A Legal and Practical Analysis of Employer Sponsored Clinics

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Currently, companies are eagerly seeking ways to decrease their health insurance costs. The buzz words circulating among employers who want to reduce their costs are wellness, disease management, and prevention. In particular, on-site clinics are a proposed means of achieving these goals.

Historically, on-site clinics were largely utilized to deal with occupational injuries or minor conditions. However, today's on-site clinics are designed to offer comprehensive healthcare services, very similar to what is expected during a visit to a primary care physician or even an urgent care center or emergency room department. The employee can then return to work without the need to travel long distances to a doctor's office, which will likely result in higher participation in such employer sponsored services.

An employer's decision to build an on-site clinic should take into consideration many factors. Most importantly, legal issues involved in providing on-site healthcare need to be considered. For example, depending upon the services provided, the clinic may have to comply with various licensure requirements (e.g., physician licensure, pharmacy licensure, and clinical laboratory requirements).

If the clinic accepts Medicare, Medicaid or reimbursement from any government payor, then the clinic will also need to ensure that its compensation arrangements and contractual matters comply with various federal regulatory laws. For instance, the Anti-Kickback Statute is a criminal prohibition against payments in any form made to induce or reward the referral or generation of federal healthcare program business.

The Stark Law prohibits referrals by physicians, who have a financial relationship with an entity (for the furnishing of designated health services) for which payment otherwise may be made under Medicare, unless an exception applies. Depending upon the structure of the clinic, these laws may or may not be applicable. Likewise, from a private insurance perspective, the clinic will need to negotiate, and comply with the terms of, various managed care contracts.

In addition to federal law, there could be state law concerns. Some states have strong corporate practice of medicine doctrines or fee splitting laws, which could pertain to employer sponsored clinics. The corporate practice of medicine prohibits a lay corporation from employing a physician or controlling a physician's practice of medicine. In order to avoid a violation of the corporate practice of medicine, the clinic can independently contract or hire a nurse practitioner or physician assistant to provide the majority of the services, and pursuant to an independent contractor agreement, contract with a physician to provide the applicable oversight for these services. The corporate practice of medicine doctrine (which varies in each state) does not typically apply to nurses and physician assistants, so these individuals may be employed.

Operating an on-site clinic also has privacy issues the employer needs to consider. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and Security Rule; and (ii) Health Information Technology for Economic and Clinical Health Act contain specific requirements on how health information should be safeguarded and protected by healthcare providers and health plans, which are referred to as "covered entities." Depending upon how the clinic is structured, it will most likely be subject to HIPAA as a covered entity healthcare provider and may even be a covered entity health plan as explained in more detail below.

In addition to healthcare laws, an on-site clinic may also implicate a number of employee benefit laws. For example, an on-site clinic that provides services beyond treatment of minor illnesses or injuries to employees, or first aid to workplace injuries, or that permits spouses, dependents or former employees access to the clinic, will constitute an "employee welfare benefit plan" for purposes of the Employee Retirement Income Security Act of 1974 (ERISA).

In short, this means that the employer is required to adopt a written plan document describing the services available at the clinic and the costs of those services, and satisfy applicable reporting and disclosure requirements, as well as fiduciary responsibility rules. Similarly, an on-site clinic that provides comprehensive medical services will be a "group health plan"

subject to the continuation coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

Finally, the benefits (i.e., the services available at the clinic as well as the amount of reimbursement available for the cost of such services) will constitute a self-insured medical expense reimbursement plan subject to the nondiscrimination requirements of the Internal Revenue Code of 1986. Failure to satisfy the applicable requirements thereunder can result in adverse tax consequences to the employer's officers and other highly compensated individuals.

On-site clinics are not necessarily the right decision for every employer. Depending on the employer's objectives, an employer with high rates of absenteeism due to illness, low rates of utilization of preventive care services, and long employee commutes for medical care may benefit from on-site clinics. In addition, an on-site clinic may prove to be a necessary component for an employer's ongoing wellness and disease management programs, which themselves are intended to manage healthcare costs and improve long-term employee health.

Due to the financial commitment and legal ramifications of implementing and operating an on-site clinic, an employer interested in this alternative should definitely consider consulting with members of its own finance, benefits and legal departments, as well as an outside consultant and attorney. A complete analysis of the employer's current healthcare costs and objectives, as well as a feasibility study to determine the cost and scope of the services to be provided at the clinic are imperative. An attorney experienced in the various laws implicated by the on-site clinic can ensure that a company will get the most out of this innovative concept in employee healthcare.

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