WIMPER Compliance

Pre-tax and Post-tax Treatment:

- **Pre-tax:** Plan costs deducted from employees' gross wages are eligible for pre-tax treatment under IRC § 106(a), reducing taxable income for both employees and employers. This treatment aligns with provisions excluding employer-provided wellness program coverage from an employee's gross income. The Office of Chief Counsel Internal Revenue Service Memorandum (Number: 201703013, Dated: 1/20/2017) states: "The value of coverage by an employer-provided wellness program that provides medical care (as defined under § 213(d)) is generally excluded from an employee's gross income under § 106(a). The pre-taxing of this deduction, made possible under a Self-Insured Medical Reimbursement Plan and a Cafeteria Plan (§ 125), creates the reduction of taxable income, generating savings for the employee and the employer."
- **Post-tax:** Medical care reimbursements paid under a self-insured medical reimbursement plan generally aren't considered wages and aren't subject to Social Security, Medicare, FUTA taxes, or income tax withholding. Specific rules apply for including certain reimbursements in the gross income of highly compensated individuals. Additionally, the life insurance option is a post-tax benefit election that is compliant with IRC § 213(d) and ACA regulations, along with other post-tax benefits such as dental, vision, accident, hospital, short-term and long-term disability.

Compliance with Relevant Codes and Regulations:

Essentials Health Plan™ adheres to a range of relevant codes and regulations:

- **IRC § 106(a)** (ERISA)
- **IRC § 213(d)** (ADA, ACA)
- **IRC § 105(b)** (HIPAA)
- **IRC § 5125**
- **IRC § 125**
- **Code of Federal Regulations (CFR) § 1.105-11**
    - **CFR § 1.105-11(i)**
    - **CFR § 1.105-11(k)(1)**
    - **CFR § 1.105-11(k)(2)**
- **IRC § 104(a)(3)**

Reimbursement Allowances:

Allowable pre-taxing and reimbursement amounts are determined based on HHS reports, national average cost totals, and fair market value, ensuring compliance with IRC § 213(d).

Integration with ACA-approved Medical Plan:

The program integrates seamlessly with an ACA-approved medical plan, forming an integrated 105 plan. This integration ensures adherence to IRS guidelines, with proper documentation and continuous education provided to both employees and employers. Furthermore, the 11 Participatory model, developed under the Affordable Care Act (ACA), is an integrated 105 plan requiring at least one activity per year (42 U.S. Code 300gg-4(j)(3)(c)).

Response to IRS Guidance:

In response to the IRS Office of Chief Counsel Internal Revenue Service memorandum Number: 202323006, Release Date: 6/9/2023, our wellness plan is not a fixed indemnity wellness plan. Our program is structured as a WIMPER Program:

- **Salary Reduction Agreement:** Allows employees to make pretax contributions to a Section 125 cafeteria plan for qualified benefits such as accident and health benefits or group term life insurance.
- **IRC § 106 Wellness Plan:** Funded with pretax dollars (e.g., from a cafeteria or other qualified plan).
- **SIMERP:** Provides tax-free reimbursements of medical care expenses described in IRC § 105(b) and defined in IRC § 213(d), including insurance covering medical care. We agree with the IRS memorandum that under IRC § 105(b), a wellness plan may not be paired with an indemnity plan that pays money to a client while using pretax dollars to pay for the wellness indemnity, thus creating a taxable event.

Definition of Medical Expenses:

Medical expenses are costs incurred for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for 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.

Documentation and Administration:

- **SIMERP Plan:** The Essentials Health Plan™ includes a sample SIMERP Plan document ("Basic Plan Document") and its related Adoption Agreement, intended to qualify as a self-insured medical expense reimbursement plan arrangement. This plan provides benefits excludable from gross income under Code § 105(b) and is administered in accordance with IRS Notice 2002-45 and IRS Revenue Ruling 2002-41. This Plan is intended to be subject to ERISA.
- **Section 125 Plan:** Additionally, the Essentials Health Plan™ includes Section 125 Plan documents ("Basic Plan Document") and its related Adoption Agreement, intended to qualify as a premium-only plan within the meaning of Code § 125, § 105, and § 106, providing for the pre-tax payment of premiums for accident and health insurance.
- **Wellness Program Basic Plan Document:** The Wellness Program Basic Plan Document and its related Adoption Agreement are intended to provide nontaxable employer-provided wellness and health benefits under Code § 105 and § 106 and the

regulations issued thereunder. These documents are interpreted to accomplish the objective of providing benefits eligible for exclusion from participants' gross income under Code § 105(b).

Compliance Monitoring:

If an employee does not complete their yearly wellness activity, the Plan Sponsor will annually audit the participant's compliance with the Wellness Program. If the participant has received a reimbursement during a period in which they are deemed non-compliant, the reimbursement will be considered taxable income to the participant. At the end of the Plan Year, the Plan Sponsor will issue tax-reporting documents to non-compliant participants indicating the amount of taxable reimbursements. The participant may request an audit of their Wellness Compliance.