The Working Clinic

brought to you by AMD Global Telemedicine

HDHP/HSA Solution and Compliance Considerations

We Have Your HDHP/HSA Solution

***The Working Clinic*™ performs many services that are not considered to be at risk of making HDHP-participants ineligible for tax deductible HSA contributions. These services include medic health risk assessments, physician HRA reviews, periodic health monitoring activities, minor treatment of injuries and illnesses, and wellness counseling.**

However, when an HDHP-participating employee visits *The Working Clinic™* and completes a doctor visit with a diagnosis and prescription, this service could be interpreted as “significant” or greater than ‘minor treatment of illness or injury’ and if the patient pays nothing out of pocket for the visit, could put the HSA contributions’ tax deductibility status in jeopardy.

When an employee completes a doctor visit with a diagnosis and prescription, this service could be interpreted as “significant”.

In those cases we can charge a normal market fee (typically $40) to avoid risking pretax benefits of the HSA contributions.

These charges can be paid by using an HSA program’s “flex-pay” card or similar program.

So – in order to eliminate risk of losing tax-deductible status, *The Working Clinic™* does the following:

1. The employer, as part of its regular monthly enrollment report, must report which employees are participating in its HSA program. This information is recorded in the patient's electronic medical record.
2. When a physician sees these patients for a diagnostic visit with prescription, the patient will be charged a nominal market rate fee (typically $40) to their credit card at the visit.
3. The client will receive a credit against its monthly fee.

HSA-participating employees cannot receive “significant benefits in the nature of medical care” with “first dollar covered” while remaining eligible for tax deductible contributions by employee or employer under and HDHP plan. IRS examples for “significant benefits in the nature of medical care” are shown only as extremes; *The Working Clinic™* fits in the middle. On that basis alone, the customer together with their counsel could choose their risk tolerance based on their interpretation and research on the matter.

Also to consider …

Under ERISA, “facilities for the treatment of minor injuries or illness or rendering first aid in case of accidents occurring during working hours” do NOT give rise to an employee welfare benefit plan. Why is this important? If the client determines the clinic services go above and beyond the definition above, IRS Code §223(c)(1)(a) generally prevents HDHP covered employees from contributing to an HSA with tax deductibility if they are covered under another health plan (ie the clinic) that is not an HDHP .

Based on a recent study, we learned 30% of companies with on-site clinics believe their free on-site clinic services do not compromise tax deductibility of HSA contributions while70% of companies are taking measures that indicate free on-site clinic services do compromise status.

IRS Q&A – Significant Benefits in the Nature of Medical Care

Q-10. Is an otherwise eligible individual who has access to free health care or health care at charges below fair market value from a clinic on an employer's premises an eligible individual under § 223(c)(1)?

A-10. An individual will not fail to be an eligible individual under § 223(c)(1)(A) merely because the individual has access to free health care or health care at charges below fair market value from an employer's on-site clinic if the clinic does not provide significant benefits in the nature of medical care (in addition to disregarded coverage or preventive care).

Example 1. A manufacturing plant operates an on-site clinic that provides the following free health care for employees: (1) physicals and immunizations; (2) injecting antigens provided by employees (e.g., performing allergy injections); (3) a variety of aspirin and other nonprescription pain relievers; and (4) treatment for injuries caused by accidents at the plant.

The clinic does not provide significant benefits in the nature of medical care in addition to disregarded coverage or preventive care.

Example 2. A hospital permits its employees to receive care at its facilities for all of their medical needs. For employees without health insurance, the hospital provides medical care at no charge. For employees who have health insurance, the hospital waives all deductibles and co-pays.

Because the hospital provides significant care in the nature of medical services, the hospital's employees are not eligible individuals under § 223(c)(1)(A).

Compliance Considerations

Employers sponsoring on-site clinics or telemedicine benefits encounter compliance obligations similar to those they encounter with other employer-sponsored welfare benefits. None of these issues are insurmountable, but the employer should be aware of them. Compliance issues employers will want to consider, with the assistance of knowledgeable legal counsel, include the following:

ERISA Compliance

ERISA establishes a compliance framework for employer-sponsored medical benefits. Among other things, ERISA dictates that these benefits must be set forth in a written plan document, that various disclosures must be made to participate, and that the employer files general information about the plan with the government. When ERISA applies, some employers will want to treat the telemedicine benefit as part of the employer's larger health plan. Doing so will help the employer meet its ERISA requirements without creating additional documents, disclosures, or filings. If helpful, we have sample language that can be included in your plan document for achieving the necessary compliance requirements.

COBRA Compliance

COBRA requires group health plans to provide participants and beneficiaries with the right to continue receiving benefits under their existing plan after certain triggering events, such as a termination of employment or a divorce, which can cause the participant of beneficiary to lose eligibility. To the extent COBRA applies, employers will have to consider if and how to meet their COBRA obligations in light of the particular clinic or telemedicine benefit. In addition to determining how much to charge for COBRA and communicating COBRA rights, employers may need to consider how to provide clinic or telemedicine access to COBRA beneficiaries. Telemedicine programs are unique in that they can allow care access to former employees, for example, without the physical presence of the clinic.

HDHP Compliance

Employers (and the employee) who participate in a high deductible health plan (HDHP) have the option to make pretax contributions to a health savings account (HSA). Funds in the HSA can then be used to pay for medical expenses. To be able to make HSA contributions, however, the health plan member cannot receive "significant benefits in the nature of medical care" for free. When an employee completes a doctor visit with a diagnosis and prescription, this service can be interpreted as "significant". In those cases Medicine at Work™ can charge a normal market fee (typically $40) to avoid risking pretax benefits of the HSA contributions. These charges can be paid by using an HSA program's "flex-pay" card or similar program.

Resources:

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