A Division of the Better Tomorrow Financial Group

Examining the compliance and legality of merging a Participatory Self-Funded Accident & Health Plan with a Section 105b HRA to establish a WIMPER (Wellness Integrated Medical Plan Expense Reimbursement) Program.

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1. Introduction – Our Goal

Our research aimed to validate the appropriate structure of a Wellness Integrated Medical Plan Expense Reimbursement (WIMPER) Program. A WIMPER is a fully compliant employee benefit aligned with ACA, ADA, ERISA, HIPAA, and IRS regulations, designed to yield tangible tax and healthcare cost savings for both employers and employees. It combines two distinct components:

- A Section 125 Eligible, Voluntary Participatory Wellness Program concentrating on preventive health and disease management for fifteen particular chronic health conditions.
- A Section 105b Self-Insured Medical Expense Reimbursement Plan (SIMERP).

Project blue's plan is called Preventative Health Initiative (PHI)

2. Project Blue Internal Review Process

To assess the legality and compliance of establishing a fully operational WIMPER, Project Blue partners initially examined the IRS codes that govern the ethical and legal handling of employee benefits and qualified medical reimbursements. Precisely, Sections 125, 105b, 105-11, 132, and 106a were scrutinized, along with various IRS memorandums, including #201703013, to ensure the latest guidance was incorporated.

Following this, a comprehensive review of HIPAA, ADA, and ACA was undertaken to confirm that the program adhered to all pertinent healthcare, discrimination, diversity, and inclusion regulations. This encompassed the ACA's participatory wellness requisites, HIPAA's employer limitations, and compliance with the EEOC's final directive on Title I of the ADA concerning the treatment of individuals with disabilities.

Lastly, legal experts were engaged to conduct a thorough evaluation of Project Blue PHI WIMPER Program's procedures. These legal professionals were tasked with auditing internal processes and aligning them with the aforementioned laws, memorandums, and codes. Section 7 of this document presents the key outcomes, discoveries, and legal opinion.

3. Structuring Legal & Compliant WIMPER

When meticulously designed, a WIMPER stands as an incredibly versatile employee benefit, yielding immediate and quantifiable tax and healthcare advantages for both employers and employees. A WIMPER, when legally compliant, harmonizes two interlinked plans:

1. A voluntary participatory wellness program
2. A health reimbursement arrangement

The Voluntary Employee Wellness Program, a component of the Wellness Plan, is tailored to furnish members with benefits centered on preventive health and the management of chronic illnesses. This program aligns with Section 125 compliance, allowing for pre-tax collection of all premiums. This leads to a reduction in taxable wages, securing a 7.65% savings for both employers and employees.

This wellness initiative is seamlessly integrated with a Section 105b SIMERP framework, delineating how employees can utilize wellness program benefits to qualify for reimbursements on their eligible expenses. These reimbursements are acknowledged as tax-free, given their classification as qualified medical services under IRS Section 213d, 2020 Publication 502, and IRS Publication 15, the 2022 Employer's Tax Guide.

Employing this structured WIMPER approach ensures full adherence to IRS, ACA, HIPAA, ADA, and ERISA compliance standards and regulations. This compliance translates into substantial tax savings, averaging at:

- $523.57 per participant annually for the employer
- $1800 per participating employee each year

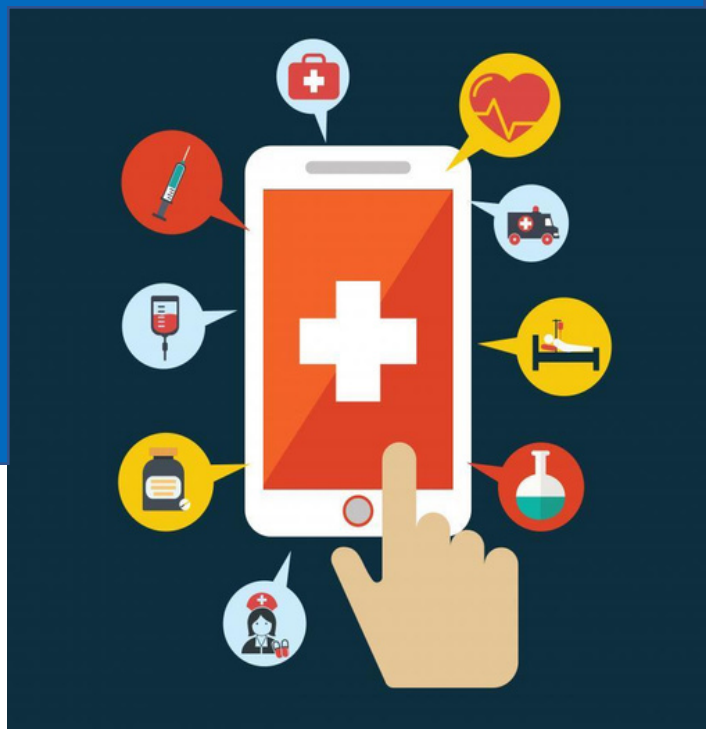
Furthermore, a WIMPER holds the potential to generate healthcare cost efficiencies through an array of preventative services. A compliant program encompasses medical services as stipulated by IRS Section 213d, including but not restricted to:

1. Counseling & Therapy
2. Primary & Urgent Care
3. Prescription Drugs
4. Wellness Seminars
5. Medical Guidance and Tracking

Members can tap into these services to curtail out-of-pocket expenses, utilizing the $0 copay services embedded within their wellness plan. By actively participating in the Wellness Plan, members can also curtail the likelihood of future diagnoses and ailments.

In parallel, employers stand to trim their healthcare expenditures by encouraging employees to capitalize on the Wellness Program's benefits. Potential savings encompass reductions in prescription costs, ER visits, urgent care utilization, and hospitalization claims, thanks to PHI's telehealth offerings.

Our research has shown that 8 key risks and behaviors drive 15 of the costliest chronic illnesses worldwide.



Poor Diet	Physical Inactivity	Smoking	Lack of Health Screening
Poor Standard of Care	Poor Stress Management	Insufficient Sleep	Excessive Alcohol

- Diabetes
- Coronary Artery Disease
- Hypertension
- Back Pain
- Obesity
- Cancer
- Asthma
- Arthritis
- Allergies
- Sinusitis
- Depression
- Congestive Heart Failure
- Lung Disease (COPD)
- Kidney Disease
- High Cholesterol

Per 100 workers employed, here is the financial impact to employer healthcare spend:

Health Risk	% of US Population	Potential Cost/100
Stress	40%	$28,560
Smoking/Tobacco	14%	$53,298
Physical Inactivity	28%	$53,508
Depression	7%	$19,831
Hypertension	45%	$107,640
Obesity	42%	$553,896
Poor Sleep	35%	$142,660
Binge Drinking	17%	$11,390

4. Applicable IRS Codes, Employer Tax Guide & Compliance Rules

To establish a foundational grasp of the legal and compliant aspects of a WIMPER program, it's essential to delve into the IRS codes governing its framework. Given that the PHI program functions as a Self-Funded Voluntary Employee Wellness Program, a thorough examination of the following IRS codes and guidelines becomes paramount:

Section 125 – Cafeteria Plan: Under Section 125 of the IRS code, a Cafeteria Plan is a documented arrangement maintained by an employer for employees, adhering to specific requirements and regulations. This plan offers participants the opportunity to receive particular benefits on a pre-tax basis. Qualified benefits, as per the IRS, encompass those that don't defer compensation and are excludable from employees' gross income under specific Code provisions. Examples of such benefits include Accident & Health Benefits, Dependent Care Assistance, Group-Term Life Insurance, and HSAs.

This holds significance for the research presented here as the PHI's WIMPER stands as a Section 125 eligible Voluntary Participatory Wellness Program to be provided by employers to employees. This eligibility is derived from the program's nature as a Self-Insured Accident & Health Plan under IRS Section 105b – Self Insured Medical Expense Reimbursement Plans, or "SIMERP."

IRS Section 105b: IRS Section 105 details "Amounts received under Accident & Health Plans." WIMPER plans, like that of the PHI program, qualify as Accident & Sickness Plans as per IRS Code 105b due to their status as Self-Funded Voluntary Wellness Programs. Moreover, IRS Code 105-b specifies that "Gross income does not include amounts referred to in subsection A; such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him/her for the medical care (as defined in Section 213d) of the taxpayer, his/her spouse, or his/her dependents."

IRS Section 106a: IRS Code Section 106a outlines the means by which employees can make qualified contributions to Accident & Health Plans, a topic covered in multiple rulings over the past 30+ years. Section 106a states that gross income doesn't include contributions to accident or health plans for compensation to employees. This holds importance as PHI falls under the definition of a Self-Insured Accident & Health Program as defined by the IRS, ERISA, ADA, ACA, and HIPAA.

IRS Publication 15: IRS Circular E, the Employer Tax Guide for 2022, emphasizes that "Medical Care Reimbursements" paid for employees under an employer's self-insured medical reimbursement plan are not considered wages. Therefore, they aren't subject to social security, Medicare, FUTA taxes, or income tax withholding.

4. Cont'd

IRS Section 213d: Understanding IRS Section 213d is crucial within the context of the research presented in this document. This section outlines the deduction and qualification of medical care expenses, offering clarity on which medical services are deductible personally or can be reimbursed by an employer through qualified accounts like HSA, FSA, or HRA. Periodically, the IRS releases Publication 502, updating the roster of qualified medical expenses. For our research, the 2020 Publication 502 was utilized, and it's readily available on irs.gov for reference.

Section 213d defines a medical expense as follows:

- Expenses for diagnosing, curing, mitigating, treating, or preventing disease or affecting any part or function of the body.
- Payments for medical services provided by physicians, surgeons, dentists, and other practitioners.
- Costs for necessary equipment, supplies, and diagnostic devices.
- Medical care expenses must primarily alleviate or prevent a physical or mental disability or illness, excluding expenses beneficial to general health, like vitamins or vacations.
- Medical care expenses also cover insurance premiums for medical care coverage.

The list of 213d eligible medical services available through compliant WIMPERs, such as PHI, can be accessed via our user-friendly app which is available on both Android and Apple App for your convenience.

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5. 2017 IRS Memorandum #201703013

While delving into programs like SIMERP/WIMPER such as PHI, it's likely you'll come across IRS memorandum #201703013. Issued on January 20, 2017, this memorandum authored by Stephen Tackney, Deputy Associate Chief Counsel (Employee Benefits), examines the tax treatment of benefits offered by fixed-indemnity health plans. Often cited by skeptics aiming to undermine qualified SIMERP/WIMPER programs, this memorandum should not serve as a justifiable foundation for such criticism.

A correctly organized WIMPER program is distinctly different from a fixed-indemnity plan. PHI follows the ERISA guidelines for a Self-Funded Voluntary Accident & Sickness plan. In contrast to Mr. Tackney's mentioned scenarios, these programs don't provide fixed lump-sum benefits to participants. Instead, a compliant WIMPER strictly reimburses eligible medical expenses, adhering to IRS list 213d definitions. If needed, we can provide copies of this memorandum upon request or they are readily accessible for direct review.

6. The CPA Journal Article: "20 Questions about Establishing a Health & Wellness Program in the Workplace," by Peter Karl & Dominick Mondi (Jan 2021)

In January 2021, The CPA Journal featured a piece authored by Peter Karl & Dominick Mondi entitled "Addressing Health & Wellness Programs in the Workplace – Potential for Tax and Cost Efficiencies." Within this publication, they discuss the formulation of a well-organized WIMPER/SIMERP. The subsequent highlights from their work align closely with the supplementary research discussed in this document.

How does a WIMPER program save employers money?

A WIMPER program saves employers money through a reduction in FICA taxes paid. This is because the plan contribution amount elected by the employee is not considered to be wages, and therefore is not taxable for social security purposes. These programs can also provide additional savings through the reduction of paid time off because they support healthier employees. It should also be noted that a WIMPER program is only subject to federal law, not state insurance regulations.

Why would an employee want to participate in a WIMPER program that combines a healthcare plan with a wellness plan and a SIMERP?

Healthcare medical reimbursement plans are growing in popularity. This is because they not only allow employees more input in choosing benefits; but they also give benefit providers more flexible solutions for businesses. Some examples include tax-free reimbursements for employees to use towards the purchase of ancillary insurance products, such as disability and accident policies. This results in lower Federal Insurance Contributions Act (FICA) taxes for both the employer and employee.

One reason employees may want to participate in a WIMPER program is that these programs' unified platforms provide an opportunity to purchase additional benefits that might not otherwise be affordable without affecting their net pay.

IRS 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.

6. Cont'd

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, in which an employer chooses and administers a healthcare plan.

How should a WIMPER program be designed?

To achieve 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 IRS Section 106 Wellness Plan funded with pretax dollars (e.g., from a Cafeteria Plan or other qualified plan);
- A SIMERP that provides for tax-free reimbursements of medical care expenses described in IRS Section 105(b) and defined in IRS Section 213(d). This includes, but is not limited to, insurance covering medical care.

A copy of the complete article can be viewed by visiting: https://www.cpajournal.com/2021/01/27/20-questions-about-the-establishing-a-health-wellness-program-in-the-workplace/

7. A Review of Project Blue's WIMPER, by Tax & Legal Professionals

Project Blue partners engaged a nationwide law firm and a prominent national CPA firm to guarantee that the formulation of their SIMERP/WIMPER strictly adhered to the prerequisites, regulations, and considerations expounded in earlier sections of this document. Each of these experts executed a comprehensive examination of Project Blue's internal procedures to confirm and guarantee conformity with all obligatory IRS, HIPAA, ADA, and ACA legal requisites.

Upon your request and upon the signing of a Mutual Non-Disclosure Agreement, we can furnish the Operational Summary Letter furnished to Project Blue by our Legal Counsel and CPA advisors to any potential client or partner who is intrigued by our services.

8. Conclusion

After more than 3 years of extensive research and development, Project Blue is confident that there is substantial evidence confirming the compliance and legality of its PHI product, the Wellness Integrated Medical Plan Expense Reimbursement program (WIMPER). This program aligns with all pertinent IRS, ERISA, ADA, DOL, ACA, and HIPAA requirements. Consequently, both participating employers and employees can simultaneously alleviate their tax obligations, curtail overall healthcare expenses, and enhance the healthcare landscape.

Project Blue aspires for this document to serve as a valuable resource in your decision-making process. Please do not hesitate to reach out with any inquiries you may have.