

This Webinar Will Start Momentarily.
Thank you for joining us.



On-Site Clinics and Other Supplemental Benefit Programs

March 16, 2023

Presented By:
Christopher Bao and Cindy Niesen

*Presented by the Regulatory and
Legislative Strategy Group*



Presentation Agenda



1

On-Site, Near-Site & Shared Site Clinics

2

Definitions

- HIPAA Excepted Benefits: On-Site Clinics
- Types of On-Site Clinic Facilities
- Range of Services Offered
- HIPAA Nondiscrimination, Portability, Privacy and Security

3

Compliance Considerations

- COBRA/State Continuation Coverage
- Affordable Care Act (ACA)
- Health Savings Accounts and Clinics
- Tax Considerations
- Application of ERISA

4

Supplemental Benefits

- Definition
- Examples of Supplemental Health Benefit Coverages

DISCLAIMER

Brown & Brown, Inc. and all its affiliates, do not provide legal, regulatory or tax guidance, or advice. If legal advice counsel or representation is needed, the services of a legal professional should be sought. The information in this document is intended to provide a general overview of the topics and services contained herein. Brown & Brown, Inc. and all its affiliates, make no representation or warranty as to the accuracy or completeness of the document and undertakes no obligation to update or revise the document based upon new information or future changes.

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal or medical advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.

On-Site Medical Clinics



Types of Facilities



On-Site Medical Clinic – An employer-sponsored medical clinic located *on the employer's premises*



Near-Site Medical Clinic – An employer-sponsored medical clinic located *near the employees' worksite*



Shared-Site Medical Clinic – An employer-sponsored medical clinic that *serves multiple employers or employer locations, generally in a near-site setting*

Today's presentation is focused on "On-Site Clinics"

HIPAA Excepted Benefits: On-Site Clinics



Generally: On-Site Clinics Are Excepted Benefits

Generally, On-Site Clinics are considered HIPAA excepted benefits

- HIPAA “excepted benefits”
 - » Exempt from ACA market reforms
 - Coverage for children until age 26
 - Mental Health Parity and Addiction Equity Act
 - 100% coverage for preventive services
 - Lifetime/annual dollar maximums
 - » Typically considered a health plan or part of a health plan under ERISA (if applicable)
 - » Subject to COBRA continuation
- Near-site or shared-site clinics may/may not qualify as an excepted benefit
 - » Consult with legal counsel on the rules as they relate to these clinics

Group Health Plan



Two Different Kinds of Clinics



Not a Group Health Plan –
First Aid Services



Group Health Plan Subject to
ERISA and/or COBRA –
On-Site Clinic that provides
medical care or benefits

Important because whether or not the On-Site Clinic or other supplemental health benefit is a “group health plan” determines if the plan is subject to ERISA, COBRA and other applicable laws

On-Site Clinic: First Aid Facility

NOT A GROUP HEALTH PLAN

First Aid Facilities – Not a Group Health Plan

- Services provided to employees (not spouses or dependents)
- During working hours for minor illnesses or injuries occurring during working hours
- Typically provided at no cost to employees
- Services generally constitute excepted benefits (described later)



What Is an ERISA Plan?

Is it established or maintained by an employer?

- Any plan, fund or program established or maintained by an employer or an employee organization or both for the purpose of providing participants and beneficiaries, through the purchase of insurance or otherwise

Does the plan provide benefits subject to ERISA?

- Medical, surgical or hospital care or benefits or benefits for sickness, accident, disability, death, or unemployment, or vacation benefits, apprenticeship or other training programs or day care centers, scholarship funds, or prepaid legal services...
- Unless the ERISA exception applies for certain voluntary plans and plans maintained by governmental employers or churches

On-Site Clinic: Group Health Plan

ERISA and COBRA

- A group health plan is any “...medical, surgical, or hospital care or benefits” offered to employees with the term “medical” being broadly defined as not just medical coverage, but also dental, vision, prescription drug coverage and other healthcare benefits

Exceptions

- 1) Church Plans
- 2) Governmental Plans (exempt under ERISA only, as governmental plans are subject to COBRA under PHSA)



Important because whether or not the On-site Clinic or other supplemental health benefit is a “group health plan” determines whether the plan is subject to ERISA, COBRA and other applicable laws

Most Likely Considered a Group Health Plan

Basic Healthcare Facilities:

- Diagnostic testing and treatment of certain minor illnesses and injuries
- Physical examinations, screening tests and vaccinations
- Medications
- Health care counseling, education and similar services
- May include wellness services
- Employees, spouses and dependents generally eligible
- Employees may be required to contribute toward the cost for provision of care

Subject to:

- ERISA (unless ERISA exempt)
- COBRA
- HIPAA (if healthcare provider engages in certain electronic transactions and is a covered entity)



Most Likely a Group Health Plan

SERVICES OFFERED

Worksite Wellness

- Biometric screenings (if managed by the employer outside of the health coverage)
- Flu shots (if managed by the employer outside of the health coverage)
- Education, activities, coaching, etc.

Comprehensive Healthcare Facilities – may include basic services plus:

- Primary care services
- Physical therapy
- On-site pharmacies
- Behavioral health

Subject to:

- ERISA (unless ERISA exempt)
- COBRA
- HIPAA (as a health care provider)

ERISA



ERISA Disclosure Requirements

Plan Documents

- Plan document requirements: ERISA 402(a)
 - » Every employee welfare benefit plan must be established pursuant to a written plan
 - No form or format is prescribed by ERISA 402(a)
 - Plan sponsor is responsible for the plan document; typically, the employer/plan sponsor is the plan administrator
 - Required for all ERISA plans; no exemption for small plans
 - » A written plan is necessary for a self-insured plan for the Section 105(b) tax exclusion to apply to the benefits provided by the plan
 - » The formal written plan creates the promise to pay for covered benefits



ERISA Disclosure Requirements



Summary Plan Description

- ERISA Section 102(a) requires a summary to be provided that explains the plan terms in a manner calculated to be understood by the average participant
 - » Plan Administrator is responsible for the SPD; typically, the employer/plan sponsor is the Plan Administrator
 - » Required for all ERISA plans; no exemption for small plans
 - » Within 90 days after enrollment (120 days of adoption of a new plan)
 - » Amended and restated SPDs required once every five (5) years if there are material modifications; once every ten (10) years if no material changes
 - » Exception for “top hat” plans

ERISA Reporting (Form 5500) Requirements

Plan sponsors subject to ERISA are generally required to file an annual Form 5500, subject to certain exceptions:

- Form 5500 is an annual information report that is submitted to the U.S. Department of Labor's Employee Benefits Security Administration, reporting certain information on employer-sponsored benefit plans
- 5500s are due the end of the seventh month following the end of the plan year (unless an extension applies)

Plan sponsors must also provide a Summary Annual Report (SAR) to all participants after filing Form 5500 if there are any fully-insured benefits reported on the Form 5500

- The SAR is a summary of the information filed with the EBSA on Form 5500
- SARs must be distributed within two months after 5500 filing deadline (with any extensions)
- However, if the On-Site Clinic is not bundled with other (insured) benefits no SAR would be required because the plan is self-insured

When Is Form 5500 Required?

A form 5500 is required for:

- Single Employer Health and Welfare Benefit Plans that:
 - » Are maintained for the benefit of employees of a single employer (controlled group rules apply),
 - » Consist of insurance contracts and the plan sponsor's general assets for any plan year in which there *are at least 100 participants on the first day of the plan year, or*
 - » That are funded (trust plans), *regardless of the number of plan participants at the beginning of the year.*

*The term "participants" means employees and former employees enrolled in the benefit plan (disregarding spouses and dependents who may be plan beneficiaries).

- Multiple Employer Health and Welfare Plans that:
 - » Provide health care benefits and cover participants that are not part of the same controlled group, *regardless of the number of participants*
 - » Plan may be funded or unfunded
- Multiemployer Health and Welfare Plans that:
 - » Are maintained by a collective bargaining unit to benefit their members
 - » Into which multiple unrelated employers make contributions
 - » *Reporting is required regardless of the number of participants*
 - » Plan is generally funded
 - » Required because the plan is self-insured

Specific reporting requirements apply to each plan type.

COBRA/State Continuation Coverage



COBRA/Continuation Coverage



Background

Group Health Plans: If a benefit is considered a Group Health Plan for purposes of COBRA continuation coverage, then the benefit must be offered under COBRA continuation coverage:

- **Offers only minor first aid:** Not likely considered a group health plan and most likely not subject to COBRA/state continuation coverage.
- **Offers more robust medical coverage:** Most likely a group health plan and subject to COBRA.

COBRA/Continuation Coverage

On-Site Clinics

A clinic may consider limiting services to satisfy the requirements of the “first aid” exception so that it will not be subject to the COBRA rules:

- **Considerations/issues under COBRA/state continuation coverage:**
 - » **Former Employees:** Security of facility could be compromised by allowing former employees (or family members) access to stand-alone clinic
 - » **Expanded COBRA Population:** If access to the stand-alone clinic is provided to those not enrolled in the major medical plan, it must also be offered to qualified beneficiaries through COBRA
 - » **COBRA Rate:** What is the applicable calculation method to calculate the COBRA rate?

Health Care Reform and Stand-Alone Clinics



Health Care Reform

On-Site Clinics

On-Site Clinics are typically considered an “excepted benefit” under Health Care Reform

- **Excepted Benefit:** On-Site Clinics are **not subject to:**
- **Previously Discussed:**
 - » Preventive services coverage at no-cost to the participant
 - » Prohibition on lifetime-annual dollar maximums
 - » Mental Health Parity “predominant benefit” or “non-quantitative treatment limit” rules
 - » Consolidated Appropriations Act Transparency in Coverage disclosure



Health Care Reform

W-2 REPORTING

Background

Health Care Reform and W-2 Reporting: Requires that all plan sponsors of group health plans report the “cost of employer-sponsored coverage” in Box 12 of each participant’s/employee’s W-2

- **Applies to participants within the plan** (i.e., employees enrolled in coverage)
- **Transition relief:** Requirement does not apply to employers that issue fewer than 250 W-2s
- **Applies mostly to coverage subject to COBRA:** Coverage that is subject to a COBRA rate

Health Care Reform

W-2 REPORTING



On-Site Clinics

A Group Health Plan need not include its cost of employer-sponsored coverage on employees' W-2s unless there is a required COBRA rate to be included with the offering of that stand-alone clinic benefit

- **First Aid Exception:** Need not include cost of coverage in W-2
- **Group Health Plan:** If otherwise subject to the W-2 reporting requirement, must report the cost of coverage for the On-Site Clinic

Health Care Reform

PCORI FEES

On-Site Clinic programs that qualify as excepted benefits are not subject to the payment of the Patient-Centered Outcomes Research Institute (PCORI) fee applicable to other self-insured health plans.



Health Savings Accounts and Clinics



Health Savings Accounts

On-Site Clinics

Background

Health Savings Accounts: An individual is eligible to contribute to an HSA if:

- **Enrolled in a Qualified HDHP:** A qualified HDHP cannot pay first-dollar coverage until the minimum IRS deductible is met for the plan year
- **Not Enrolled in Other Disqualifying Coverage:** Cannot be enrolled in other coverage that provides first-dollar payment for services (other than permitted coverage such as limited-purpose dental or vision coverage, long-term care, certain HSA-compatible supplemental benefits or coverage for preventative services)

Health Savings Accounts

On-Site Clinics

On-Site Clinics and HSA Eligibility

If a clinic provides more than just first aid services, it could be considered “other coverage” that interferes with HSA eligibility:

- **Considerations/issues with clinics and HSA eligibility:**
- **Fair Market Value:** The fair market value of services offered by the clinic should be charged to HSA eligible individuals until they satisfy their IRS minimum deductible for a qualified HDHP
- **Post-Deductible Clinic:** HSA eligible individuals may utilize the clinic after satisfying their IRS minimum deductible for a qualified HDHP
- **Preventive Services Clinic:** If the clinic offers only preventative services (preventative care for diabetes, immunizations) along with first aid care

Taxation and Clinics



Taxation: Does the Plan Provide Medical Care?

Definition:

“For purposes of this section—

The term “medical care” means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section 7702B(c)), or

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long term care insurance contract (as defined in section 7702B(b)).”

IRC § 213(d)

Taxation

On-Site Clinics

Taxation of Benefits Offered through Clinics: Employer-sponsored clinics have similar tax treatment to other employer-sponsored benefits.

- **Non-Taxable:** Benefits/services offered through an employer-sponsored clinic are not subject to taxation for employees, spouses and dependents
- **Potentially Impute Taxes to Employee:** Clinic benefits that are paid for or provided on behalf of domestic partners or non-dependents may need to be treated as imputed income to the employee



**HIPAA Nondiscrimination,
Privacy, Security and
Portability and Clinics**



HIPAA Nondiscrimination, Privacy, Security and Portability

- Generally, On-Site Clinics are excepted from HIPAA portability, nondiscrimination, privacy and security rules that apply to other group health plans
- However, the clinic itself is a health care provider, which is a Covered Entity subject to HIPAA privacy and security
 - » Normally, staffed by employees of medical practice through contractual arrangement
 - » Engaged in certain electronic transactions
 - » Unless plan sponsor is also a covered entity (i.e., a health care provider)
 - » State privacy rules may also apply

Supplemental Health Benefit Coverages







Supplemental Benefits

COMPLIANCE CONSIDERATIONS

	On-Site Clinic	Telehealth/ E-Health	Health Advocacy Services	Accident	Cancer/Critical Illness	Hospitalization	Long-Term Care	Direct Primary Care	Supplemental Medical
HIPAA	<input checked="" type="checkbox"/> Excepted Benefit (clinic is covered entity subject to privacy & security requirements for health care providers)			<input checked="" type="checkbox"/> May be an excepted benefit if:					
Privacy/Security		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Under separate policy, certificate or contract <input checked="" type="checkbox"/> No coordination exists between policy and any other plan maintained by employer			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Portability		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Paid regardless of whether benefits are paid for same event by group health plan			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Nondiscrimination		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Must pay fixed dollar amount benefit for event/diagnosis or per day			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
COBRA		<input checked="" type="checkbox"/>		Indemnity only plans with no medical component should be exempt from COBRA			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
ERISA		<input checked="" type="checkbox"/>		May be subject to ERISA unless voluntary exception applies (taking after-tax payroll deduction and remitting premiums to carrier are only permitted employer activities for the exception to apply)				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Top hat plans may have exemption from certain ERISA requirements (e.g., SPD)
Mental Health Parity	<input checked="" type="checkbox"/> "Excepted benefit" not subject		<input checked="" type="checkbox"/> Subject to extent plan covers mental health services			<input checked="" type="checkbox"/> "Excepted benefit" not subject		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> "Excepted benefit" not subject

Supplemental Benefits

COMPLIANCE CONSIDERATIONS

	On-Site Clinic	Telehealth/ E-Health	Health Advocacy Services	Accident	Cancer/Critical Illness	Hospitalization	Long-Term Care	Direct Primary Care	Supplemental Medical
ACA Market Reforms ✓ Guaranteed Renewability/Availability ✓ Prohibition on Lifetime/Annual Limits on EHBs ✓ Preventive Health Mandated ✓ Prohibition on Excessive Waiting Periods	 If coverage qualifies as an excepted benefit or is an account-based plan that is integrated with a group health plan								
Transparency		 Subject if plan is a group health plan and does not qualify as excepted benefit				 Subject to cost reporting requirements		 Subject if plan is a group health plan and does not qualify as excepted benefit	

Summary

Most On-Site Clinics and supplemental health programs are considered “group health plans” subject to ERISA and COBRA

Generally, excepted from HIPAA portability requirements, mental health parity and ACA market reforms if properly designed

HRCI and SHRM Credits

This Program, **ID No. 617876**, has been approved for 1.00 HR (General) recertification credit hours toward aPHR™, aPHRi™, PHR®, PHRca®, SPHR®, GPHR®, PHRi™ and SPHRi™ recertification through HR Certification Institute® (HRCI®).



Brown & Brown is recognized by SHRM to offer Professional Development Credits (PDCs) for SHRM-CP® or SHRM-SCP®. This program is valid for 1 PDCs for the SHRM-CP or SHRM-SCP. Activity **ID No. 23-ZJJUN**. For more information about certification or recertification, please visit www.shrmcertification.org.





Find your solution at [BBrown.com](https://www.BBrown.com)

DISCLAIMER: *Brown & Brown, Inc. and all its affiliates, do not provide legal, regulatory or tax guidance, or advice. If legal advice counsel or representation is needed, the services of a legal professional should be sought. The information in this document is intended to provide a general overview of the topics and services contained herein. Brown & Brown, Inc. and all its affiliates, make no representation or warranty as to the accuracy or completeness of the document and undertakes no obligation to update or revise the document based upon new information or future changes.*

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal or medical advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.