

FAQs: Onsite Clinics and Regulatory Compliance

Question 1: Are onsite clinics considered to be employee welfare benefit plans subject to the regulatory requirements of the Employee Retirement Income Security Act of 1974 (“ERISA”)?

Answer: As with all legal questions such as this one, we recommend consultation with qualified benefits counsel to answer this question for your company. However, we believe that onsite clinics most commonly offered in the current marketplace to private employers (other than governmental entities and churches) are group health plans subject to ERISA. There is a very limited exemption in ERISA for employer-provided clinics providing first aid for work-related injuries and treatment of minor injuries or illness. Current onsite clinic offerings go well beyond the limited exemption by providing access to a broad range of medical care for employees and dependents: primary care (such as annual physicals and wellness visits), acute care, laboratory tests and certain prescription medications.

Question 2: What obligations does ERISA imposed on welfare benefit plans also apply to an onsite clinic that is a group health plan as described in Q&A 1?

Answer: Obligations for ERISA compliance for an onsite clinic are very similar to the requirements imposed on employer-provided health coverage. These include:

- Adopting a written plan document
- Drafting and distributing a Summary Plan Description (“SPD”) to clinic participants
- Filing Form 5500 on an annual basis (for clinics with 100+ enrolled employees)
- Complying with COBRA’s notice and continuation of coverage provisions

Question 3: What steps do employers commonly take to comply with the plan document and SPD requirement?

ANSWER: A common solution to the plan document and SPD requirement is to incorporate the onsite clinic benefit into the employer’s ERISA-compliant group health plan document and SPD. This can be done through use of a “wrap” document and “wrap” SPD. A wrap document incorporates the insurance policies, benefit summaries, certificates and other documents reflecting something the welfare benefit plans of the employer into a single plan. It also includes required disclosures, such as the COBRA general notice and Statement of ERISA Rights. Should you choose this solution, you should work with your company’s benefits advisor and/or benefits counsel to develop a wrap plan document and SPD.

Question 4: What must an onsite clinic do to comply with COBRA?

ANSWER: The COBRA obligations for an onsite clinic are the same as any group health plan sponsored by a private employer with 20 or more employees. These include:

- Distributing an initial notice of COBRA rights to all participants
- Providing a general COBRA election notice when a qualifying event occurs
- Setting the monthly premium for COBRA coverage within regulatory guidelines
- Allowing all qualified beneficiaries (including employees and dependents) to continue coverage in accordance with COBRA’s rules

It is important to note that employers may combine COBRA administration of the onsite clinic with COBRA administration for its health, dental and vision plans that are also subject to COBRA.

Question 5: Is an onsite clinic subject to HIPAA’s special enrollment rules and HIPAA’s privacy and security rules that govern health plan PHI?

Answer: Under current regulatory guidance, onsite clinics generally fall into a category called “excepted benefits” under the Health Insurance Portability and Accountability Act (“HIPAA”). As excepted benefits, onsite clinics are exempt from HIPAA’s portability requirement, which means that HIPAA’s special enrollment rules and the requirement to issue creditable coverage certificates do not apply. In addition, as an excepted benefit, an employer’s onsite clinic is exempt from direct compliance with HIPAA’s privacy and security regulations. However, as providers of medical care, onsite clinic providers are HIPAA “covered entities,” and must fully comply with HIPAA’s privacy and security regulations in use, disclosure and maintenance of the protected health information (“PHI”) of an employer’s employees and dependents who receive onsite clinic services. It is also important to note that because onsite clinic providers are HIPAA covered entities, appropriate confidentiality agreements are required before the clinic may share clinic PHI with an employer’s group health plan if data integration is desired.

Question 6: Must an onsite clinic comply with the Affordable Care Act’s eligibility and coverage mandates?

Answer: No. As HIPAA “excepted benefits,” onsite clinics are not required to comply with ACA mandates (such as the elimination of annual and lifetime dollar limits and the requirement to allow adult children to participate).

Question 7: My company offers a high deductible health plan (“HDHP”) and encourages employees to contribute to individual health savings accounts (HSAs). Does offering health care at the onsite clinic impact employees’ eligibility to contribute to HSAs?

ANSWER: The answer to this question depends on the scope of services offered by the onsite clinic. When an onsite clinic offers services that are very limited (first aid and treatment of worksite illness and injuries), the clinic will be exempt from ERISA and will not be considered health plan coverage that must coordinate with HSA eligibility. (See Q&A #1 for more information about this limited exemption). In addition, if the onsite clinic’s services are limited to preventive care, dental and vision, the onsite clinic will not impact HSA eligibility. However, if an onsite clinic offers broader coverage – “significant care in the nature of medical care” as stated in IRS guidance – coordination with IRS rules to preserve HSA eligibility is required. We believe that the broad scope of services provided under most onsite clinic models (including services such as preventive care, annual physicals, acute care, laboratory services, and prescription drug services) are health plan benefits that are significant and rise to the level of a group health plan. This means that the clinic is a health plan that impact HSA eligibility, and steps must be taken to address IRS guidelines applicable to HDHPs and HSAs.

Question 8: Are employers with HDHP/HSA strategies prohibited from implementing an onsite clinic with a broad scope of services?

Answer: No. Onsite clinics can be coordinated with an employer’s HDHP in a way that preserves employees’ eligibility to contribute to individual HSAs. To make this work, we recommend consultation with your benefits advisor, your benefits counsel and/or tax advisor to put steps in place to preserve HSA eligibility. Key to these steps include working with your company to determine, based on the cost of providing services, the “fair market value” for onsite clinic services that are not preventive in nature. Participants visiting the onsite clinic will pay out of pocket for nonpreventive services received from the clinic based on the fair market value determination, up to the minimum deductible for a qualifying HDHP or a higher amount as determined by the employer.

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