



# **Compliance Positioning:** **HOW *SIMRP* DIFFERS FROM COMMONLY SCRUTINIZED STRUCTURES**

## **CONTEXT**

Over the past two decades, the IRS and the Department of Labor have issued repeated warnings about benefit program designs that expose employers and employees to unintended tax liabilities. Problematic structures often involve circular cash flows, untethered fixed payments, or attempts to exclude the same dollars from taxation twice. Because of these similarities in terminology and marketing, SIMRP (Self Insured Medical Reimbursement Program) has occasionally been confused with such arrangements. This document clarifies how SIMRP operates under well-established provisions of the Internal Revenue Code and avoids the pitfalls the IRS has explicitly cautioned against.

## WHAT THE IRS HAS SCRUTINIZED

### 1. Circular Payments / Wage Recharacterization

Some programs reduce employee wages pre-tax and then reimburse the same amounts post-tax, without any connection to genuine medical expenses. The IRS has identified these as “sham transactions”, treating the reimbursements as taxable income and exposing both employer and employee to FICA liability.

### 2. Fixed Indemnity Plans

In IRS CCA 202323006, the IRS clarified that fixed indemnity or “wellness indemnity” payments (cash paid to employees regardless of actual medical expense) must be treated as taxable wages.

### 3. Double Dipping

Earlier schemes attempted to reimburse employees for insurance premiums that had already been paid pre-tax under a \$125 cafeteria plan. This effectively excluded the same dollars twice, which is expressly prohibited.

## HOW SIMRP DIFFERS

### Grounded in §105(b)

IRC §105(b) allows employer reimbursements for medical care expenses to be excluded from an employee’s gross income, as long as the expenses qualify under §213(d). This provision is what separates legitimate medical reimbursement plans from taxable cash payments or indemnity schemes.

In SIMRP, reimbursements are not untethered cash - they are specifically tied to §213(d)-compliant medical benefits such as telehealth, prescriptions, primary care, and counseling. Because the plan delivers defined benefits directly to employees, there is no requirement for employees to submit receipts for reimbursement. Instead, the plan itself substantiates that benefits provided are qualified under §213(d).

### No Untethered Cash

SIMRP does not distribute cash stipends or lump-sum payments. All reimbursements are tied to defined, pre-approved §213(d) medical benefits. This directly addresses the IRS’s concern in CCA 202323006 about payments unlinked to medical care.

### Participatory Wellness Framework

The program is designed under 42 U.S.C. §300gg-4(j)(3)(C), which permits participatory wellness programs to provide defined benefits without requiring employees to meet health outcomes. This reinforces compliance with ACA wellness program requirements.

### No Double Dipping

SIMRP does not reimburse premiums paid pre-tax. Instead, it pairs a compliant §125 salary reduction with a §105(b) non-taxable reimbursement to deliver medical and wellness services. Premiums are paid post-tax, preventing any double exclusion.

## WHY THIS MATTERS

**SIMRP is distinct from the types of arrangements the IRS has criticized because it:**

- Does not provide cash stipends to employees.
- Does not reimburse pre-tax premiums.
- Provides only bona fide §213(d) medical benefits.
- Operates under the statutory framework of §105(b) and ACA participatory wellness program rules.

## CLOSING NOTE

We respect and appreciate the IRS's role in issuing guidance such as CCA 202323006. These memoranda serve to protect both employers and employees by drawing a clear line between abusive designs and compliant benefit programs. SIMRP aligns with that mission by ensuring its structure delivers cost-effective, compliant benefits while avoiding the risks highlighted in past enforcement actions.

## REGULATORY COMPLIANCE & LEGAL FOUNDATIONS

The program is designed to comply with the Internal Revenue Code, including:

- **IRC §§ 105(b), 106(a), 213(d), 125, 104(a)(3), 1.105-11(i)**
- **ERISA, HIPAA, and ADA** regulations

Wellness plan guidelines under the **Affordable Care Act (ACA)**, specifically:

- **42 U.S. Code §300gg-4(j)(3)(c)** (Participatory wellness activity requirement)

It is also structured in light of **IRS Memorandum 202323006**, which warns against fixed indemnity wellness structures.

This plan **avoids taxable events** by using a compliant **WIMPER** model (Wellness Incentive Medical Plan with Employer Reimbursement).

## SUMMARY OF KEY TAX CODE REFERENCES

- **WELLNESS:** IRC §106(a), §213(d), §105(b), ERISA, HIPAA, ADA
- **MEDICAL:** IRC §213(d), ACA
- **PRE-TAX:** IRC §106(a), §213(d), §125
- **POST-TAX:** IRC §105(b), §213(d), 1.105-11(i), 104(a)(3)