The Key Difference to Compliance

SIMRP with Fixed Indemnity Plans

Vs.

WIMPER (SIMRP)

Preface

As stated on the CMS (Centers for Medicare and Medicaid Services) website, the **Affordable Care Act** supports participatory wellness programs, like the OACEUS 360 Wellness Plan. Implementing and expanding employer wellness programs may offer our nation the opportunity to not only improve the health of Americans, but also help control health care spending. The Affordable Care Act creates new incentives and builds on existing wellness program policies to promote employer wellness programs and encourage opportunities to support healthier workplaces. The **Department of Health and Human Services (HHS), The Department of Labor and the U.S. Treasury** are jointly releasing proposed rules on wellness programs to reflect the changes to existing wellness provisions made by the Affordable Care Act and to encourage appropriately designed, consumer-protective wellness programs in group health coverage. These proposed rules would be effective for plan years starting on or after January 1, 2014. The proposed rules continue to support workplace wellness programs, including "participatory wellness programs" which generally are available without regard to an individual's health status. These include, for example, programs that provide a reward to employees who complete a health risk assessment without requiring them to take further action. The rules also outline amended standards for nondiscriminatory "health-contingent wellness programs," which generally require individuals to meet a specific standard related to their health to obtain a reward. Examples of health-contingent wellness programs include programs that provide a reward to those who do not use, or decrease their use of, tobacco, or programs that provide a reward to those who achieve a specified cholesterol level or weight as well as to those who fail to meet that biometric target but take certain additional required actions.

The Affordable Care Act and Wellness Programs | CMS

This Affordable Care Act ACA-compliant Federal program reduces an Employer's payroll taxes for all eligible employees. Eligible employees must be W-2 full-time workers working 35 hours per week. Non-eligible employees will be employees that are part-time, seasonal, per diem, or independent contractors (Form 1099). Other payroll factors will also be taken into consideration during eligibility. The company must offer health insurance. Health insurance is going to be utilized if your employees are sick or injured. The OACEUS Wellness Plan is going to promote health and help prevent disease for the intended recipient. All types of organizations are eligible to participate: Public, Private, Union, Non-Union, and Nonprofit.

For employers struggling with the rising cost of health insurance and ancillary benefits, a self-funded healthcare platform may be the answer to increasing employee benefits, while containing costs. Employers know all too well that although it is expensive to pay for employee benefits, it is still cheaper than losing talented employees with valuable experience. With average health insurance premiums rising faster than the consumer price index, employers are turning to consumer-directed health plans (CDHPs) and shifting more of the burden to employees through higher premium contributions, deductibles, copays and coinsurance. The authors answer 20 questions on how **Wellness and Integrated Medical Plan Expense Reimbursement programs (WIMPER)**, provide incentives that allow employers to give cash reimbursements to employees, for individual and family medical care, as a result of participating in health and wellness plans. This follows the intent of the Affordable Care Act (ACA) which describes strategies to reward quality care through establishing payment structures that provide reimbursement for implementing wellness and health promotion activities. The healthcare platform is beneficial since it results in additional employee benefits, while also reducing costs for both employers and employees.

A self-insured medical reimbursement plan (SIMRP) is a separate written employer plan, which reimburses employees for **medical expenses that are not provided by either an accident and health insurance policy or a prepaid healthcare plan** (e.g., an HMO) that is regulated under federal or state law. In its simplest form, a Section 105 SIMRP is a direct reimbursement plan that allows an employer to reimburse employees for medical care expenses, such as insurance premiums.

The ACA increased incentives for employers to adopt self-insured healthcare programs. More focus is being placed on consumer-based approaches with an emphasis on preventative care. One approach is to establish a Wellness and Integrated Medical Plan Expense Reimbursement (WIMPER) program. This unified health care approach provides a tax-advantage, affordable means to purchase secondary health insurance products. A medical insurance plan along with a well-designed wellness program encourages employees to take personal responsibility to help minimize healthcare costs. When medical and wellness plans are integrated with a SIMRP, employees that participate in the wellness plan can be reimbursed to cover medical expenses.

The OACEUS 360 Wellness Plan was specifically designed to follow along with the structure of the WIMPER program and the regulations provided by the ACA. The focus of the benefits has been outlined to promote health and prevent disease. The WIMPER program identifies the IRC 213 (d) medical expenses as allowable benefits to be utilized with this tax code section. These specific types of benefits are focused on the diagnosis, cure, mitigation, treatment, or prevention of disease, which affects the body or mind.

The clear and very distinct difference between a wellness plan, designed like the OACEUS 360 Wellness Plan, and what other plans that are utilizing the same tax code section are on one side completely legitimate and the others are not in compliance. When utilizing the tax code defined in the WIMPER program, especially when it comes to using the allowed IRC 213 (d) benefits, the plan is deemed legitimate. Which companies can feel safe moving forward with, like the OACEUS 360 Wellness Plan.

However, on the other hand there are other plans that are using the same tax code section for medical reimbursement, but they are not using the IRC 213 (d) benefits. Instead, they are utilizing fixed indemnity plans. According to the IRS, fixed indemnity plans cannot have premiums paid on a pre-tax basis and benefit payments to employees that are also tax-free. If premiums for fixed indemnity insurance are made pre-tax, then the benefits are generally taxable, to the extent they exceed the individual's actual medical expenses. Otherwise, it would be considered double dipping.

There are a large number of warnings and opinions out there regarding these plans, using the SIMRP tax code section, that are utilizing the fixed indemnity benefit; instead of the IRC 213 (d) benefits like the WIMPER program clearly outlines. Cash rewards received from a wellness program do not qualify as the reimbursement of medical care as defined under IRC 213 (d) or as an excludible fringe benefit under IRC 132, and therefore are not excludible from an employee's income.

Simply stated, the WIMPER program is clearly structured to be in compliance by utilizing the IRC 213 (d) benefits. The other medical reimbursement programs using a fixed indemnity plan as the incentive benefit will not be in compliance due to the double dipping aspect.

Another distinguishing feature of the OACEUS 360 Wellness Plan is that participants are required to engage in the plan. This is called a participatory wellness plan, which is the proactive approach to wellness. This also aligns with the guidelines provided by the ACA, DOL, HHS and the U.S. Treasury. In the pursuit of wellness, one must be their own advocate. The employee (participant) is incentivized with an additional life insurance policy. If the employee chooses not to participate, then they will be removed from the plan and the life insurance policy that was used as an incentive. The participation requirements are easy and simple engagements, such as uploading a co-pay receipt on their wellness portal or undertaking a diet and nutrition assessment. Most engagements should only take a couple minutes. But those couple minutes count towards participation. Of course, the choice of engagement can go up from there, for example,

using the counseling sessions or smoking cessation benefits. Some companies provide monthly wellness activities. Either way participation is very easy. The goal is to create a healthier workplace by promoting health and the prevention of disease. All of this will improve and empower the company to have better attrition by enhancing their benefit package; which is all made possible with the OACEUS 360 Wellness Plan powered by WIMPER/SIMRP.

Supporting Documentation for SIMRP and WIMPER

This document articulates the rules and regulations governed by the IRS tax code section that substantiate the self-insured medical reimbursement plan, also known as SIMRP. As well as the Wellness integrated medical plan expense reimbursement, also known as WIMPER. (See Exhibit A).

In this document you will find the following:

1. The tax code sections that support the SIMRP/WIMPER Program
2. The ability to have the reimbursement apply to benefits provided to the employee and their dependents. (See Exhibit B)
3. The FAQ's and answers for the IRC 213 (d) medical expenses. (See Exhibit C)
4. The differentiated amounts of the pretax deduction utilized in the cafeteria plan for the SIMRP administration identified as $950 for single employees and $1,250 for employees with dependents. These numbers represent the amount of money that would be utilized if the employee were to purchase these Wellness benefits outside of their health insurance. As indicated on the National Health Expenditure Accounts, a single person is spending $12,914 on benefits above and beyond their health insurance. (See Exhibit D)
5. The IRS Office of Chief Counsel Memorandum (CCM) Number 202323006 released on 6/9/2023
    a. The WIMPER program can be distinguished since it does not offer monthly taxable payments for personal injury and sickness which were included in the Wellness policy addressed in this CCM.
    b. The OACEUS 360 Wellness Plan requires participants to actively participate in the Wellness plan. Participation is monitored and the participant will be removed from the plan if there is no engagement. Therefore, utilization of the benefits is achieved if the participant is enrolled in the plan.
6. The difference between a Fixed Indemnity Health Insurance plan and the WIMPER plan that utilizes the IRC 213 (d) medical expenses. (See Exhibit E)
    a. How the Fixed Indemnity Health Insurance plan is considered double dipping in this tax strategy.

b. How the WIMPER program is utilized as a proactive approach to wellness.

SIMRP

The self-insured medical reimbursement plan, also known as SIMRP, utilizes 3 tax code sections. One being the section 125 plan, cafeteria plan. The second being the health reimbursement tax code IRC 105 (b). And the third one being the IRC 213(d) medical expense. The IRS defines each code as stated below.

IRC 125 Cafeteria Plan -

IRC 125 Cafeteria Plan, also known as a cafeteria plan, is a provision of the Internal Revenue Service (IRS) law that allows employees to convert taxable benefits into nontaxable benefits. These benefits can be deducted from an employee's paycheck before taxes are paid and are used for individuals with expenses. A cafeteria plan is a separate written plan maintained by an employer for employees that meets the specific requirements of and regulations of IRC 125 of the Internal Revenue Code.

IRC 105 SIMRP

IRC 105(b) is a subsection of the IRS tax code that states that gross income does not include amounts paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred for the medical care (as defined in IRC 213 (d)) of the taxpayer, spouse, or dependents – any child under 27. (As defined in IRC 152). (See Exhibit B)

IRC 213 (d) Medical Expenses

IRC 213 (d) of the IRS code defines medical care as amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease.

(See Exhibit C)

Exhibit A

20 Questions about Establishing a Health & Wellness Program in the Workplace - The CPA Journal

1. What is a Self-insured Medical Reimbursement Plan (SIMRP)?

A self-insured medical reimbursement plan (SIMRP) is a separate written employer plan, which reimburses employees for medical expenses that are not provided by either an accident and health insurance policy or a prepaid healthcare plan (e.g., an HMO) that is regulated under federal or state law. In its simplest form, a Section 105 SIMRP is a direct reimbursement plan that allows an employer to pay employees money for medical care expenses, such as insurance premiums.

2. How is a SIMRP structured?

A plan document is required to establish a SIMRP and should include which medical expenses are reimbursable, how reimbursements will be made and who is eligible. A SIMRP is considered to be a group health plan subject to the ACA which prohibits limiting coverage for essential health benefits. Because insurance premiums are not considered to be essential the plan may limit total reimbursements.

3. What are the eligibility requirements to participate in a SIMRP?

Eligibility to participate in a SIMRP must be satisfied by both of the following tests

- *Percentage test*. The plan must benefit 70% or more of all employees or 80% or more of all employees who are eligible to benefit under the plan (provided 70% or more of all employees are eligible to benefit under the plan).
- *Classification test*. The plan must benefit all employees who qualify under a given classification and cannot discriminate in favor of highly compensated individuals. Although certain employees may be excluded from consideration, it must be uniform for all participants, but may establish a maximum reimbursement limit.

The following classification of employees may be excluded from consideration. Workers who—

- have not completed 3 years of service prior to the beginning of the plan year,

- have not attained age 25 prior to the beginning of the plan year,
- are part-time employees (less than 35 hours per week),
- are part of a collective bargaining agreement, or
- are nonresident aliens who receive no earned income.

Can employers create their own self-funded healthcare platform to allow employees to participate in a wellness plan that provides payment for ancillary or supplemental health benefits in a cost-effective way?

The ACA increased incentives for employers to adopt self-insured healthcare programs. More focus is being placed on consumer-based approaches with an emphasis on preventative care. One approach is to establish a Wellness and Integrated Medical Plan Expense Reimbursement (WIMPER) program. This unified health care approach provides a tax-advantage, affordable means to purchase secondary health insurance products. A medical insurance plan along with a well-designed wellness program encourages employees to take personal responsibility to help minimize healthcare costs. When medical and wellness plans are integrated with a SIMRP, employees that participate in the wellness plan can be rewarded with cash reimbursements to cover medical expenses.

5. How does a WIMPER program save employers money?

A WIMPER program saves employers money due to a reduction in FICA taxes paid because the amount elected by the employee to be contributed to the plan is not considered to be wages and therefore not taxable for Social Security purposes. The platform can provide additional savings through a reduction in paid time off as a result of healthier employees. It should also be noted that a WIMPER program is only subject to federal law, not state insurance regulations.

6. Why would employees want to participate in a WIMPER program that combines a healthcare plan with a wellness plan and a SIMRP?

Employees may want to take part in a WIMPER program as the unified platform provides an opportunity to purchase additional benefits that might not otherwise be affordable without affecting their net pay.

IRC Section 106(a) allows employers to make pretax contributions to a wellness plan (e.g., an accident and health plan). These pretax contributions are made at the election of the employee through a written salary reduction agreement that is the basis for a section 125 Cafeteria Plan. This is a separately written employer plan that allows employees to choose between two or more benefits consisting of a taxable one (e.g., cash) and at least one qualified option (e.g., an accident insurance policy). By contributing a portion of their salary to pay for qualified benefits, employees reduce their compensation; the contributions are not considered wages for income tax purposes.

A WIMPER program allows a company to make a benefit allowance available to employees with reimbursements for participation in a wellness plan. This differs from traditional benefit programs where an employer chooses and administers a healthcare plan. Healthcare medical reimbursement plans are growing in popularity because they not only allow employees more input in choosing benefits; they also give benefit providers more flexible solutions for businesses through tax-free reimbursements for employees to use towards the purchase of ancillary insurance products, such as disability and accident policies. This again results in lower Federal Insurance Contributions Act (FICA) taxes for both the employer and employee.

7. How should a WIMPER program be designed?

In order to have a compliant self-insured platform, the following provisions must be considered when determining which benefits are allowable for reimbursement:

- A salary reduction agreement that allows the employee to make pretax contributions to a section 125 cafeteria plan to pay for qualified benefits such as accident and health benefits or group term life insurance,
- An IRC section 106 wellness plan funded with pretax dollars (e.g., from a cafeteria or other qualified plan),
- A SIMRP that provides for tax-free reimbursements of medical care expenses described in IRC section 105(b) and defined in IRC section 213(d). This includes, but is not limited to, insurance covering medical care.

8. Are reimbursements for LTC insurance premiums subject to the same requirements as other insurance that covers medical care?

Long-term care (LTC) insurance is not subject to the same stringent requirements as other insurances which restrict medical care to amounts paid for the diagnosis, treatment, prevention of disease or to affect any function or structure of the body. Although LTC insurance premiums are qualified reimbursements under a SIMRP, the contributions are not allowed in cafeteria plans. Establishing a health savings account (HSA) account or a voluntary employees' beneficiary association (VEBA) trust are ways to pay for LTC insurance on a pretax basis.

9. What is an HSA?

An HSA is a tax-exempt trust or custodial account that allows money to be deducted pretax, reducing the participant's overall medical expenses through funding with tax deductible contributions. The IRS allows approved HSA trustees, such as banks or insurance companies, to pay or reimburse individuals on a pretax basis for the purchase of qualified medical expenses, including deductibles, coinsurance, copayments, and premiums for health insurance (including LTC insurance) covering medical care. In order to qualify for an HSA, an individual must meet the following requirements:

- is covered under a high deductible health plan (HDHP), on the 1st day of the month,
- has no other health coverage unless otherwise permitted under other health coverage,
- is not enrolled in Medicare,
- cannot be claimed as a dependent on someone else's tax return, and
- cannot be covered by an FSA or HRA that already reimburses for qualified medical expenses.

An HDHP coupled with an HSA allows both the employer and employee to save money by lowering insurance premiums and reducing FICA taxes because of the HSA pretax contributions. The earnings in an HSA account accumulate tax-free and any unused amounts can be rolled over to the next year. The 2020 contribution limit is $3,550 for an individual and $7100 for a family (with an additional $1,000 being deductible over age 55). The 2021 contribution limit is $3,600 for an individual and $7,200 for a family (with an additional $1,000 being deductible over age 55).

10. What is a Voluntary Employee Benefits Association (VEBA) Trust?

A VEBA, which is a mutual association of employees that provides specified benefits to its members or beneficiaries, may also be used in constructing a self-insured healthcare platform. A VEBA trust can be funded by the employer or employee with funds being used for the payment of benefits such as life, sickness, accident and medical plans. It may be created by any group of employees who share an employment related common bond, an employer on behalf of the employees (such as corporations and their wholly own subsidiaries), or members of a collective bargaining agreement. Money used towards the purchase of commercial insurance helps to avoid complications due to problems of underfunding where a promise to provide a current benefit may not be delivered in the future.

11. Are employees required to have major medical insurance through their employer or elsewhere (e.g., spouse or domestic partner) in order to qualify for medical reimbursements?

This depends on the type of wellness program being offered which in turn determines whether or not federal law applies. Some plans are offered in conjunction with an employer's group health plan while others may be voluntary stand-alone plans. Plans may provide very limited benefits (such as educational health-related information) while others are more extensive and involve biometric testing, individualized coaching, or may even be part of a disease management program.

Federal regulations under the ACA and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require that the incentives for wellness programs provided in connection with group plans be nondiscriminatory. Nevertheless, although a

recent federal court ruling vacated certain key Equal Employment Opportunity Commission rules, including incentive limits on wellness programs, employers should be aware these plans must not only comply with ACA and HIPAA regulations, but the Department of Labor and the American with Disabilities Act (ADA) mandates as well.

12. What are the most common types of wellness plans offered in conjunction with group health plans?

Participatory plans are the most common type of wellness program and may either offer no reward or provide one that does not require satisfying a health-related standard (i.e., awarded without regard to one's health status). Although an enrollee must participate in the program, the reward is not contingent upon achieving a specific goal or outcome; such as the employee being required to attend or participate in a smoking cessation program and subsequently quit smoking. Other common examples of rewards include general education seminars as well as reimbursements for gym memberships and diagnostic testing programs.

There are two types of health contingent plans which require an enrollee to satisfy a health-related standard in order to receive an award.

- *Activity only*. These programs are based on a health factor and require an individual to complete a health-related activity in order to receive an award. Common examples include diet and exercise programs.
- *Outcome based*. These programs require an individual to satisfy a standard relevant to one's health, such as attaining or maintaining a certain outcome in order to receive an award. Common examples include smoking cessation programs or achieving certain biometric screening results.

13. How does a wellness plan comply with requirements under HIPAA, as well as the newly revised ADA rules which limit reimbursements for wellness plans if the plan requests health-related information or requires a medical examination?

HIPAA regulations do not impose limits on incentives on a participatory program such as one that only asks employees to complete a Health Risk Assessment (HRA). As long as all participating employees within a given class receive the same incentive regardless of the answers provided on an HRA about their health status or medical history, these wellness programs do not violate HIPAA and the ADA. This helps to clarify the term incentives to include both financial and in-kind incentives (e.g., reductions in insurance premiums, cash, time-off awards, prizes, and other items of value, including "trinket" gifts). If the wellness model only provides a preventative reimbursement for expenses of medical care and does not include any of the aforementioned incentives (e.g., the award is not contingent upon achieving a health-related standard) the amounts being reimbursed are not subject to any limit.

14. In order to remain compliant with the IRS requirements, how is the deduction and reserve handled under a WIMPER program for an employee who is no longer meeting all of the plan participation requirements (i.e., the employee terminates contributions under the plan year)?

The compliance is the same as any section 125 cafeteria plan. The plan selections are considered irrevocable unless there is a change in status based on one of the following:

- marital status,
- number of dependents,
- employment status,
- a dependent satisfying or ceasing to satisfy dependent eligibility requirements,
- change in residence, or
- commencement or termination of adoption proceedings.

Plans may also allow participants to change elections based on the following:

- significant cost changes or reduction of coverage, or
- addition or improvement of benefit package options.

Failure to remain compliant will nullify the pretax advantages resulting in the participant paying future premiums on an after-tax basis.

15. How do cash reimbursements from a WIMPER program qualify as medical care, as defined under 213(d) with respect to healthy employees having no risk factors, if the program does not reimburse a participant for medical care?

If the employee has not incurred any expenses during a plan month, it has no effect on the healthcare program and the pretax plan savings is not negated. This is similar to an employee making pretax contributions to a major medical plan in one month and having no subsequent claims during the same month, resulting in no effect on the pretax contributions to the major medical plan. The key to providing tax-free reimbursements is participating in a wellness plan, not the amount of services used or expenses incurred during the month.

16. If an employee elects to receive a cash reimbursement in lieu of purchasing qualified benefits, is it taxable?

Generally, the value of an award, including cash payments or cash equivalents, is taxable to an employee as wages unless it is excludable, such as a de minimis fringe benefit. This is defined as any property or service provided by an employer for an employee for whom the value is so small as to make it administratively unreasonable or impractical to determine. Examples include employee picnics, tickets to a sporting or theater event and other occasional or infrequent (i.e., not routine) benefits.

In addition, amounts directly or indirectly received by employees for medical reimbursements under a SIMRP and an employer provided accident or health plan,

would not be taxable. Cash awards or cash equivalents that are neither excludible nor qualified medical expenses would be subject to taxation.

17. Can highly compensated employees contribute additional amounts to a cafeteria plan and subsequently receive more medical reimbursements under a WIMPER program?

Highly compensated employees (HCE) may receive more reimbursements, but these may be taxable. Testing must be performed each year in order to determine whether the plan is nondiscriminatory in favor of HCEs. Employers must ensure that most of the eligible employees benefit from the company plan.

A SIMRP, which is part of a WIMPER program, allows for separate employee classifications; and therefore, if the WIMPER program meets all other participation requirements, the combined platform may give HCEs higher after-tax reimbursements to purchase additional benefits (e.g., a disability policy). Even if the classification is uniform for all participants and reimbursements are the same (e.g., do not allow for a higher level of reimbursement), these plans may still be appealing to HCEs as the supplemental insurance can cover a portion of the risk in a cost-effective way.

18. What is a fixed indemnity insurance plan and is it allowed as part of a wellness plan?

A fixed indemnity insurance plan is a type of supplemental health plan that pays the insured a predetermined amount on a per-incident basis in the event of a specific illness or injury covered by the policy. Fixed indemnity plans are not permitted when embedded in the wellness program but are allowed separately as a reimbursement if the value of the wellness plan that provides medical care is excluded from gross income. Any payments or medical care reimbursements to an employee for coverage under the fixed indemnity insurance plan that were made by salary reduction through a cafeteria plan would not be taxable.

19. What guidance did the IRS provide regarding self-funded health plans?

Memorandums from the IRS Office of the Chief Council offer guidance regarding the tax treatment of benefits within self-funded health plans, including wellness programs and the subsequent employer reimbursements of insurance premiums.

In Memorandum 201703013, (December 12, 2016), the IRS Chief Counsel stated that payments received by employees under an employer-provided fixed indemnity health plan were considered gross income under IRC section 106(a) if the value of the coverage was excluded from an employee's gross income and wages. But the value of an employer provided wellness program that reimburses employees for medical care as defined under IRC section 213(d) is generally excluded from an employee's gross income under IRC section 106(a), as are any amounts reimbursed for medical care (e.g., rewards, incentives or other benefits) under IRC section 105(b).

This memorandum clarifies the tax treatment of payments received from a fixed indemnity health plan is considered gross income if the contributions were made pretax as the exclusions under IRC sections 105(b) and 104(a)(3) do not apply. However, if the contributions to the fixed indemnity health plan premiums were made with after-tax payments received from the plan, these are considered tax free reimbursements.

In Memorandum 201622031 (April 14, 2016), the IRS addressed the question as to whether or not cash rewards paid to an employee for participating in a wellness program may be excluded from an employee's income under IRC sections 105 or 106 if the premium contributions to the wellness program were paid pretax by salary reduction through an IRC section 125 cafeteria plan. The Chief Counsel stated that cash rewards paid to employees for participating in a wellness program are not excludable from an employee's gross income under IRC sections 105 or 106; therefore, they are taxable unless the reimbursements of premiums are used for medical care under IRC section 213(d). In addition, noncash rewards that are occasional or infrequent such as tickets for a sporting event would be considered a de minimis fringe benefits and therefore not taxable.

In Memorandum 201719025 (April 24, 2017), the Chief Counsel concluded that benefits paid under an employer provided self-funded health plan were considered to be income and therefore taxable if either: the average amount an employee receives for participating in a health-related activity markedly exceeds their after-tax contributions or, if it is self-funded, the health plan does not involve any insurance risk (i.e., is neither insurance nor has the effect of insurance). It concluded that wellness plans independently qualify as accident and health plans under IRC section 106 and contributions to an IRC section 125 cafeteria plan are considered pretax. Furthermore, the Chief Counsel expressed that flex credits awarded under a wellness plan are nontaxable if used to purchase qualified benefits such as group term insurance but are taxable if used to purchase nonqualified benefits such as whole life insurance coverage or a gym membership.

The memorandums referred to wellness plans that reimburse employees for qualified medical expenses, such as LTC insurance through a SIMRP. As discussed above, a properly structured wellness plan can be funded with pretax contributions allowing employees taking part in a wellness program to receive money through a SIMRP on a tax-free basis. This is provided that such amounts are paid directly or indirectly to employees as reimbursements for medical care.

20. Would a repeal of the ACA have an impact on wellness plans that are part of a WIMPER program?

The potential implication of a repeal of the ACA would depend upon the type of wellness plan that is being offered. ACA repeal would not impact participatory wellness plans associated with a WIMPER program. The ACA amended Employee Retirement Income Security Act (ERISA) to prohibit wellness plans from discriminating against individual participants and beneficiaries based on health status. Participatory programs that reward individuals for attending a periodic health education seminar or offer health coaching to guide participants by providing education and support in several areas including exercise and nutrition, are likely to remain permitted even without the ACA.

In conclusion, the WIMPER concept provides an opportunity for employees to receive cash reimbursements for participation in health and wellness programs with the tax saving benefit of reducing FICA tax liability for both the employee and employer. In addition, employees can save income taxes because, when part of a WIMPER program, pretax contributions of gross pay are made to an IRC section 125 cafeteria plan.

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Exhibit B

The ACA reformed and added provisions that extended these benefits to an employee's dependents. (Dependents as defined by the IRS).

The following information can be found on the IRS website with the link provided below.

Internal Revenue Bulletin: 2013-40 | Internal Revenue Service (irs.gov)

Part III. Administrative, Procedural, and Miscellaneous
Notice 2013-54
Application of Market Reform and other Provisions of the Affordable Care Act to HRAs, Health FSAs, and Certain other Employer Healthcare Arrangements
I. PURPOSE AND OVERVIEW

This notice provides guidance on the application of certain provisions of the Affordable Care Act[1] to the following types of arrangements: (1) health reimbursement arrangements (HRAs), including HRAs integrated with a group health plan; (2) group health plans under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy, such as a reimbursement arrangement described in Revenue Ruling 61-146, 1961-2 C.B. 25, or arrangements under which the employer uses its funds to directly pay the premium for

an individual health insurance policy covering the employee (collectively, an employer payment plan); and (3) certain health flexible spending arrangements (health FSAs). This notice also provides guidance on section 125(f)(3) of the Internal Revenue Code (Code) and on employee assistance programs or EAPs.

The Departments of the Treasury (Treasury Department), Health and Human Services (HHS), and Labor (DOL) (collectively, the Departments) are continuing to work together to develop coordinated regulations and other administrative guidance to assist stakeholders with implementation of the Affordable Care Act. The guidance in this notice is being issued in substantially identical form by DOL, and guidance is being issued by HHS to reflect that HHS concurs in the application of the laws under its jurisdiction as set forth in this notice.

II. BACKGROUND

A. *Health Reimbursement Arrangements*

An HRA is an arrangement that is funded solely by an employer and that reimburses an employee for medical care expenses (as defined under Code § 213(d)) incurred by the employee, or his spouse, dependents, and any children who, as of the end of the taxable year, have not attained age 27, up to a maximum dollar amount for a coverage period. IRS Notice 2002-45, 2002-02 C.B. 93; Revenue Ruling 2002-41, 2002-2 C.B. 75. This reimbursement is excludable from the employee's income. Amounts that remain at the end of the year generally can be used to reimburse expenses incurred in later years. HRAs generally are considered to be group health plans within the meaning of Code § 9832(a), § 733(a) of the Employee Retirement Income Security Act of 1974 (ERISA), and § 2791(a) of the Public Health Service Act (PHS Act) and are subject to the rules applicable to group health plans.

B. *Employer Payment Plans*

Revenue Ruling 61-146 holds that if an employer reimburses an employee's substantiated premiums for non-employer sponsored hospital and medical insurance, the payments are excluded from the employee's gross income under Code § 106. This exclusion also applies if the employer pays the premiums directly to the insurance company. An employer payment plan, as the term is used in this notice, does not include an employer-sponsored arrangement under which an employee may choose either cash or an after-tax amount to be applied toward health coverage. Individual employers may establish payroll practices of forwarding post-tax employee wages to a health insurance issuer at the direction of an employee without establishing a group health plan, if the standards of the DOL's regulation at 29 C.F.R. § 2510.3-1(j) are met.

Exhibit C

The following guidance is provided on the IRS website regarding frequently asked questions about medical expenses related to nutrition, wellness and general health. This information can also be found on this link:

Frequently asked questions about medical expenses related to nutrition, wellness, and general health | Internal Revenue Service (irs.gov)

These frequently asked questions (FAQs) address whether certain costs related to nutrition, wellness, and general health are medical expenses under section 213 of the Internal Revenue Code (Code) that may be paid or reimbursed under a health savings account (HSA), health flexible spending arrangement (FSA), Archer medical savings account (Archer MSA), or health reimbursement arrangement (HRA).

Section 213 of the Code generally allows a deduction for expenses paid during the taxable year for medical care if certain requirements are met. Expenses for medical care under section 213 of the Code also are eligible to be paid or reimbursed under an HSA, FSA, Archer MSA, or HRA. However, if any amount is paid or reimbursed under an HSA, FSA, Archer MSA, or HRA, a taxpayer cannot also deduct the amount as a medical expense on the taxpayer's federal income tax return.

Medical expenses are the costs of diagnosis, cure, mitigation, treatment, or prevention of disease, and for the purpose of affecting any part or function of the body. These expenses include payments for legal medical services rendered by physicians, surgeons, dentists, and other medical practitioners. They include the costs of equipment, supplies, and diagnostic devices needed for these purposes. They also include the costs of medicines and drugs that are prescribed by a physician.

Medical expenses must be primarily to alleviate or prevent a physical or mental disability or illness. They don't include expenses that are merely beneficial to general health.

Exhibit D

The fact sheet from the Centers for Medicare and Medicaid Services (CMS) contains the average amount of health/benefit expenses that are being paid by an individual person according to the National Health Expenditure Data (NHE).

According to the fact sheet, in 2021, National Health Expenditures (NHE) grew 2.7% to $4.3 trillion, or **$12,914 per person**, and accounted for 18.3% of Gross Domestic Product (GDP). Medicare spending grew 8.4% to $900.8 billion in 2021, or 21 percent of total NHE. Medicaid spending grew 9.2% to $734.0 billion in 2021, or 17 percent of total NHE. Private health insurance spending grew 5.8% to $1,211.4 billion in 2021, or 28 percent of total NHE [1]

Data collection from the Centers for Disease Control and Prevention

https://www.cdc.gov/nchs/hus/contents2019.htm#Table-044

2018 –

- National Health Expenditures $11,172
- Health Consumption Expenditures $10,638
- Personal Health Care $9,415

Based on this data the OACEUS 360 Wellness plan utilizes IRC 125 cafeteria plan pretax deduction as $950 for a single employee and $1250 for an employee that has dependents per month. This number represents the cost of benefits included in the OACEUS 360 Wellness plan if they were purchased retail. Which is below the average based on the CMS report in 2021 and the NHE data from 2018. These numbers are then reimbursed utilizing IRC 105 (b) reimbursement slot in payroll. Thus, creating a tax withholdings savings created to fund IRC 213 (d) medical expenses. In this example would be the Wellness plan premium and the universal life insurance paid for with after tax dollars.

Exhibit E

The difference between a Fixed Indemnity Health Insurance plan and the WIMPER plan that utilize IRC 213 (d) medical expenses are broken down and identified individually based on purpose and utilization in this tax strategy.

Fixed indemnity plans are a type of health insurance plan that pays the insured person a set amount of money based on the medical service that the person receives, regardless of the actual cost of the care. The plan can pay a fixed amount based on a particular type of service provided, or pay a fixed amount based on a period during which care is provided; some fixed indemnity plans use both approaches, depending on the circumstances. Fixed indemnity plans are not considered major medical plans and do not meet the minimum essential coverage requirements of the Affordable Care Act (ACA). If a plan like this is utilized in this tax strategy it would be considered double dipping by the

IRS. Double dipping with a fixed indemnity plan occurs when the employer takes a tax deduction for the premium paid for the plan and then reimburses the employee for the same expense. This is considered non-compliant by the IRS.

The WIMPER structure, which the OACEUS 360 Wellness Plan follows. This OACEUS 360 Wellness Plan provides a proactive approach by utilizing IRC 213 (d) benefits that prevent disease, promote wellness mentally and physically. It does not pay for the services provided by the plan; therefore, it is not considered to be double dipping. There is a large variety of benefits included in the OACEUS 360 Wellness Plan. The primary focus of the benefits is to diagnose, cure, mitigate, and prevent disease that can lead to treatment if necessary.