PLLS

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September 5, 2024

VIA E-MAIL
Essentials Health Plan, LLC
c/o Slava Zatuchny, Partner
Attn: steve@getehp.com

To Whom It May Concern:

Subject: UNDERWRITING APPROVAL OF ESSENTIALS HEALTH PLAN™

This letter provides underwriting approval of Essentials Health Plan™ as it pertains to PLLS' review of relevant tax regulations and guidance. The approval expressed herein is based on PLLS' review of federal tax codes and recent IRS guidance. Please note that this letter is intended to provide general commentary and should not be construed as binding legal advice.

Pre-Tax and Post-Tax Treatment:

The Essentials Health Plan™ appears to comply with the requirements under IRC § 106(a) for pre-tax treatment. Employer-provided wellness plans offering medical care as defined under IRC § 213(d) generally qualify for exclusion from an employee's gross income. IRS Memorandum 201703013 supports this by clarifying that wellness programs that provide medical care under § 213(d) can be excluded from gross income under § 106(a). This allows for a reduction in taxable income for both employees and employers when the plan is funded through a cafeteria plan under IRC § 125.

In terms of post-tax treatment, medical care reimbursements provided through the Essentials Health Plan™ are not considered wages under IRC § 213(d) when paid through a self-insured medical reimbursement plan and meet the requirements of IRC § 213(d). These reimbursements would generally not be subject to Social Security, Medicare, FUTA taxes, or income tax withholding when complying with § 213(d). However, careful attention should be paid to the specific tax treatment of reimbursements for highly compensated individuals, where special rules may apply.

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Compliance with Regulatory Codes:

The Essentials Health Plan™ is based upon several provisions in the Internal Revenue Code and the Code of Federal Regulations. Specifically:

- IRC § 106(a), governing the exclusion of employer contributions for medical care from gross income.
- IRC § 213(d), defining qualified medical expenses.
- IRC § 105(b), which outlines the exclusion of reimbursements for medical care under self-insured medical plans.
- Section 125, allowing for the pre-tax payment of premiums.

These regulations, along with ERISA and ACA guidelines, form the foundation of the plan's adherence to current legal requirements.

Integration with ACA-Approved Plans:

The Essentials Health Plan™ integrates with an ACA-compliant health plan, forming a combined arrangement that likely qualifies as an IRC § 105 plan. By adhering to ACA guidelines, this structure meets the regulatory requirements for health plans under the Affordable Care Act. Furthermore, by utilizing a participatory model as required under the ACA (42 U.S. Code 300gg-4(j)(3)(c)), the plan provides an annual wellness activity, ensuring continuous compliance.

Response to IRS Guidance:

In light of the IRS Office of Chief Counsel Memorandum 202323006, released on June 9, 2023, we recognize that the Essentials Health Plan™ is not structured as a fixed indemnity wellness plan. Instead, the plan operates under the WIMPER model, which includes salary reduction agreements and the provision of tax-free medical reimbursements under IRC §105(b). The IRS memorandum confirms that pairing a wellness plan with a pre-tax indemnity plan could create a taxable event, which the Essentials Health Plan™ explicitly avoids.

Conclusion:

Based on the information reviewed, the Essentials Health Plan™ meets our underwriting

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approval as it appears to comply with relevant tax provisions and regulatory guidelines. Pre-tax and post-tax treatments under the plan follow established rules, and the program's integration with ACA-approved medical plans supports its alignment with current healthcare laws. That said, this letter is intended for underwriting purposes only, is directed to Essentials Health Plan, and does not constitute legal advice.

Sincerely,

/s/ George K. Brew
CEO

GKB/cms

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