

## **360 Advantage Frequently Asked Questions (FAQ)**

**Q: How is 360 Advantage compliant with the IRS and the Affordable Care Act (ACA)?**

**A: The 360 Advantage program is a Section 1.105-11, participatory plan, NOT an activity-based plan that reimburses employees for “claim” activities. The 360 Advantage program architecture is not attempting to mimic a qualified HRA model (like an HSA or FSA), where pre-tax dollars are being put aside in an account to fund medical claims. 360 Advantage utilizes a Section 125 Plan, where participating employees contribute to the plan using pre-tax dollars (which is 100% compliant with the Employee Retirement Income Security Act (ERISA) guidelines. Separately, employees are eligible under IRS 42 U.S. Code 300gg-4 (j)(3)(c) for a reimbursement of premiums from the plan, so long as they are participating in the plan during the plan year.**

**Q: How can 360 Advantage make the reimbursements based on the premium expense?**

**A: Because the 360 Advantage program utilizes codified treasury regulations that have been in place since the early 1980’s which in addition to Section 1.105-11 of the IRS Code include, by incorporating a Self-Insured Medical Reimbursement Plan (SIMRP) in conjunction with a Section 125-Cafeteria Plan.**

**Q: How does 360 Advantage ensure Compliance with IRS and ACA Guidelines?**

**A: The 360 Advantage program does NOT provide cash payments. All 360 Advantage programs ARE 213 (d) compliant, and documented by the Preventative Care Management document. 360 Advantage does NOT reimburse under Section-125; but, rather the Self-Insured Medical Reimbursement Plan (SIMRP, per Section 1.105-11 of the IRS Code. There are no indemnity products or services embedded in the 360 Advantage program. 360 Advantage has on-staff ERISA Attorney’s that draw up the documents to ensure compliance which include the Section-125 Cafeteria Plan, Self-Insured Medical Reimbursement Plan, and Preventative Care Management Plan. All pre-tax dollars contributed by employees are utilized for ONLY 213(d) eligible medical expenses, otherwise the funds are taxed. The 360 Advantage compliance team tracks, monitors and reports on all plan participant engagement, to ensure the necessary annual participation obligations under the plan are met.**

**Q: Why is the 360 Advantage an eligible pre-tax expense?**

**A: The premium contribution employees are making to the 360 Advantage wellness plan, through the Section 125 Plan is absolutely an eligible pre-tax expense as the services offered through the program are all 213(d) compliant, and well documented in the Preventative Management Care Plan Document drafted for each client by our ERISA Attorneys. The reimbursement of the premiums after tax is allowable and complies with IRS guidelines. Specifically, the 360 Advantage program reimburses employees through a Self-Insured Medical Reimbursement Plan (via Code Section 1.105-11), not a Section 125 Plan. Pursuant to code section 1.105-11 specifically k2, reimbursement of premium is allowable. The 360 Advantage program is a participatory program (not an activity-based program). See federal Register, Vol. 78, June 3, 2013, pg. 33,161. The 360 Advantage plan is an integrated 105-plan which requires a minimum of one activity per year. See 42 U.S. Code 300gg-4 (j)(3)(c)**

**Q: In the 360 Advantage Service Agreement, what does ATTENTIVE. LLC provide?**

**A: ATTENTIVE, LLC provides ACA compliance through the Preventative Care Management Program (PCMP) designed to improve the health of employees through preventative care designed to reduce the healthcare costs of employees which reduces the cost of paying for the employees healthcare to the employer.**

**Q: Does ATTENTIVE offer indemnification protection for the Employer and Employees?**

**A: Yes. The ATTENTIVE indemnification protection for the employer and employee is embedded in the language embedded in the Indemnification portion of the Compliance Agreement, which protects all parties which states: ATTENTIVE agrees to indemnify, hold harmless, protect and defend Client, all of Client's subsidiaries, affiliates and parent entities and their shareholders, agents, attorneys and employees from all claims, out-of-pocket expenses, reasonable attorney's fees and court costs, damages (including compensatory and punitive damages) and liabilities arising from or related to (i) acts, errors or omissions, (whether negligent or willful) by ATTENTIVE while performing Services under this Agreement; (ii) violations of any statute, law or regulation by ATTENTIVE's PCMP, Section 125 documents or SIMRP; or (iii) ATTENTIVE's failure to perform any of its obligations under this Agreement.**

**Q: Does the 360 Advantage Employer (e.g. The Client) mutually indemnify 360 Advantage?**

**A: Yes. ATTENTIVE states: The Client agrees to indemnify, hold harmless, protect and defend ATTENTIVE, all of ATTENTIVE's subsidiaries, affiliates and parent entities and their partners, agents, attorneys and employees from all claims, reasonable attorney's fees and court costs, out-of-pocket expenses, damages (including compensatory and punitive damages) and liabilities arising from or related to; (i) acts, advice, errors or omissions (whether negligent or willful) by Client or by an employee pertaining to performance under this Agreement; (ii) violations of any statute, law or regulation by Client or Client's employee; (iii) Client's failure to perform any of its obligations under this Agreement; or (iv) failure by Client to authorize or make payments due to employees under any law or under a policy or agreement with Client, such as pay for commission, bonuses, taxes, profit sharing, severance, other compensation, vacation or other paid time off. All indemnity obligations hereunder are without monetary limit and without regard to the cause thereof, including the negligence of either party, whether the negligence is sole, joint, comparative or contributory. If such indemnification is for any reason insufficient to hold the indemnitee harmless, the indemnitor agrees to contribute to the losses involved in such proportion as is appropriate to reflect the relative benefits received (or anticipated to be received) by each party with respect to the matters contemplated by this Agreement or, if such allocation is judicially determined to be unavailable, in such proportion as is appropriate to reflect the relative benefits and equitable considerations such as the relative fault of the parties. The indemnification provisions of this Agreement shall survive indefinitely the expiration or other termination of this Agreement.**

**Q: In order to be IRS compliant, the 360 Advantage program must bear some risk. What risk is being borne by the Client in the 360 Advantage program?**

**A: The 360 Advantage program requires participants to participate in the program during the plan year, otherwise, the premium reimbursements run the risk of becoming a taxable event for both the participant and the employer. This is clearly stated in the documentation completed by the company and employees during open enrollment.**

**Q: In order for the 360 Advantage program to be compliant it must align with the Economic Substance Doctrine. How does the 360 Advantage plan comply?**

**A: In the 360 Advantage plan, when a plan participant contributes to a Section 125 Plan (paying premiums on a pre-tax basis), that premium contribution must be substantiated. Under the 360 Advantage program, the \$1,150 per month contribution of the employee meets the IRS's Economic Substance Doctrine requirements. The pre-tax contribution employees are making to the 360 Advantage plan is determined based on the actuarial value of having 10 clinically developed, digital therapeutic support programs at your fingertips 24/7/265.**

**Q: Why is 360 Advantage not considering reimbursing medical expenses?**

**A: The client, under the rules of self-insurance becomes the entity that is being reimbursed for a payment directly to the health service provider. Employees are eligible under IRS 42 U.S. Code 300gg-4 (j)(3)(c) for a reimbursement of premiums from the plan, so long as they are participating in the plan during the plan year. Reimbursements made to members of the 360 Advantage plan are not as a result of them enrolling in a "fixed indemnity insurance policy". Not every employee is eligible for the 360 Advantage plan. The employee must qualify, for example, in making enough salary annually to qualify.**