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EHP | THE EMPLOYER'S CHOICE

Wellness and Integrated Medical Plan Expense Reimbursement

Leveraging Tax Deductions and Benefits with a WIMPER plan

Employers can take advantage of section 125 tax deductions, known as cafeteria plans, to offer benefits without incurring out-of-pocket expenses. When properly paired with a Self-Insured Medical Reimbursement Plan (SIMRP), these plans provide tax advantages that make it easier for employers to offer health programs and other secondary benefits, all completely paid for by tax savings. By participating in these programs, employers will save $1,120 per employee per year. For an employer with 300 employees, this translates to $336,000 in annual payroll tax savings.

In addition to the employer tax savings, the employee receives valuable Preventative Care and *additional* supplemental insurance benefits completely funded with tax savings. That means there is zero out-of-pocket expense to the employee for these benefits. Whatever their take-home-pay is now, it will be the same after implementing the WIMPER plan.

Without using a WIMPER plan, employees have to pay for these benefits. Which usually means they don't get any at all, or they don't get enough. With implementation of this plan, for the first time in the employees' entire career, they can say they are properly insured and it cost them nothing out of pocket.

Outline of Benefits

Revive Health – EHP's partnership with Revive Health is the heart and soul of the program and the reason why the ACA wants employers to offer these types of plans. Revive Health offers additional medical services for physical and mental health as well as over 1,000 free prescriptions. Revive is more than telehealth. It is a comprehensive virtual health solution for the employee's entire household with 24/7 access to doctors for Primary Care, Urgent Care, Mental Health, Physical Health, 1,000+ FREE Prescriptions, Weight Health, and more. All at $0 copay and $0 deductible. This additional access to physicians is a step in the right direction to curing the chronic disease epidemic.

Ex. 1) If an employee feels the flu coming on and needs meds, they can utilize Revive all via text or over the phone keeping them from having to miss work, pay deductibles, sit in a waiting room, etc. just to see their usual primary care doc.

Ex. 2) If an employee's child develops a rash and needs meds, they can utilize Revive and get the doctors diagnosis, opinion and meds needed within minutes.

Ex. 3) If an employee is struggling with mental health they can be seen immediately by a certified counselor and set up reoccurring visits. Concerns like depression, anxiety, marriage counseling, etc. There are even multiple online live classes for things like addiction management, positive and critical thinking, and many more.

Why is this valuable to you as the employer? Well, the answer to that lies in this next question. Why does health insurance go up every year? Because of claims. The most powerful part of this Health Plan is that it is not attached to the employer's major medical plan. So anytime an employee utilizes Revive Health it is saving you money on the rising cost of healthcare because it is NOT a negative claim on your health plan.

Manhattan Life – EHP's partnership with Manhattan Life provides the employee with the most comprehensive supplemental benefits on the market. These benefits pay the employee money directly to their bank account in the event they have an accident or are diagnosed with an illness.

- Critical Illness- Pays the employee up to $30,000 lump sum if diagnosed with Cancer, Heart Attack, Stroke, Coma, Dementia, etc.
- Short-Term Disability – Pays the employee up to 60% of their monthly income when out of work due to illness or accident.
- Hospital Indemnity - If diagnosed with an unforeseen accident or illness it will pay up to a $2,000 lump sum upon initial 16 hour stay in the hospital and a $200 daily benefit.
- Accident – Pays for X-Rays, MRI's, Ambulance Rides, Breaks, Burns, Fractures, etc.
- Life Insurance – $25,000 to beneficiary when they pass away.

Now I know that you have a supplemental benefits provider already. But I also know that the national average of participation in those benefits is 20%. That means that 80% of your employees don't have the benefits they need if they get diagnosed with Cancer, have a Heart Attack, break bones, or are unable to work. Health insurance pays doctors and hospitals. These benefits pay you. The bills don't stop when there is snow, rain, sleet, or Cancer. The mail man still brings the electric bill regardless if you're working or not.

Now for the 20% that do have these benefits, they definitely don't have everything. They only have one or two benefits. Why is that? Because they cost the employee money. If you went to every employee and said, all of these benefits are now free, wouldn't they all sign up? Of course. If you implemented this plan, you would be able to tell them that now they

have all the funds needed because of tax savings, to pay for all of these benefits. What a way to increase employee retention and attract talented employees.

In conclusion, the WIMPER plan truly creates a win-win solution for the employer and employee by saving the employer significant payroll taxes and providing the employee with the most robust and comprehensive benefits package on the market, all without taking a penny from the employee or employer's pocket.

Next Steps

1. If you think Muskogee County could benefit from saving $300,000+ per year in taxes, ask yourself, "How could we better use that money?" Hire more police, fire, administrative, trash, or utility workers? Use those savings to super fund existing employees' retirements with a vesting retention program? Those are immediate tax savings for you to use however you see fit.
2. Ask yourself, "How would my employees feel about having all of these benefits that cost them nothing out of pocket?" Every employee knows someone that has been affected by Cancer, or Heart Attack, or had an accident and was severely financially affected. Now they would have the protection they needed without having to take food off the table.
3. If you think the answers to these questions could positively help your county, let's set up a time to have a 45-minute Zoom call with the decision makers and do a full presentation. In that presentation we will talk about the Revive Health benefit and the Manhattan benefits in more detail as well as talk about a properly set up plan to be compliant and of course, what an enrollment would look like. Which is much different than what you have seen before with your current benefits. It is streamlined to be very efficient and effective for an average participation rate of 98%.
4. Where do you feel we should go from here?

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20 Questions about Establishing a Health & Wellness Program in the Workplace

Opportunities for Tax and Cost Savings

By Peter Karl and Dominick G. Mondi

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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 reimburse 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.

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 reimburse for medical care expenses, such as virtual health 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.

4. 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 reimbursements for supplemental coverages 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 expensess 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, sick, 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 plans 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 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 reimbursements for participation in health and wellness programs with the tax saving benefit of reducing FICA tax liability for both the employee and employer. They are then able to cover the cost of additional supplemental benefits with no reduction to their take home pay. In addition, employees can save income taxes because, when participating in a WIMPER program, pretax contributions of gross pay are made to an IRC section 125 cafeteria plan.

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