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As counsel for Crawford Advisors’ Employee Benefits and Executive Compensation Group, Mr. Haynes advises employers and plan sponsors in a variety of health and welfare benefit plan compliance matters, including, but not limited to, tax qualification and other Internal Revenue Code issues, ERISA, COBRA and HIPAA portability and privacy issues. Mr. Haynes lectures frequently and has published many articles on health and welfare benefit plan compliance topics.

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Temple University School of Law, LL.M.
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Agenda

1. ERISA
2. COBRA
3. HIPAA Portability & HIPAA Privacy & Security
4. Health Savings Accounts (HSAs)
5. Tax Considerations
6. Questions?
Reasons Employers are Considering Onsite Health Clinics

- The biggest reason employers are considering opening an onsite health clinic are the rising health care costs.

Benefits to Employers:

- Improved health and productivity on the job
- Reduced absenteeism
- Reduction of emergency room visits, hospitalizations and medical claims
- Compliment employers wellness, disease management and preventive care programs
- Reduction of referral use and costly services from specialists
- Boost employee retention, recruitment and morale
Onsite Clinic Saving Opportunities

Onsite Clinic

Lead to Savings

Medical Costs
Prescriptions
Workers Compensation
Disability
Lost Time
In addition to start-up and operating costs, many employers and vendors are unaware of the welfare benefit implications of providing employer-provided onsite health care facilities. There are compliance issues and concerns that need to be well-thought-out if opening an onsite health care facility.
Understanding the Risks and Staying in Compliance

- Design considerations affecting compliance

- Compliance issues
  - ERISA
  - COBRA
  - HIPAA portability
  - HIPAA Privacy and Security
  - Health Saving Accounts (HSAs)

- Wellness and compliance
  - HIPAA nondiscrimination rules
  - Genetic Information Nondiscrimination Act (GINA)
  - ADA
  - State Laws
  - Taxation
ERISA

• ERISA defines employee welfare benefit plans as any plan or program established or maintained by an employer for the purpose of providing medical, surgical, or hospital care or benefits to employees and beneficiaries. (Under this definition, an employer sponsored onsite health care clinic appears to be subject to ERISA).

• ERISA provides an exception to onsite facilities that treat minor injuries or illnesses, or render first aid for accidents that occur during working hours.

• Facilities that provide more than treatment of minor injuries or illnesses, like primary care visits for employees and their dependents, diagnostic tests and lab work would likely be an ERISA plan.

Onsite facilities subject to ERISA, may have to prepare the following documents:

- Plan document
- Summary plan descriptions (SPD)
- Form 5500 filing
- Summary annual report (SAR)
- Summary of material modifications (SMM)

• Claims for benefits provided by an onsite facility are subject to ERISA claims procedures and appeals process.
COBRA

• An onsite clinic that provides medical care beyond first-aid and minor injuries must offer COBRA continuation coverage to all eligible employees, as well as their participating spouse and/or dependents, upon the occurrence of a COBRA qualifying event.

• The COBRA obligation arising out of an onsite clinic can create concerns for an employer outside of federal law compliance, because a terminated employee who elects COBRA continuation through an onsite clinic will continue to have access to the employer’s premises after employment terminates.
HIPAA Portability

• If the onsite health care facility is considered an employer health plan or part of an employer health plan, the following requirements apply:

  • The facility must comply with HIPAA’s portability requirements, including the pre-existing condition, special enrollment, creditable coverage and nondiscrimination rules. (These rules apply to all employees’ eligible for health center coverage, even those who do not participate in the employers major medical plan).

  • Onsite health facilities that provide services associated with an employers wellness program need to comply with HIPAA’s nondiscrimination rules.
HIPAA Privacy & Security

- Onsite health care facilities can either employ or contract with physicians, nurses or other providers to provide health services.

- An onsite health facility that engages in electronic transactions is subject to HIPAA’s administrative simplification provisions, which include privacy and security rules.

- Under the privacy and security rules, covered entities, which include health plans and health care providers, must take specific steps to restrict access to certain health information. Contracted vendors must fully comply with HIPAA’s privacy and security regulations in its use, disclosure and maintenance of the protected health information of an employer’s employees and dependents who receive onsite clinic services.

- A health care provider that processes one or more HIPAA transactions electronically becomes a covered entity subject to the administration simplification rules.
HIPAA transactions include:

- Billing
- Payment
- Coordination of benefits
- Enrollment
- Disenrollment
- Eligibility Communications

For example, if a health facility electronically bills the employer health plan for the cost of a strep throat culture and diagnosis, it is subject to HIPAA’s privacy and security rules.
Health Savings Accounts (HSAs)

- An onsite health care facility can affect HSA eligibility.

- To be eligible for an HSA, individuals must have qualified high deductible health plan (HDHP) coverage, and may not have other impermissible coverage. (Permissible coverage includes preventive care coverage for accidents, disability, dental care, vision care and long-term care).

- The IRS has concluded that an HSA-eligible individual who has access to an employers onsite clinic will remain eligible to contribute to an HSA if the onsite clinic does not provide significant benefits in the nature of medical care.
Tax Considerations

• An employer-funded onsite health facility is considered employer-provided health coverage, and the medical care that employees (spouses & dependents) receive is excludable from employees gross income.

• An employer can generally deduct the cost of the health facility as a business expense.
Conclusion

- As onsite clinics are becoming a opportunity for employers who struggle to improve employee health and lower costs to their bottom line, employers must be aware of the legal obligations in order to avoid costly compliance issues down the road.
Questions

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