

COMPLIANCE OVERVIEW

Provided by Touchstone Consulting Group

On-site Health Clinics – Impact on HSA Eligibility

Employers may consider establishing on-site health clinics in order to help manage health care costs and encourage employee wellness. On-site health clinics can be designed to cover a wide array of health care services, such as first aid, treatment of work-related injuries or illnesses, preventive care or primary care.

Employers that offer high deductible health plans (HDHPs) that are compatible with health savings accounts (HSAs) should consider how access to an on-site health clinic may impact employees' HSA eligibility. According to Internal Revenue Service (IRS) guidance, having access to an on-site health clinic that provides significant medical benefits for free or at a reduced cost may prevent employees from making HSA contributions.

Employers that want to establish an on-site health clinic while preserving HSA eligibility will need to make sure that the clinic's services are provided in a way that is HSA-compatible. This may include, for example, limiting the clinic's services to first aid, care for workplace illnesses or injuries, preventive care or other types of permitted coverage.

LINKS AND RESOURCES

- [IRS Notice 2008-59](#), IRS tax guidance on HSAs
- [IRS Publication 969](#), Health Savings Accounts and Other Tax-favored Health Plans
- [Internal Revenue Code Section 223](#), federal tax law for HSAs

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

HIGHLIGHTS

HSA ELIGIBILITY RULES

To be HSA-eligible, an individual must:

- Be covered by an HDHP;
- Not be covered by other health plan coverage that is not an HDHP (with certain exceptions);
- Not be enrolled in Medicare; and
- Not be eligible to be claimed as a dependent on another person's tax return.

DISQUALIFYING COVERAGE

- Health plan coverage that provides benefits before the HDHP deductible is met will typically disqualify an individual from making HSA contributions.
- As a general rule, access to on-site health clinics that provide substantial medical benefits for free or at a reduced cost is considered disqualifying coverage for purposes of HSA eligibility.

ON-SITE HEALTH CLINICS

On-site, employer-sponsored health clinics are growing in popularity as employers look for ways to manage health care costs and as employee wellness becomes a higher priority. An on-site health clinic can offer health care services to employees in a convenient location at the workplace. These clinics tend to offer health care services to employees for free or at a reduced cost.

Services offered at an on-site health clinic can vary widely. Some clinics only provide treatment for work-related injuries and illnesses and general first-aid services. Other clinics may provide services to support an employer's wellness program (for example, blood and body mass index testing), offer comprehensive primary care services or simply supplement the care employees receive from their primary care providers. These supplemental clinics may offer diagnostic services, injury care, pharmacy access, preventive care and more.

Before establishing an on-site health clinic, employers should consider the compliance issues associated with this type of benefit. Employers that sponsor HDHPs will also want to consider whether the health clinic's coverage could disqualify employees from making HSA contributions.

Before establishing an on-site health clinic, employers with HDHPs should consider how the clinic's coverage will impact employees' eligibility for HSA contributions.

HSA ELIGIBILITY

An HSA is a tax-favored trust or account that can be contributed to by, or on behalf of, an eligible individual for the purpose of paying qualified medical expenses. HSAs provide a triple tax advantage. Contributions, investment earnings and amounts distributed for qualified medical expenses are all exempt from federal income tax, FICA tax and most state income taxes. Due to an HSA's potential tax savings, federal tax law imposes strict eligibility requirements for HSA contributions.

Only an eligible individual can establish an HSA and make HSA contributions (or have them made on his or her behalf). An individual's eligibility for HSA contributions is generally **determined monthly as of the first day of the month**. The HSA contribution limit is calculated each month, and a contribution can only be made for months in which the individual meets all of the HSA eligibility requirements.

To be HSA-eligible for a month, an individual must:

- 1 Be covered by an HDHP on the first day of the month;
- 2 Not be covered by any health plan that provides coverage below the minimum required HDHP deductible (with certain exceptions);
- 3 Not be enrolled in Medicare; and
- 4 Not be eligible to be claimed as a dependent on another person's tax return.

Employer Verification

When an employer makes a tax-free contribution to an employee’s HSA, the employer should have a **reasonable belief** that the contribution will be excluded from the employee’s income. However, the employee, and not the employer, is primarily responsible for determining eligibility for HSA contributions. [IRS Notice 2004-50](#) (Q&A 81) states that an employer is only responsible for determining whether the employee is covered under an HDHP or any low deductible health plan sponsored by the employer, including health flexible spending accounts and health reimbursement arrangements.

If the employer does not have a reasonable belief that the contribution will be excluded from the employees’ income (for example, because the employee is covered under a non-HDHP sponsored by the employer), then the contribution is **subject to federal income and employment tax withholding**.

HSA-compatible Coverage

To be eligible for HSA contributions, an individual generally cannot have health coverage other than HDHP coverage. This means that an HSA-eligible individual cannot be covered under a health plan that provides coverage below the HDHP minimum annual deductible. Certain types of non-HDHP coverage, however, will not prevent an individual from being HSA-eligible. These types of coverage include the following:

Preventive Care	Includes periodic health examinations, routine prenatal and well-child care, child and adult immunizations, tobacco cessation programs, obesity weight loss programs and certain health screenings. In general, it does not include any service or benefit intended to treat an existing illness, injury or condition.
Permitted Insurance	Insurance benefits for workers’ compensation, tort liabilities, property liabilities, specific diseases or illnesses, or a fixed amount per day (or other period) for hospitalization (that is, hospital indemnity insurance).
Permitted Coverage	Separate coverage for accidents, disability, dental care, vision care or long-term care.
“Insignificant” Medical Benefits	An employee assistance program, disease management program or wellness program if the program does not provide significant benefits in the nature of medical care or treatment . To determine whether a program provides significant benefits in the nature of medical care or treatment, preventive care services are disregarded.
Discount Programs	Discount cards that entitle holders to obtain discounts for health care services or products at managed care market rates if the individual is required to pay the costs of the health care (taking into account the discount) until the deductible of the HDHP is satisfied.

APPLICATION TO ON-SITE HEALTH CLINICS

IRS Guidance

The IRS addressed how an on-site health clinic may impact individuals' eligibility for HSA contributions in [IRS Notice 2008-59](#). The IRS provided that an individual will not fail to be an eligible individual for HSA purposes merely because the individual has access to free health care or health care at charges below fair market value (FMV) from an employer's on-site clinic if the clinic **does not provide significant benefits in the nature of medical care**. An on-site health clinic may also provide free or reduced cost preventive care or permitted coverage (such as dental care or vision care) without jeopardizing employees' HSA eligibility.

KEY POINT

If an employer's on-site health clinic provides significant medical benefits to employees (other than preventive care or permitted coverage) for free or at a reduced cost (that is, below FMV), employees who may access the clinic will not be eligible for HSA contributions.

IRS Examples

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 (for example, 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).

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 copays. Because the hospital provides significant care in the nature of medical services, the hospital's employees are not eligible for HSA contributions.

Application to On-site Health Clinics

Whether access to an on-site health clinic will impact employees' eligibility for HSA contributions depends mainly on the scope of services provided by the health clinic. On-site health clinics that provide significant medical benefits (for example, acute care, laboratory services and prescription drug services) to employees for free (or at a reduced cost) before they satisfy their HDHP deductible interfere with HSA eligibility.

However, based on the IRS' guidance, an on-site health clinic will not prevent an individual from contributing to an HSA if it satisfies one of the following design options:

- ✓ **The on-site health clinic does not provide significant benefits for medical care or treatment.** Access to an on-site health clinic's free (or reduced cost) services will not interfere with an employee's HSA eligibility if the clinic does not provide significant medical benefits. Treatment for work-related injuries and illnesses and general first-aid services are not considered significant medical benefits. Also, access to wellness program services through an on-site clinic generally does not interfere with an employee's HSA eligibility, as long as the wellness program does not provide significant medical benefits.
- ✓ **The on-site health clinic's services are limited to preventive care services and permitted coverage.** Employees will not lose their eligibility for HSA contributions merely because they have access to an on-site health clinic that provides preventive care or permitted coverage (for example, dental care or vision care) for free or at a reduced cost.

In addition, an on-site health clinic's services can be designed to **coordinate with coverage under the HDHP** in a way that does not interfere with HSA eligibility. For example, employees could be required to pay the FMV for the medical services that they receive from the clinic and those costs could be applied toward the HDHP deductible. Also, access to the on-site health clinic's free (or reduced cost) health services could be limited to only those employees who have satisfied their HDHP deductible for the year.