THRIVE
PREVENTIVE CARE

Executive
Summary

Preventive Care Plan

This is a benefits program made up of two components: a self-insured medical plan called the Preventive Care Plan, which covers eligible preventive health services and medical care, and a cafeteria plan (Caf Plan) that allows participants to pay for their coverage under the Preventive Care Plan using pre-tax dollars under Section 125 of the Internal Revenue Code. Together, these elements promote wellness and offers a cost-effective way to access medical care.

Snapshot of the Program

The "Program" includes two components: a self-insured medical plan referred to as the "Preventive Care Plan," and a cafeteria plan ("Caf Plan") that facilitates payment for participation in the Preventive Care Plan. Below is a step-by-step overview of how the Program operates:

- An eligible employee of the Preventive Care Plan pays the cost of the Preventive Care Plan on a pre-tax basis through salary reduction under the Caf Plan.
- As a participant in the Preventive Care Plan, the employee experiences a trigger event; an event under the Plan in furtherance of diagnosis and early detection of conditions and disease.
- Upon completion of the trigger event, the employee earns the reward payment.
- The reward payment is paid by the Preventive Care Plan, not the employer. The reward payment is distributed to the employee on its paycheck as a matter of convenience saving the Preventive Care Plan the administrative work and cost of cutting multiple individual checks.
- The reward payment is clearly marked on the payroll information as a Preventive Care Plan payment.
- Payment of the reward by the Preventive Care Plan ends the Preventive Care Plan involvement with that reward payment.
- It is the employee's responsibility, as an individual taxpayer, to experience sufficient medical care expenses to offset the difference between the amount of the reward payment and the amount of the reward payment minus the value of the trigger event. This is called the "excess".
- The Preventive Care Plan is designed to provide triggers and other medical care with sufficient value to offset the excess leaving the individual with no excess upon which to pay taxes.
- During the time the employee is a participant in the Preventive Care Plan, the employee has access to an extensive, state of the art collection of providers and services designed around early detection and treatment of disease.
- The providers and services provide medical care under Section 213(d). Receipt of such services does not cause a taxable event for the employee.

Compliance with Applicable Law

The structure and operation of the Program described above complies with applicable law including:

Affordable Care Act ("ACA")

The ACA requires group health plans to provide certain benefits (i.e., preventive care) on a first dollar, no deductible basis.

- This Program does not satisfy this requirement on its own and therefore, must be integrated with an employer sponsored ACA compliant group health plan.
- By integrating with an employer sponsored ACA compliant group health plan, the employer sponsored group health plan that is not compliant borrows the compliant status of the group health plan with which it integrates.
- Every individual covered under this Program must be covered under an employer sponsored ACA compliant group health plan.
- To sponsor this Program, the employer must also offer its own employee sponsored ACA compliant group health plan.
- The Preventive Care Plan documentation reflects these requirements.

Internal Revenue Code ("Code")

A number of Code sections have been used together to create a structure compliant with the following:

- Section 105 of the Code addresses accident and health plan including self-insured medical plans.
- A self-insured medical plan provides care and services that meet the definition of Section 213(d) of the Code.
- Section 213(d) of the Code defines medical care in part: care for the diagnosis, cure, treatment, or prevention of disease or for the purpose of affecting any structure or function of the body.
- The value of the benefits received through a Section 105 self-insured medical plan are not taxable.
- Where a medical trigger is used with a corresponding reward payment, the trigger is not taxable if it is medical care under Section 213(d). The reward payment can be excluded from income if there is no excess; no portion of the reward payment that is not offset by medical care. This is described and applied to several relevant scenarios in Rev. Rul. 69-154.
- As a group health plan, the Preventive Care Plan is subject to COBRA continuation if the employer is subject to COBRA.
- Preventive Care Plan documentation includes a General Notice of COBRA Rights.
- A self-insured medical plan can have portion of the cost for which the employee is responsible paid pre-tax through a cafeteria plan under Section 125 of the Code.
- A cafeteria plan does not provide benefits itself. It allows the employee to participate in a qualified benefit offered through the cafeteria plan by allowing the employee to pay all or a portion of the cost of that qualified benefit on a pre-tax basis.
- The cafeteria plan only addresses the pre-tax payment of the cost to participate in a qualified benefit. It does not address the tax consequences of the benefits received through that qualified benefit.
- Section 125 of the Code imposes numerous documentation and operational requirements.
- Examples include operating on a plan year, irrevocable elections, only recognized exceptions to the irrevocable election rule, and claims rules for electronic payment cards.
- The Caf Plan documents reflect the requirements and the operations follow the documents and Code provisions.

HIPAA Privacy and Security

- As a group health plan, the Preventive Care Plan is subject to HIPAA Privacy and Security.
- The Preventive Care Plan documents reflect the requirements of HIPAA Privacy and Security and include the mandatory HIPAA language.

Employee Retirement Income Security Act of 1974 ("ERISA")

ERISA applies to most, but not all, employers and to most, but not all, benefits provided by employers.

- The documents reflect the requirements of ERISA. If the employer is not subject to ERISA, the documents contain an explanation of how the documents work in that situation.
- ERISA requires the terms and conditions of the plan document be followed.
- ERISA requires plan assets be (1) held in trust, and (2) used for the sole and exclusive purpose of providing benefits under the plan and paying reasonable plan expenses.
- ERISA regulations provide that all pre-tax salary reductions are plan assets.
- To avoid having to hold plan assets in a trust, the Program is operated consistently with DOL Technical Release 92-01.
- Salary reductions stay unsegregated from the employer's general assets until it is time for the Preventive Care Plan to make a reward payment.
- The exclusive purpose rule applies whenever and wherever there are plan assets including when held unsegregated from the employer's general assets and when accessed to pay benefits under the plan.
- ERISA requires record-keeping and, dependent upon the size of the plan, may require government reporting (e.g., Form 5500).
- ERISA requires key personnel (e.g., plan administrator and fiduciaries) of the plan to follow the plan documents and act for the sole and exclusive purpose of providing benefits under the plan, free from self-interest.
- ERISA requires any persons handling plan property to be bonded.
- These requirements are addressed in the plan documentation and service agreements.

Summary

The plan design, plan documentation, and operational activities have been reviewed for compliance with the applicable law described above: ACA; Code Sections 105, 213(d), 125; Revenue Ruling 69-154; HIPAA Privacy and Security; and ERISA. A legal protection policy is available to the employer providing (1) up to $500,000 in legal protection to the employer for any federal regulatory actions arising from use of the plan, and (2) up to $10,000 for any employee who experiences federal regulatory oversight action regarding utilization of the Program.

Note: This document was prepared by HitesmanLaw, PA. It is for general informational purposes only. It does not provide legal or tax advice.

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