The Future of On-Site Health Care: Trends and Compliance Land Mines

Katy Stowers
Advisor and General Counsel
FirstPerson
Indianapolis, Indiana

Paul Ashley, CEBS
Advisor
FirstPerson
Indianapolis, Indiana
The past

- Large (5,000+)
- Single site only
- Manufacturing industry centric
- Occupational health focused
- Hospital or health system facilitated
The present

• Down market to 500-4,999 employees
• Shift to preventive and general care
• Some wellness solutions included
• Independent clinic management (not affiliated with hospital or healthy system)
The future

- Continue down market even to less than 100 employees
- Advocacy and consumer support tools added
- Medial home concept: wellness integration and population health management
- Shared and near-sight models
- Telemedicine (many states have limitations)
Clinics are in demand

- 15% of employers with 500-4,999 workers had an on-site clinic
  - Another 11% plan to add one by the end of 2014
- Limited access to care and shortage of PCPs
- Self-funding driven by health care reform is making clinics more attractive

Other pressures

• A way to reduce health care costs through a controlled provider source
• Direct response to narrow networks or employers who choose to drop plans
• Clinic care can be an attractive job perk to attract and retain top-notch employees
• On-site clinics encourage healthier, more engaged and productive employees
On-site care capabilities

Risk Stratification

Data Integration

Occupational Medicine

Acute and Preventive Care

Clinical Steerage

Wellness and Coaching

Chronic Disease Management
Acute care

• Episodic, urgent care
  • Upper Respiratory Infections (bronchitis)
  • Gastrointestinal (gastritis, diarrhea)
  • Musculoskeletal (sprains, strains)
  • Allergy (hay fever)
  • Dermatology (rash, acne)
  • Psychological (insomnia, depression, anxiety)

• Identify gaps in care
Evidence-based medicine

- Greater use of generic medications
- Less specialty referrals
- Appropriate diagnostic studies and procedures
Price transparency and steerage

- Brings TPA, carrier, and independent transparency tools to life
- Common areas of savings include MRI, CT Scan, and colonoscopy
- Price variations can be up to 300%
- Medical clinic acts as patient advocate
Member risk stratification

Strategy
- 20% of population spends 80% of health care dollar
- Predictive modeling—target high risk members
- Significant reduction in health care spend
  - Cardiovascular
  - Musculoskeletal
  - Oncology
  - Other
Patient centered medical home

• 70% of health care dollar is spent on chronic disease care
  • Diabetes, heart disease, asthma, arthritis
• Requires coordination of care
• Work with member’s PCP and specialists
• Close gaps in care
Wellness and coaching

Objective

• Modifying health risks through healthy behaviors
• Target high-risk member population
• Provide coaching in clinic
• One-on-one coaching
  • Motivation
  • Nutrition
  • Fitness
  • Stress management
Where does compliance come into play with on-site clinics?

- Because of the many benefits, on-site clinics are increasing in popularity.
- Employers installing clinics often do not look at these as benefit plans, and do not consider technical legal compliance or coordination with other employer-sponsored plans.
- Regulatory guidance is scant; often seems inapplicable.
Do clinics create unique compliance obligations?

Is the on-site clinic a group health plan?

• The answer might be NO if . . .
  • The clinic provides only “treatment for minor injuries or illness”
  • “Rending of first aid in case of an accident during work hours”

• But it’s probably YES if . . .
  • Any medical care beyond this narrow example is likely sufficient to create a group health plan
Why does it matter?

- On-site clinics that are health plans are subject to the same federal regulatory structure as any other employee welfare benefit plan providing health benefits. These include:
  - ERISA reporting and disclosure requirements
  - COBRA’s requirements
  - Internal Revenue Code requirements
  - Coordination with HDHP requirements if intent is to preserve ability to make HSA contributions
Some exceptions

• HIPAA portability and privacy
  • On-site clinics are subject to an exemption under HIPAA
  • Still necessary to coordinate with clinic provider so that PHI can be exchanged with employer’s health plan

• Affordable Care Act (aka Health Care Reform)
  • Because on-site clinics are treated like “excepted benefits” as defined under HIPAA, clinics are not required to comply with Affordable Care Act mandates such as unlimited annual and lifetime benefits, eligibility for adult children, and the preventive care mandates
What steps must an employer take to address on-site clinic compliance issues?

• You’ve planned to install an on-site clinic and want to stay in compliance with federal law. What now?
  • Start with “low hanging fruit”—determine where documentation, reporting, and COBRA can be combined with major medical plan
  • Examine eligibility to determine where existing plans already align and where economies of scale may be gained
ERISA

- Incorporate the clinic into the group health plan document and SPD
  - Options
    - Wrap plan document that incorporates clinic as part of group health plan
    - Separate plan document and SPD describing clinic benefits—generally necessary when there are eligibility or coverage differences that make it difficult to document in combination with major medical plan
  - File Form 5500 (if plan doc is separate) or incorporate into current 5500 filing
COBRA

- Include clinic as a benefit in the initial COBRA notice and election (if included with major medical plan)
- Offer separate COBRA initial notice and election for clinic plan if offered as a stand-alone benefit
- Determine whether separate COBRA election (clinic only) should be offered
HIPAA

- Exempt from certificate of creditable coverage and other portability requirements
- Exempt from direct compliance with HIPAA privacy and security
  - Be certain that clinic provider takes precautions to comply with HIPAA privacy and security requirements in handling PHI
  - Practical HIPAA questions inevitably arise at worksite
  - Ideally, put proper safeguards and processes in place to share data with employer’s medical plan
Does the clinic impact an employer’s high deductible health plan?

- An on-site clinic is health coverage that could negatively impact consumer-driven health strategies already in place, because the clinic may provide first-dollar coverage that is not permitted for individuals making HSA contributions.

- Coordination with an HDHP/HSA arrangement is necessary to avoid potential adverse tax consequences.

- Negative tax impact of offering clinic alongside HSA contributions can impact both employer and employees.
Does the clinic impact my high deductible health plan?

How do I know if our clinic provides first-dollar health coverage?

• Determine whether benefits are “significant care in the nature of medical care” in addition to preventive care
  • Services beyond worksite first aid and treatment of minor injuries would likely constitute “significant” medical care
  • Common clinic services—such as acute care, annual physicals, X-rays, laboratory testing, dispensing prescription medicines, and drugs—likely cross the line into first-dollar coverage
Does the clinic impact my high deductible health plan?

Does this mean that my company cannot offer these services at our clinic alongside an HDHP and HSA contributions?
No. But compliance with IRS rules for HDHPs is a must.

- Charge “fair market value” for treatment received at the clinic up to the minimum allowable deductible
- What is “fair market value”?
  - IRS guidance does not address in the context of clinics
  - Use network methodology
Compliance strategies

• Be proactive
  • If using a consumer-driven strategy, partner with a clinic provider who can collect payment at point of service, take other steps to coordinate with HDHP
  • Design eligibility in a way that will make administration of COBRA easier
  • Use a wrap document to combine all welfare plans, including the clinic
    • Meets ERISA’s plan document/SPD obligations
    • Allows for a single Form 5500 filing
Thank you!

Questions?