


# PREVENTATIVE CARE MANAGEMENT PROGRAM

## UTILIZING THE REQUIRED SELF-INSURED MEDICAL EXPENSE REIMBURSEMENT PLAN (SIMRP)

The following is information that outlines the guidelines for ACA wellness plan compliance.

## I. BACKGROUND:

**A) This model is *not* just a wellness program:** Activity-based wellness programs have been around since the 1970's (*Riding the Wave to Affordable Healthcare, Heart and Soul* magazine, April, 2019, for more information).

**B)** Some of the early crafters of "activity-based" wellness models initially leveraged them for use as a payroll tax reduction program. Current Preventative Care Management Programs are not just being financially positive, in impact, as demonstrated by the value of PCM benefits these current plans provide.

A genuine ACA Preventative Care Management Program offers benefits that focus on improving the lives of people. These programs are designed to meet the demands of today's health care climate and newer plans contain a strong emphasis on a well-rounded virtual care solution. ACA Preventative Care Management Programs are wellness programs that focus on the well-being of the employee population base and their dependents.

**C) IRS Office of Chief Counsel memos:** The IRS Chief Counsel memos dealt with actual, "activity-based", wellness programs and their providers. The Department of the Treasury assisted in the creation of the existing "participatory" and "health-contingent" models available to employers today. (with the help of the Department of Labor and Department of Health and Human Services).

## II. STRUCTURE

**A Section 125 Cafeteria Plan *and* Self-Insured Medical Reimbursement (SIMRP) are required to have a compliant preventative care management program.**

A. **The Section 125 Cafeteria plan is required with a financially compliant pre-taxed program.** The Section 125 Cafeteria Plan covers the 105, 106, and 129 (Dependent Day Care) plans like an umbrella. Pre-taxed wellness plans are compliant if the wellness benefits are 213(d) compliant.

Having 213(d) compliant benefits is the differentiator between a compliant program and a non- compliant program. The IRS Chief Counsel Memo Number: 201622031 (5/27/2016) states the following:

*Coverage by an employer-provided wellness program that provides medical care, as defined under section 213(d,) is generally excluded from an employee's gross income, under section 106(a). Any section 213(d) medical care provided by the program is excluded from the employee's gross income, under section 105(b). However, any reward, incentive, or other benefit provided by the medical program, that is not medical care as defined under section 213(d,) is included in an employee's income, unless excludible as an employee fringe benefit, under section 132.*

This explains why reimbursements for gym memberships often offered through group health insurance companies as a wellness initiative are not compliant. The program takes into account the necessity of 213(d) compliant benefits and provides a compliant "participatory" program rather than one that is solely "activity-based." If the benefits are not 213(d) compliant then everything else is a moot point.

**B. Code 1.105-11 is what makes the SIMRP premium deduction reimbursement compliant.** All IRS memos address the specifics about the compliance guidelines. The main focus is on the reimbursement process, which is typically accomplished through payroll.

A reimbursement *cannot* be made under Section 105 of a Section 125 Cafeteria Plan. The IRS memos state the following:

*Coverage by an employer-provided wellness program that provides medical care, as defined under section 213(d), is generally excluded from an employee's gross income under section 106(a), and any section 213(d) medical care provided by the program is excluded from the employee's gross income, under section 105(b). However, any reward, incentive or other benefit provided by the medical program that is not medical care, as defined under section 213(d), is included in an employee's income, unless excludible as an employee fringe benefit under section 132* (IRS Chief Counsel Memo Number: 201622031, 5/27/2016).

The statement only defines the boundaries for the wellness plan premium deduction for reimbursement. This is specifically why the SIMRP plan document is necessary.

The SIMRP provides guidance of the reimbursement. There are three options: 1) It is the employee's reimbursement. 2) It is the employer's reimbursement. 3) It is the employee's and it becomes the employer's reimbursement.

If the employer made the contribution, and is providing the reimbursement, then the amount is taxable. *Section 105(a) provides that amounts received by an employee, through accident or health insurance, for personal injuries or sickness, are included in gross income to the extent such amounts are either (1) attributable to contributions by the employer that were not includible in the gross income of the employee, or (2) are paid by the employer. However, § 105(b) provides an exception to the general rule, requiring inclusion in income. Section 105(b) provides that, except in the case of amounts attributable to (and not in excess of) deductions are allowed under*

*§ 213 (relating to medical expenses) for any prior taxable year, gross income does not include amounts paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care (as defined in § 213(d)) of the taxpayer or the taxpayer's spouse or dependents (as defined in § 152). Section 213(d)(1) defines "medical care" to include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body*.

This code demonstrates that reimbursement for 213(d) compliant medical expenses is *excluded* from taxable income.

To summarize:
1) If the EMPLOYER makes the contribution, then any reimbursement is taxable.
2) If the employer reimburses amounts for 213(d) compliant medical expenses, then the reimbursement is *not* taxable.

The source of the premium deduction falls under a Section 105 plan, and the eligibility requirements are as follows:

1. Employers are the sole contributors to the plan.
2. In contrast to a Section 125 plan, Section 105 plans cannot be funded through a reduction of the employee's salary, whether voluntary or involuntary.
3. Reimbursements are excluded from gross taxable income if they are used to pay 213(d) compliant medical expenses.

Attempting to reimburse under a Section 105 means:

a) All contributions are employer contributions.
b) The reimbursable expenses by the employer are for 213(d) compliant medical expenses.

This addresses the employee as the required source of the premium deduction, contributions, and reimbursements.

If it goes no further than "reimbursing under a 105," then the plan is out of compliance. The IRS codes make a distinction between "employer" and "employee" contributions (1.105-11). Specifically, subsection (i), which states*: Self-insured contributory plan, a medical plan subject to this section may provide for employer and employee contributions. See § 1.105-1(c). The tax treatment of reimbursements attributable to employee contributions is determined under section 104(a)(3). The tax treatment of reimbursements attributable to employer contributions is determined under section 105. The amount of reimbursements which are attributable to contributions of the employer shall be determined in accordance with § 1.105-1(e).*

***C.*** **The origin of the *contribution* determines the taxability of the reimbursement**. Code 1.105-11(i) states the employee contributions are determined under a 104(a)(3). *(a)In general, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—(3)amounts received through accident or health insurance (or through an arrangement, having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer).*

This is also affirmed in the IRS Chief Counsel Memo Number: 201719025 (5/12/2017), which states: *Section 104(a)(3) provides that gross income does not include amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness. This exclusion does not apply, however, if the amounts are either (1) attributable to contributions by the employer that were not includable in the gross income of the employee, or (2) paid by the employer.*

**D. The information above verifies that employee contributions that are reimbursed for amounts received through accident, health insurance, or through an arrangement having the effect of accident or health insurance, are not included in gross income.**

The Self-Insured Medical Expense Reimbursement Plan SIMRP is the "arrangement" that allows employee reimbursement of 213(d) compliant medical expenses, which includes preventative care.

1) What is a Self-Insured Medical Expense Reimbursement Plan SIMRP? A written plan is provided that allows for reimbursement of premium deductions and/or contributions to employees. The employer administers the plan. IRS Section 106(a) allows employers to make contributions to an accident and health plan, on a pre-tax basis. These contributions are usually made at the election of the employee, through a salary reduction agreement between the employee and employer. These are contributions in which the EMPLOYEE agrees to contribute a portion of his or her salary, on a pre-tax payroll deduction basis, to pay for the 213(d) qualified benefits. The salary deduction contributions are not considered to be constructively (i.e. actually) received by the employee, and therefore, are not considered wages for federal income tax purposes.

Employees subsequently participate in a preventative care management program, and as a result of their participation, are reimbursed money through a SIMRP, on an after-tax basis. The following code states that the only compliance requirement, for meeting participation requirements, is the employer must allow the employee to participate at least one time, annually, in order to receive the reward or reimbursement (**42 U.S. Code 300gg-4(j)(e)(3)(c)**). Some large major medical plans have an "activity-based" wellness program bundled with their major medical Integrated 105 plan. The plan is an Integrated 105 plan because the requirement is to have an employer-offered group medical plan in order to participate in an ACA Preventative Care Management Program. Integrated 105 plans were grandfathered into the ACA and are exempt from the 4980D penalty. Typical wellness initiative programs, by their nature, do not meet the ACA minimum essential requirements of one activity per year.

2) The preventative care management program requires a plan document. A plan document should include, but is not limited to, which medical expenses are reimbursable (the 213(d) compliant benefits of the preventative care management program), how reimbursements will be made (through payroll), and who is benefit eligible (must have an employer-sponsored medical plan offered through employer, spouse's employer, or parent's employer). It should be noted that although a SIMRP is considered to be a group health plan subject to the ACA, which prohibits limiting coverage for essential health benefits, the deduction costs are not considered to be "essential" and therefore the plan places annual limits on reimbursements. Applied deductions are restricted to $800 per month, per participating employee, and/or $1,125 per month per employee, to include one additional family member, optional). These were originally determined from two factors:

1) The DHHS report of July 2016, which concluded that every man, woman, and child in the U.S. spent, on average, $10,345 per person, for their medical expenses.
2) The national monthly average cost for all preventative care benefits available to the employee, is $1,711.00, monthly. The monthly deduction cost is the total amount deemed for the preventative care management program. (According to national data, employees pay on average only 28% of the annual total premium for their major medical plan.)

## E. Special Note Regarding the 1.105-11

The 1.105-11 provides an important component under the 105, that states that the PCM program can be done under the 105, so long as the medical expenses are 213(d) compliant.

The answer lies in 105-11 (k) Special Rules.

(1) **Relation to cafeteria plans**. *If a self-insured medical reimbursement plan is included in a cafeteria plan, as described in section 125, the rules of THIS SECTION will determine the taxable or nontaxable status of a benefit.*
(2) This shows that the rules of 105-11, regarding the taxability as described in subsection (i), determine the taxability guidelines, instead of the straight section 125.
(3) **Benefits subject to reimbursement.** *For the purposes of this section, a benefit subject to reimbursement is a benefit DESCRIBED in the plan, under which a claim for reimbursement or for a payment directly to the health service provider, MAY BE FILED by a plan participant. It DOES NOT refer to actual claims or benefit reimbursements paid under the plan.*

This clearly shows that, under the SIMRP, a reimbursement of the premium deduction, for the 213(d) compliant preventative care management programs, is compliant with 105-11 guidelines. It does not have to be the actual dollar value of each use of the 213(d) compliant benefits or how much they have used during the pay period.

These are the compliant codes and procedures to pre-tax the Preventative Care Management Program premium deductions as well as to the reimbursement of the specified premium deduction.

The employer realizes FICA tax savings due to the pre-taxing of the premium contributed by the employee. The employee also realizes tax savings due to the pre-tax calculation. The resulting tax savings for the employee is a "post-tax allotment." The employee can use this allotment (tax savings) to purchase additional qualified benefits "after-tax". If the employee does not use the total allotment (tax savings) for these purposes, the post tax allotment balance reflects as an increase in the employee's net pay. The program's administrative fee is a fee outside the reimbursement and pays for the benefits of the preventative care management program. Both the employee and employer pay fees using their gross tax savings.

**Conclusion**: CPAs and ERISA attorneys have meticulously reviewed all areas of the model for compliance purposes. The determination is that a wellness plan document, a Section 125 Plan, and a SIMRP plan document are required to have a compliant ACA preventative care management model. This model reimburses a premium deduction for a plan that offers 213(d) compliant benefits.

**This document is not intended to be tax advice or legal advice, and the reader should contact a Preventative Care Management Program consultant at Capstone, for any compliance information regarding this subject.**