



## Some Insight Into On-Site Healthcare and HSAs

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In the continuing effort to manage ever rising healthcare costs, larger employers are increasingly willing to get directly involved with their employees' healthcare by operating on-site primary care health centers. One recent survey revealed that 25% of larger employers already are sponsoring on-site health centers and that another 5% plan to do so. Another survey reports that nearly 300 employers operate these centers at their larger locations.

These employers have embarked on a strategy of direct involvement in the hope of providing needed care that is timelier, less disruptive and less expensive than when provided by external physicians. Many of these employers also want their on-site providers to supplement their purely medical services with a "teaching moment", by instructing and encouraging healthy behaviors. Their belief in the efficacy of delivering healthcare on-site is such that many of these employers don't charge employees the actual cost of providing these services.

At the same time that on-site health care is increasing in popularity, we also have the expansion of consumer-directed healthcare in the form of High Deductible Health Plans (HDHP) and Health Savings Accounts (HSA). The point of the HSA is to take some of the sting out of the cash exposure created by the HDHP, especially if the employer provides some HSA funding. Ultimately, the theory is to be sure that the actual cost of healthcare is squarely in the mind of the employee-patients and that they act like they are spending their own money.

How can these two approaches co-exist?

The first place to look is to the law. The Internal Revenue Service issued guidance in April 2004 (Notice 2004-23) saying that preventive services could be received by a person covered by an HDHP without applying the high deductible. This guidance did not specifically address the delivery of preventive services by on-site health centers. Mostly by inference, on-site health centers have been operating on the basis that they are included within IR Notice 2004-23. In fact, there is no *official* IRS guidance regarding the offerings and pricing of on-site health center services to employees who have an HSA. Twice, the IRS has offered unofficial guidance and those two attempts at clarity contradict each other.

According to CareHere!, a manager of 60 on-site health centers, in August 2005 the Society of Professional Benefits Administrators (SPBA) held discussions on this subject with IRS attorney Elizabeth Purcell. Ms. Purcell told the SPBA that the IRS was certainly aware of on-site medical clinics and had discussed addressing these programs in an IRS Notice. However, said Ms. Purcell, the IRS decided it was not necessary to issue any guidance about on-site health centers because *the IRS did not view these arrangements (on-site clinics) as health plans*. Accordingly, Ms. Purcell said, there was no need to be

worried that this type of program would make employees ineligible for HSAs. The SPBA also obtained similar assurance from the Department of Labor.

Ms. Purcell's statements certainly were consistent with ERISA. ERISA's definition of "employee welfare benefit plan" specifically excludes "the maintenance on the premises of the employer of facilities for the treatment of minor injuries or illness or rendering first aid in the case of accidents occurring during work hours".

So, if you had a connection to the SPBA in late 2005, you very well might have been told that your on-site health center could deliver both preventive and acute care services to HSA account holders at whatever price fit your objectives.

In May 2008, the National Business Group on Health published the results of conversations it had with the IRS on the relationship between on-site health centers and HSAs. The new, but still unofficial, guidance from the IRS is that an HSA account holder will lose HSA eligibility if he/she receives more than *nominal medical benefits* from an on-site health center, unless the actual cost of those services is subject to the person's High Deductible. The IRS attorney said that "nominal" means services on the level of a flu shot or dispensing aspirin. It appears that if the HSA account holder pays the cost of the "above-nominal" services, there will not be any loss of HSA eligibility.

Apparently, on-site health center pricing discretion has been completely recast in the mind of the IRS. Indeed, according to the NBGH, the IRS (now and at least internally) defines a health plan as the providing of significant health benefits in the nature of medical care or treatment. Unlike ERISA's definition, this new IRS opinion sweeps on-site health centers into its regulatory orbit.

The NBGH states that in the view of the IRS, on-site health centers may provide the following services to HSA account holders without disturbing HSA eligibility only if the HSA account holder pays the cost of these services, up to the amount of the High Deductible:

- Primary medical care
- Non-preventive medications
- Major acute care
- Chronic condition care
- Any other medical services beyond a nominal level (this presumably includes lab and x-ray services that are not preventive in nature)

The IRS did comment to the NBGH about how an on-site health center should price its services to HSA account holders, but did not give many details. It appears that providing the services listed above to HSA account holders without charging fees would create HSA eligibility problems. It also appears that on-site health centers can charge discounted or negotiated prices for the services shown above without creating any HSA eligibility issues. A third way of pricing - charging HSA account holders what amounts to a subsidized below-market fee or co-pay for those services, may create HSA eligibility problems.

If actual-cost pricing is the principle to follow, how is an on-site health center going to determine the actual cost of delivering each and every acute care service? Is this a new career opportunity for cost accountants? There are several ways some on-site health centers are obtaining what seem to be reasonable or at least good-faith pricing proxies:

1. They use the internet to find out what commercial retail clinics are charging per service and use those prices in setting their own
2. They join the Medical Group Management Association to obtain pricing information
3. They use a low percentile of UCR, say the 60<sup>th</sup>, as a reference for discounted market pricing

The NBGH does not expect the IRS to issue official guidance any time soon. Apparently the Service is concerned that both Congressional Democrats and Republicans, for completely different reasons, don't want HSA rules changed to permit HSA account holders to receive more than preventive care from on-site centers at less than actual cost.

All of this boils down to "yes", HSA account holders can receive the full range of services from their employers' on-site health centers, if they pay the center's actual cost of delivering acute care services.

### **Did You Know?**

Senator Ron Wyden, Dem. Oregon, and principal architect of the proposed Healthy Americans Act, in a speech to healthcare industry leaders: "If your profession decides, as it did in 1993 and 1994, to go out and spend millions of dollars fighting to preserve the status quo, you may delay reform for a while but you will increase the likelihood of a government-run health system with no role for the private sector."