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Telemedicine: Know the Issues

Many employers are implementing low-cost telemedicine programs as part of their benefit package. However, employers should proceed with caution in implementing a telemedicine program, as providing telemedicine benefits to employees can raise several compliance and excise tax issues.

What Is "Telemedicine"?

The term "telemedicine" generally refers to health-related services delivered to employees over the telephone or internet. Telemedicine benefit plans typically allow individuals to communicate with a healthcare specialist on topics such as general health and wellness information, primary care diagnoses, and advice regarding prescription drug services. To encourage usage, employers often subsidize the cost of the services or offer them free of charge, which can impact HSA eligibility for employees covered by a High Deductible Health Plan (HDHP).

HSA Eligibility Issue

Employers who adopt a telemedicine program alongside a qualified HDHP must ensure that the telemedicine program does not inadvertently disqualify their covered employees from HSA eligibility. Individuals who are covered under an HDHP and meet other requirements can set aside tax advantaged dollars (whether done as a pre-tax deferral or outside of a cafeteria plan) to pay eligible medical expenses. However, to be HSA eligible, an individual must have qualifying HDHP coverage and no "disqualifying coverage." Disqualifying coverage includes any health coverage that provides a benefit prior to meeting the HDHP deductible, and is often referred to as "first dollar coverage."

The IRS rules allow an exception from the first dollar coverage prohibition for certain types of coverage, including "permitted insurance" (e.g. workers compensation, per diem hospital benefits), "excepted benefits" (e.g. stand-alone dental or vision benefits), preventive care services, certain employee assistance programs (EAPs), and discount card programs. However, telemedicine programs generally provide health care outside of the above exceptions, including primary care visits and benefits.

Employer provided telemedicine programs that allow employees to obtain primary care on a free or discounted basis will destroy HSA eligibility. For example, with many telemedicine products, the employer pays a monthly fee that allows the employee to access telemedicine visits on a discounted basis before his/her HDHP deductible has been met. This type of program would result in a loss of HSA eligibility. In addition, to satisfy other requirements, amounts employees pay for telemedicine services should be run through the primary health care plan and applied to the HDHP deductible.

The employer should ensure it can show that the employee pays fair market value for telemedicine services, and payment for those services is applied against the deductible as out-of-pocket costs.

ERISA Group Health Plan Issue

Employers providing a telemedicine program to all employees regardless of group health plan enrollment could inadvertently create a separate ERISA group health plan. Telemedicine programs that provide primary care or prescription drug services (which most do) that are not bundled with the primary health plan would qualify as a group health plan under ERISA, COBRA, HIPAA, and other federal laws.

As an independent, separate health plan, such a program would also arguably be considered a group health plan under the Affordable Care Act (ACA). The ACA imposes a series of coverage mandates on virtually all group health plans, including providing certain preventive care without cost sharing, such as immunizations and screenings. However, telemedicine programs do not provide these services, resulting in non-compliance with the ACA's requirements. An employer with a group health plan that fails to satisfy the ACA's requirements is subject to excise taxes of $100 per day "with respect to each individual to whom such failure relates." In other words, inadvertently establishing a non-compliant ACA group health plan could expose an employer to excise taxes up to $36,500 per year for each participant in the plan.

One way to minimize the risk of creating a separate group health plan is by permitting only employees who are enrolled in your group health plan to utilize the telemedicine benefits. In this way, the telemedicine program can be integrated with the group health plan to meet the ERISA and ACA requirements. However, employers still need to ensure the program is compliant with the other group health plan mandates, HSA eligibility requirements and COBRA.

What Does The Future Hold?

To date, the federal agencies enforcing these laws have remained mostly silent with respect to the compliance obligations of telemedicine programs. Before adopting a telemedicine program, you should consult with legal counsel regarding compliance issues. By doing so, you can discuss the potential risks and ensure you are not subject to excise taxes and that your employees do not lose HSA eligibility, which could subject them to unintended income and excise taxes if they maintain an HSA.

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