Regulatory and Compliance Issues with Employer On-Site Clinics

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Agenda

- Introduction
- On-site Clinic Considerations and Decision Points
- Compliance Issues Related to On-site Clinics
  - ERISA
  - COBRA
  - HIPAA
  - HSAs
  - Other Laws
The Perfect Storm
Factors driving the resurgence of on-site clinics

- Contributors to the popularity of on-site clinics
  - Increasing employee out-of-pocket costs
  - Employees face heavy stressful workloads
    - Less willing to leave worksite
  - Providers are hurried, distracted
    - The 5-10 minute office visit
  - Limited access to care, shortages of PCPs
  - Non-compliance approaches 50%
  - The Sick-care Delivery System
    - Incentives poorly aligned

- Demographics
  - Aging workforce
  - Higher chronic disease prevalence
    - Hypertension
    - Heart disease
    - Diabetes
  - High cholesterol
  - Depression
  - Arthritis

- Lifestyle Risks
  - Obesity, Inactivity, Stress

The Next Wave
How Common are On-site Clinics?

Source: Mercer/Marsh Survey on Health, Productivity and Absence Management Programs 2007
On-site Clinic Considerations and Decision Points
On-site Clinic Considerations

- Key decision points in assessing the feasibility of an on-site health clinic
  - Who should be eligible to use the clinic?
  - What costs underlie an on-site clinic?
  - Should there be a charge for services?
  - What services should the on-site clinic offer?
  - How should the clinic be staffed and managed?
  - What are the benefits of an on-site clinic and how should they be measured?
  - Should the clinic be a dedicated on-site facility or contracted offsite with an existing or proposed retail clinic?
On-site Clinic Services
What to offer and how to position

- Treat primary and urgent care needs to reduce costs and absenteeism, and improve productivity
- Referrals to high quality community physicians and specialists when outside care is required
- Drive preventive health and wellness programs to manage health risks and maximize member benefits
- Provide health coaching and care management serve as on-site information/education center, incl RA review
- Dispense commonly prescribed prescription drugs to improve generic use and formulary compliance
- Provide initial on-site mental health triage, counseling and integration with EAP services
- Treat and manage travel medicine program to minimize direct medical costs and lost work time
- Build employee loyalty, morale and well-being
Staffing and Managing an On-site Clinic

Predominant management models

- **In-House**
  - The clinic is managed directly by the employer and clinic staff are hired and paid by the employer as its employees.

- **Hybrid**
  - The employer contracts medical services from a local clinic or health care institution but manages business operations itself.

- **Outsourced**
  - The entire enterprise is outsourced to a third-party vendor or management company that controls all clinic operations and employs all clinic personnel.

When choosing a model, consider what makes sense for you and the risk your organization is willing to absorb.
On-site Health Services
Potential benefits from employer onsite clinics

- Reduced lost work time and absenteeism
- Avoidance of higher cost and time consuming settings (e.g., ERs)
- Reduced referrals to and use of costly services from specialists
- Reduced general and work-related health costs, particularly in claims for workers’ compensation as well as non-occ disability
- When combined with an onsite pharmacy, improved generic and therapeutic substitution and greater formulary compliance
- Lower medical trend amongst members who use the onsite clinic
- Improved employee morale, retention and productivity
Compliance Issues Related to On-site Clinics
Compliance issues related to on-site clinics

ERISA

- Is an on-site clinic an ERISA plan?
  - General rule is broad
    - ERISA plans include any plan or program established by employer to provide health, disability or certain other benefits
  - First-aid exception

- If the clinic is an ERISA plan, what must an employer do?
  - Plan document
  - Summary plan description
  - Form 5500

- A cautionary note for certain employers
Compliance issues related to on-site clinics

COBRA

- Is an on-site clinic subject to COBRA?
  - General rule is also broad
  - Most employers sponsoring group health plans must offer COBRA continuation coverage
  - Another first-aid exception

- Implications if the clinic is subject to COBRA
  - Back-door access to the group health plan
  - Front-door access to the clinic
  - Side-door alternative for individuals not permitted on premises?
Compliance issues related to on-site clinics
HIPAA portability

- Is an on-site clinic subject to the HIPAA portability rules?
  - General rule
    - Portability rules apply to most group health plans
      - Limit application of pre-existing condition exclusions
      - Require certificates of creditable coverage
      - Establish special enrollment periods
      - Prohibit plans from discrimination based on health status
  - On-site clinic exemption
    - Ask yourself: Where are the benefits coming from?
Compliance issues related to on-site clinics
HIPAA administrative simplification

- How do the HIPAA administrative simplification rules apply to on-site clinics?
  - Privacy, security and standardization of health data
  - Only apply to covered entities
    - health plans
    - health care providers
    - health care clearinghouses

- Is an on-site clinic a HIPAA health plan?
  - Probably not.

- Is an on-site clinic a HIPAA provider?
  - Depends.
  - As yourself: Does the clinic (or any of its providers) transmit health information electronically?
Compliance issues related to on-site clinics
A short course on health savings accounts (HSAs)

- General HSA rule
  - Employees can’t contribute to an HSA if have medical coverage other than through a qualified high-deductible health plan (HDHP)

- Is eligibility to use an on-site clinic considered non-HDHP medical coverage?
  - Recent IRS guidance confirms that on-site clinics won’t disqualify employees from making or receiving HSA contributions, as long as the services provided aren’t significant medical benefits:
    - Free physicals
    - Immunizations, allergy and other shots
    - Dispense aspirin and other nonprescription pain relievers
    - Treat work-site injuries
Compliance issues related to on-site clinics

Other laws

- Americans’ with Disabilities Act (ADA)
- State licensing laws
- State or federal laws governing confidentiality of medical records may apply even to HIPAA-exempt clinics
- Occupational Safety and Health Administration standards
- Local and/or state health department rules
- Laws regulating laboratories and specimen handling
- Laws applicable to medications and handling biologicals
- Tax rules

Don’t be overwhelmed!
Discuss these issues with your legal counsel.
Questions?
Contact Information

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