeframe may not coincide with the medical plan. Many medical plans provide 180 or 365 days to submit a claim for payment. The City should consider the best approach to reconcile the Classic 105 Plan filing limit with the medical plan claim filing limit.

- As noted on the SBC and in other applicable documents, there is a vestment schedule associated with the availability of funds. There is a lag in availability that the City and participants would need to understand.
- The 25% coinsurance designation for in-network providers and 50% for out of network providers appears to reflect the 75% reimbursement that is available under the Classic 105 Plan. The City may wish to confirm.
- The SBC includes day limitations on a family level for certain benefits, including mental health benefits. It's unclear if these limitations apply for all plans or if these limitations are modified based on the underlying health plan. This is a potential concern with respect to the Mental Health Parity and Addiction Equity Act requirements unless the City has completed the requisite opt-out (see <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/hipaa-exemption-guidance-7212014.pdf>).
- The Classic 105 Plan SBC indicates that dependent daughters are not covered for pregnancies and that pre-existing pregnancies are not covered. Again, it's unclear if the dependent benefit limitation is based on the underlying medical plan. The pre-existing condition limitation does not appear to be in line with the Affordable Care Act (ACA) and the City may wish to further discuss this limitation with TTFG.

## VI. Presence on Social Media:

Phia cannot speak to the credibility of these sources; however, consider reviewing the following or similar articles to see how others are responding to similar programs.

- Zane Benefits – Small Business Employee Benefits and HR Blog: Section 105 Medical Reimbursement Plans (<https://www.zanebenefits.com/blog/bid/215555/Section-105-Medical-Reimbursement-Plans>)
- Hill, Chesson & Woody – Is the Classic 105 Plan Compliant with Federal Law? (as accessed June 20, 2016) (<http://www.hcwbenefits.com/is-the-classic-105-plan-compliant-with-federal-law/>)
- The National General Insurance – Total Financial Group; Any Info? (as accessed June 20, 2016) (<http://thenationalgeneralinsurance.com/total-financial-group-any-info.html>)
- Before It's News – Dubious 105 Tricks (Sept. 18, 2015) (<http://beforeitsnews.com/opinion/2015/09/dubious-105-tricks-2454584.html>)
- Insurance Forums - Total Financial Group; Any Info? (as accessed June 20, 2016) (<http://www.insurance-forums.net/forum/general-insurance-agent-discussions/total-financial-group-any-info-t62138.html>)



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- Insurancenewsnet.com – Church Caught up in Nightmare After Life Insurance Scheme Sours [Indiana Business Journal (IN)] (Nov. 1, 2012) (<http://insurancenewsnet.com/oarticle/Church-caught-up-in-nightmare-after-life-insurance-scheme-sours-%5bIndianapolis-Bu-a-362686>)
- Forbes – Stock to Cash Program Crashes and Burns (Oct. 31, 2011) (<http://www.forbes.com/sites/billsinger/2011/10/31/stock-to-cash-program-crashes-and-burns/#196bfe4370bb>)

*Disclaimer: This opinion is based on the facts as presented and re-stated above, and our research, which includes the sources utilized as of the date this opinion has been drafted. It is a consulting opinion only, and does not purport to offer legal advice or fiduciary guidance as to the denial or acceptance of claims. This opinion is based upon our interpretation of the relevant materials and may not conform to official interpretations of statutes, regulations, contracts, or other materials. Subsequent changes in applicable law may change the result of this opinion. Ultimately the Employer is responsible for making all business decisions related to their benefit offerings, and, as the Plan Administrator, has the discretionary authority to interpret the terms of the Plan Document and accept or deny claims for benefits.*

**CITY OF SHEBOYGAN**

**REQUEST FOR SALARIES AND GRIEVANCE COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Resolution identifying the 2016 health insurance premium opt-out incentive for eligible permanent, part-time employees.

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**REPORT PREPARED BY:** Sandy Rohrick, Director of Human Resources and Labor Relations

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**REPORT DATE:** July 22, 2016

**MEETING DATE:** July 25, 2016

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**FISCAL SUMMARY:**

**STATUTORY REFERENCE:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

Since 2012, the City of Sheboygan has offered part-time, eligible employees who waive or drop health insurance coverage an opt-out bonus of \$50 per month, up to a maximum benefit of \$600 per year. This benefit was intended to be provided in 2016, and has been paid, but Resolution 64-15-16 inadvertently omitted this information.

**STAFF COMMENTS:**

This resolution provides clarification of a benefit that has been recognized and is currently practiced in 2016.

**ACTION REQUESTED:**

Motion to recommend the City Council approve this draft resolution approving the 2016 health insurance opt-out benefits for eligible part-time employees.

**ATTACHMENTS:**

- I. Draft resolution

Res. No.         - 16 - 17        . By Alderperson Donohue. August 1, 2016.

A RESOLUTION adopting an additional benefit as part the City's Medical Benefit Plan and Dental Benefit Plan effective for calendar year 2016 coverage.

WHEREAS, in prior years, the City offered part-time employees who waive or drop health coverage an opt-out bonus with a maximum yearly benefit of \$600.

WHEREAS, while the intent was to provide this benefit in 2016 (and the benefit has been paid), the Resolution 64-15-16, which set forth medical benefits for the year 2016, did not list this benefit.

NOW THEREFORE BE IT RESOLVED: That effective January 1, 2016, the City shall offer part-time employees who waive or drop health coverage an opt-out bonus with a maximum yearly benefit of \$600. This amount would be paid directly to the employee at \$25 per payroll for the first two payrolls of each month for any month the part-time eligible employee is not on the Medical Benefit Plan.

BE IT FURTHER RESOLVED: That said change shall not supercede the provisions contained within any applicable collective bargaining agreements.

\_\_\_\_\_

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor