

Attentive Health & Wellness, Inc.  
Due Diligence Work



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Dear Business Executive

At John's Koons request, I performed due diligence work on the Attentive Health and Wellness, Inc. (Attentive) program. The items to review were, (1) does this program actually comply with IRS regulations, (2) will it cause any effect on an employee's future Social Security Benefits from the reduction in FICA and Medicare Wages, and (3) is the program a little too good to be true. Let me cover each potential question.

### **Reduction in Social Security Wage Base and Effect on Future Benefits**

A fairly detailed study was performed to gauge the effect of the reduction of a social security wage base over an extensive number of years of participation. We used the Social Security Administration's online benefits calculator to determine the base amount of benefit that an employee would receive and then calculated the effect on the amount of the benefit with the reduced amount of FICA wage base over an extended period. The entire testing package with the assumptions and calculations can be provided upon request. As a quick summary the effect would be minimal. The reduction in future social security benefits to be received in later years when eligible to draw them, does not come close to equaling the amount of future annual tax reductions to be received under this wellness program.

## Compliance with IRS Regulations

To satisfy ourselves with this question, Attentive provided various documents and legal opinions for our review. The documents provided were as follows:

Wellness Program Plan Document- Attentive - (20 pages)

Self-Insured Medical Reimbursement Plan- Attentive- (20 pages)

Section 125 Basic Plan Document- Attentive- (15 pages)

Legal Opinion on the Program provided to Attentive from a national east coast law firm- Whiteford, Taylor & Preston LLP (7 pages)

Tax Opinion Reliance Letter- Whiteford, Taylor & Preston LLP -(3 pages)

Legal Notification -AFLAC (1 page)

Based upon review of all the above documents and the interworking of the plans; the program would be in compliance with current IRS Regulations. This wellness program also discusses the benefits that are not permitted to be included in the plan under the IRS regulations. Therefore, these items are not listed in the benefits available. There is no intent to include them in the program in the future. (Cash awards, and gym and health club membership are a few items that cannot be included).

## Program too Good to be True

This item was the most difficult for me to clear. John will tell you that I asked a lot of questions. As a businessman myself and a prior managing partner of a 50 + employee firm, delving into programs like this is something that I am very familiar with. Past experience has demonstrated, that the best way for me to analyze a program, is to prepare the accounting entries. I not only do that for the first year but for five to ten years down the road. If the information is not clear enough to be able to perform these calculations and prepare the entries, I try to obtain expanded information in order to understand how the program is to work.

I have had many clients who have engaged my firm over the years, to look at the interworking of all kinds of programs. When working the numbers or viewing the charts provided by the vendor, there were some that just did not work and or correspondence to how the program was presented. I let my client know my conclusion, provided all my work and facts, and welcomed the vendor to disprove my analysis. Most were not able to do this. My client, then decided not to go forward or get involved.

My firm had a national specialty of auditing and providing consulting services for a lot of credit unions. There was one vendor that was trying to sell a supplemental executive retirement plan to a few of my clients. To be honest, this plan was junk. The plan did not properly illustrate some of the out-year problems that would occur, and was frontloaded with a lot of commissions for the vendor. The commission answer I had to drag out of them, it would not have been disclosed without the questioning.

This program might have worked for a bank. However, credit unions are tax exempt, so none of the tax savings assumptions outlined were valid. After shooting them down with several clients, they started asking the client who their auditor was before even trying to make a presentation.

There were a few clients that this vendor had sold their product a year or two before that particular credit union, became an audit client of our firm. When we showed the credit union management, the falsehoods provided in the presentation they received and how the assumptions would not work, it got ugly. The vendor, if the credit union requested, generally backed down and made the credit union whole including refunds. I do not know what happened to the commissions already paid out to the salesperson. Not my problem.

Why have I gone through this discussion? It is to let you know that if I did not think this program would work, I am not afraid to say so. As I said before it took a little longer for me to feel comfortable with this part of the program. If the marketing of the program had been handled or communicated differently at the beginning, and some of the items that I learned by asking questions were made known up front, I would have been convinced a lot sooner.

I agreed to outline to John the problems that I had and how they were solved so that you as a business executive can gain the benefit of this prior due diligence and can eliminate any concerns more quickly about the “is this too good to be true” hurdle.

I saw the tax saving potential available to the employee, related to the benefit cost deducted from the employee, and the pay back reflected in the same pay period on the paystub.

This treatment is permissible under the IRS Regulation code Sections 105, 105-11, 106(a), 125, 132, and 213(d) by incorporating Treasury Revenue Ruling 2002-3 using code section 104 (a) (3). The reversible reimbursable tax savings is based upon Section 104 (a) (3) of the code. Section 105-11 allows for the reimbursement of the premium, which is currently \$880 for a person not married and \$1,125 for a married person. This program is complicated but is an approved IRS program.

I also saw the cost saving benefit available to the employer by not having to pay the matching portion of the FICA and Medicare tax for the wages shifted into a pre-tax category. You need all the IRS code sections previously cited to enable this wellness program to work in this fashion.

What I had a hard time understanding is who pays for the benefit cost of the plan. I had the sheet of the actuarial value of the monthly benefits available to employees that could be provided through the Attentive Wellness Program. This amount was listed at \$1,711 per month. (Sheet attached).

The determination of this value is necessary to establish the validity of the wellness charge for the program; discussed above. The current fees for this program have been set at \$115 per month; \$80 for the employee and \$35 for the employer. This is not even close to the \$1,711 value, so my question still remained who makes up the cost difference and when does this occur. It is not coming from the employee. The Plan documents also indicate that the employer will bear all costs of the plan. So, when does the employer get billed for the other costs? At the end of each month and or the end of the year? When? **The answer is never.**

My next question is then, how is that possible? Attentive is able to price the admin fee at \$115 per month rather than some amount in between \$115 and \$1,711 because the \$1,711 amount represents the estimated cost if every employee utilized every service every month. The usage percentage varies by service and each service has a different cost. Some of the past usage percentages provided were 2% and 4%.

Attentive also indicated that one of their clients has had close to a 40% usage for one of the services included in the package of benefits. There is an advantage of averaging and spreading this usage percentage across a sizeable number of employees from various employers. If I apply that average percent of usage to the monthly value, the cost estimate is reduced down to a range of \$34.22 to 68.44. I am making this calculation simple, but it justifies and answers my question.

While this has not occurred in the last few years, if the program costs and usage percentages go up in the future, then the monthly fee will be anticipated to increase. Since most employers are operating under a fixed one-year monthly fee, they have the ability to choose whether they want to continue in the plan or discontinue, when the cost of the next year's or subsequent years fee is determined and announced.

My question then is why not highlight and demonstrate this linkage factor more clearly. This feature is what makes the program work. As stated before, you have to have a higher monthly actuarial cost to make the tax savings worthwhile in compliance with the IRS regulations. Why not indicate the monthly fee is lower because the actual usage level permits this.

Two final thoughts to insure proper disclosure.

### IRS Audit

If the program should ever be subject to an IRS audit, it would be the responsibility of Attentive to defend how the plan complies within the IRS regulations. Any costs associated with this IRS audit, by law cannot be considered an expense of the plan.

### Conversion of individual employee's cost saving to an annual saving basis.

Attentive will provide a chart of anticipated monthly employer cost savings. A quick overview is provided below based upon the currently established monthly program costs and administration fees.

Family Coverage \$1,125      FICA/ Medicare Savings 7.65% = 86.06  
Plan charge 35.00; net monthly savings 51.06; Annual savings \$612.72

Employee only Coverage \$800 FICA/Medicare Savings 7.65% = 61.20  
Plan charge 35.00; net monthly savings 26.20; Annual savings \$314.40

To expand, the potential annual savings for an employer having 50 employees with half obtaining each type of coverage:

Family \$612.72 X 25	\$15,318.00
Single \$314.40 X 25	7,860.00
Total savings	\$23,178.00



These savings would translate into positive cash flow and also to an increase to your bottom-line net income.

Under proper disclosure, we should indicate that the employer will also be responsible for the administrative costs to facilitate the wellness program. However, it is our belief that this program should not cause an increase in staffing levels or payroll costs, unless overtime had to be paid during the enrollment and set-up part of the process.

## Conclusion

We hope that this discussion helps to eliminate any questions that you may have related to the plan. We also hope that we have demonstrated how the plan works and the source of the funds that hit the bottom line. This program is a win, win for both the employee and the employer. My past business experience is that programs like this help to cement the employer- employee relationship as well as improving employee morale, because the employee will view it as another way of looking out for their best interests.

I am sure that John will let me know if any prospective users have any questions that come up that he cannot answer, and or pass on any questions related to the information contained in this memo.



David Legge, CPA, CRP, CFA, CBM

LeggeGroup

September 30, 2020

Below is the actuarial value of the monthly benefits provided to employees through the Attentive Wellness Program. The values are below with the documentation sources for each cost.

**Dashboard**

HRA

\$25 (includes results and road  
To wellness).

*Dee Edington, director of University of Michigan Health Management Research Center,  
25th Annual Wellness in the Workplace Conference, University of Michigan*

Past, Present, Future Risks for 12 common and 50 less common.

Personal Medical Records tab

**Coaching**

\$150

*Health Coach Solutions: "How to Price Your Health Coaching Programs"  
Kathleen LeGrys, May 10, 2017.*

**Telemedicine**

\$160

"Primary care visits available to most uninsured, but at a high price"  
*Date: May 4, 2015 Source: Johns Hopkins University Bloomberg School of Public  
Health. Summary: Uninsured people in the United States don't have any more difficulty  
getting appointments with primary care doctors than those with insurance, but they get  
them at prices that are likely unaffordable to a typical uninsured person, according to new  
research.*

Mobile device app.

\$ 4

Risk resolution Guidelines.

Included above

Road to Wellness

included above.

**F365 Addition Program**

\$416

*Addiction Cener: Brought to you by Delphi Behavioral Health Group*

**Couplewise counseling Program**

\$142

*Healthcare Bluebook*

*Individual Psychotherapy (45 Minutes)*

**Hope 80/20 Diabetes Program**

\$650

*Source: California Technology Assessment Forum: Diabetes  
Prevention Programs: Effectiveness and Value, May 9, 2016  
Pg. 54, 58*

Prescription questions

\$49

Support for diagnosis and questions

\$49

Patient family education

\$49

Alternative Care Recommendations

\$49

Explanation of benefits coverage

\$49

Locate in-network providers

\$49

*LiveHealth Online of Health Management Corporation. 2018.*

**TOTAL MONTHLY VALUE OF ATTENTIVE PROGRAM \$1,711Blog**