PPI BENEFIT SOLUTIONS

POINT SOLUTION PROGRAMS: A GUIDE FOR EMPLOYERS

A popular trend in employee benefit offerings relates to "point solution" programs, which are typically offered through third-party vendors to enhance an employer's major medical plan or benefits program. Point solution programs often target services ranging from specific condition management to digital solutions and apps to overall benefit program simplification.

While point solutions can provide helpful supplements to an employer's group health plan offerings, these types of add-on programs also give rise to several significant (and potentially problematic) compliance issues. This publication outlines several types of point solution programs and discusses the related compliance issues. Those include the application of federal group health plan laws (e.g., ERISA, COBRA, HIPAA, the ACA, and MHPAEA), interaction with HSA eligibility, plan documentation and administration, and taxation and reporting.

While point solution programs are helpful supplements to a group health plan, employers must be aware of the applicable benefits compliance requirements.

TYPES OF POINT SOLUTIONS

Point solutions come in various shapes and sizes and address a broad range of employee health and wellbeing needs through counseling, referrals, physical therapy programs, and condition management services. The growing field of point solution programs also includes clinical services for mental health, musculoskeletal disorders, fertility, diabetes, heart disease, weight management, hearing impairments, or any other health condition. Depending on an employer's workforce composition, point solutions may be offered to all employees, only to employees in certain classifications, only to employees enrolled in the group health plan, and/or to an employee's family members (spouse, domestic partner, or other dependents).

Ultimately, employers have discretion to determine eligibility criteria for their point solution offerings as well as how the benefit will interact with the group health plan. Some employers may simply prefer to provide employees with taxable earnings in the form of a "lifestyle spending account" (LSA) or "specialty reimbursement account" (SRA) to use for a broad range of wellness related pursuits, such as gym memberships, fitness classes, sports or exercise equipment, weight-loss programs, nutritional coaching, or other health-promoting activities. Employers may need to engage legal counsel to determine the exact compliance obligations associated with certain point solution offerings, including methods for imputing income at least once annually, as applicable, and to ensure that they structure the program(s) relative to the employer's other group health plan offerings.

APPLICATION OF FEDERAL GROUP HEALTH PLAN MANDATES

Whether federal group health plan laws, such as ERISA, COBRA, HIPAA, the ACA, and MHPAEA, apply to any particular point solution program depends on whether the program provides medical care. If it does, then the program is technically a group health plan and is therefore subject to these laws. At a high level, for purposes of these laws, "medical care" is broadly defined to include amounts paid for the diagnosis, cure,

mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body. Note that fixed indemnity coverage that pays a fixed amount based on a particular event (e.g., hospital admission or diagnosis of a specific condition or injury) unrelated to an individual's medical expenses is not considered medical care. Long-term care programs also fall outside the scope of medical care.

While the analysis of whether a point solution program provides medical care depends on its particular services, the determination essentially hinges on whether the program provides individualized diagnosis, treatment, or prescription services for an employee (or an employee's family member, if applicable). If the point solution is more broad-based in nature (exercise suggestions/programs, behavioral coaching, or general educational recommendations and resources), then it is unlikely to be considered medical care (and therefore it is probably not going to constitute a group health plan subject to ERISA, COBRA, HIPAA, the ACA, MHPAEA, and other federal group health plan laws). Conversely, if a licensed physician is providing diagnoses, treatment, or prescriptions related to an employee's specific condition, then the program is providing medical benefits.

With that in mind, the analysis of whether a point solution program constitutes medical care involves four considerations:

1. Is the physician/therapist/clinician a trained and licensed medical professional?
2. Is the physician/therapist/clinician actually making a diagnosis (or just responding to someone who has self-diagnosed)?
3. Is the advice/direction offered through the program specific/individualized to the employee (or is it broadly related to the general condition the employee is seeking to address)?
4. Is there any direction or prescription specific to the individual employee (or are there just general suggestions/prescriptions that broadly pertain to the condition itself)?

Another way to frame the analysis is this: would the program's advice be helpful to any person with the same condition, or is it helpful only to the individual employee? The former is considered general advice and therefore does not constitute medical care. The latter is much more likely to be individualized diagnosis, treatment, or prescription, and therefore medical care.

PPI Observation	**Medical care analysis example:** A program, accessed through a mobile phone app, asks John to input whether he has a specific condition (e.g., Type 2 diabetes), and John verifies that he has Type 2 diabetes. In response, the program gives John general coaching services about diet, exercise, and sleep habits that may reduce the risk of progression of the disease. This type of coaching is not generally sufficient to constitute medical care. Although the program provides information on a disease, prevention, and coaching (even sometimes by a trained or licensed physical therapist or diabetes specialist), and it relates to a condition that John knows or believes he has, it would not likely be considered medical care because it is not an individualized treatment plan, prescription, or diagnosis from a clinician. Remember that part of the analysis examines whether a medical professional is providing a diagnosis in connection with the illness or disease. In this example, John self-diagnosed; i.e., John told the app program that he had diabetes, and then the program provided John with some general suggestions. Because a clinician did not look at John specifically, review John's symptoms, or tell John that he had Type 2 diabetes, the program would not be considered to have diagnosed a medical issue or prescribed a remedy. Further, the clinician in this example provides general information that might be helpful for someone with Type 2 diabetes but does not suggest any particular treatment or drug that would directly help John's specific condition. On the other hand, if, after reviewing John's eating habits, the clinician were to advise something specific (such as, "You should consume less sugar, eat more vegetables, and take this particular prescription drug"), then that would be a treatment or prescription for John's particular condition and would therefore likely constitute medical care.

Because most point solution programs provide some type of individualized diagnosis, treatment, or prescription services, it becomes difficult to argue that they fall outside the purview of ERISA, COBRA, HIPAA, the ACA, and MHPAEA. Nevertheless, employers must review each program closely to determine if it provides medical care.

Potential Exceptions from the ACA, MHPAEA, HIPAA Portability and Nondiscrimination Rules, Prescription Drug Data Collection Reporting, and Prohibited Gag Clause Attestations

While point solution programs that provide medical care are generally subject to ERISA, COBRA, and HIPAA, there is a possible exception from the ACA, MHPAEA, HIPAA Portability and Nondiscrimination Rules, Prescription Drug Data Collection (RxDC)

Reporting, and Prohibited Gag Clause Attestations, known as the "excepted benefit" exception. This exception applies if the program meets the definition of an employee assistance program (EAP). To qualify as an EAP, the program must satisfy all of the following six conditions:

1. The program must not provide significant benefits in the nature of medical care, taking into account the amount, scope, and duration of covered services.
2. The program must not coordinate with benefits under another group health plan.
3. Participants cannot be required to exhaust benefits under the program before being eligible for benefits under another plan (i.e., the program may not be a gatekeeper to obtain benefits from the underlying medical plan).
4. Participation in the program may not be dependent on participation in another group health plan.
5. No employee premiums or contributions may be charged for the program (i.e., the program must be fully employer-paid).
6. There may be no cost-sharing under the program.

While most of these conditions are straightforward, the first condition – whether the program provides "significant benefits" – is open to multiple interpretations. Unfortunately, the EAP rules do not define what benefits would be considered "significant benefits in the nature of medical care," and the regulators did not adopt a standard regarding the number of counseling or therapy sessions that would trigger that status. Instead, the regulations provide that a program must take into account "the amount, scope and duration of covered services" to make this determination. That can leave employers in a tough position when it comes to knowing whether a particular point solution program meets the EAP exception. However, the rules provide two instructive examples.

Specifically, the first example indicates that a program that provides disease management services (such as laboratory testing, counseling, and prescription drugs) for individuals with chronic conditions, such as diabetes, **does** provide significant benefits in the nature of medical care. On the other hand, the second example indicates that a program that provides only limited, short-term outpatient counseling for substance use disorder services (without covering inpatient, residential, partial residential, or intensive outpatient care) without requiring prior authorization or review for medical necessity **does not** provide significant benefits in the nature of medical care.

Again, whether a particular point solution program satisfies the ACA excepted benefit criteria for EAPs depends heavily on how the program is structured and administered, and whether the benefits could be considered significant. So, each program must be analyzed to determine whether the EAP exception applies. That said, remember that the EAP exception applies only for purposes of compliance with the specific laws that incorporate the excepted benefits exception; ERISA, COBRA, and HIPAA still likely apply to most point solution programs.

PPI Observation	While the term "Employee Assistance Program" (EAP) is commonly used in the employer-sponsored benefits space to describe programs offering services such as counseling, referrals for financial wellness, job mobility, or other support related to general wellbeing, it also serves as a term of art under group health plan excepted benefit rules, where the above specific criteria determine whether an EAP is exempt from certain regulatory requirements.

Potential Options to Address Group Health Plan Compliance

Overall, it can be difficult to argue that point solution programs do not provide medical care. Thus, the more cautious approach is to assume that these programs provide medical care, and therefore that ERISA, COBRA, HIPAA, the ACA, MHPAEA, and other mandates apply. If so, there are some practical ways to address the compliance concerns that arise relative to these laws.

The easiest way to achieve compliance with federal group health plan laws is to integrate the point solution program benefits with the employer's major medical plan via the plan documents. In practice, that means adding the point solution program as a benefit under one or more of the employer's existing medical plans. The point solution thereby becomes part of the plan and achieves compliance with group health plan requirements via that integration. Notably, integration of the point solution program into the medical plan requires that the benefit is offered only to employees or former employees (i.e., COBRA participants or retirees) who are enrolled on the employer's group health plan or who certify that they are enrolled in another ACA-eligible group health plan (perhaps through a spouse's or domestic partner's employer). If the point solution benefit remains outside the major medical plan, it could be viewed as a stand-alone group health plan; as such, it would violate several provisions of the ACA, including the requirement to cover preventive services without cost-sharing and the prohibition on annual dollar limits for essential health benefits.

Adding point solution benefits to plan documents and SPDs, and including them for Form 5500 purposes, allows employers to achieve compliance with ERISA's obligations. Similarly, as individually identifiable health information (protected health information, or PHI) might be shared as part of a point solution program, employers must consider HIPAA privacy and security obligations, including running a risk analysis, developing privacy and security policies and procedures, and taking other steps to protect such sensitive information. The plan may also need to sign a Business Associate Agreement with the point solutions program vendor.

PPI Observation	Note that there are additional federal group health plan mandates beyond ERISA, COBRA, HIPAA, and the ACA that may apply when a point solution program provides medical care. Significantly, for mental health point solution programs, employers should also review their obligations under the Mental Health Parity and Addiction Equity Act (MHPAEA) to ensure that mental health/substance use disorder (MH/SUD) benefits are on par with medical/surgical (MED/SURG) benefits. Unless the program satisfies the EAP exception, when assessing the plan's MHPAEA compliance, a point solution that provides medical care must be considered in combination with other major medical benefits that the participant may simultaneously receive. For example, telehealth is considered in the outpatient category of benefits. So, if a plan provides telehealth benefits for MED/SURG treatment but not MH/SUD treatment, that exclusion is a non-quantitative treatment limitation (NQTL) that needs to be scrutinized as part of a comparative analysis of the plan's outpatient benefits as a whole. For further information about compliance with MHPAEA, see the PPI publication **MHPAEA NQTL Comparative Analysis: A Guide for Employers**.

COBRA might present the biggest compliance challenge for employers that adopt point solution programs. A point solution program that provides medical care, as most do, is subject to COBRA rules (including all notice requirements). COBRA compliance for point solutions can pose burdensome administrative challenges, as most COBRA vendors are ill equipped to administer COBRA for these programs and the point solution vendors themselves rarely administer COBRA. Further, determining a COBRA premium rate for point solution programs can prove difficult.

PPI Observation	Many point solution program vendors encourage employers to offer their product to all employees to achieve maximum participation. However, most employers only consider COBRA offers in connection with employees enrolled in the major medical plan. The disjoint between the wider universe of employees who are eligible for COBRA on the point solution program and the narrower swath of employees eligible for COBRA on the major medical plan leaves the employer with few options to achieve compliance. One option would be to expand the COBRA offer to all point solution program participants. The easiest approach, though, may be to limit participation in the point solution program exclusively to employees who are enrolled in the major medical plan. Regardless, for point solution programs that are subject to COBRA, the employer must work closely with their COBRA administrator and the point solution program vendor to ensure that COBRA compliance is handled appropriately. For further information about compliance with COBRA rules, see the PPI publication **COBRA: A Guide for Employers**.

POINT SOLUTIONS, HDHPs, AND HSA ELIGIBILITY

Enrollment in a point solution program can potentially affect an employee's HSA eligibility. Thus, employers with HDHP offerings need to pay close attention to impermissible coverage rules when selecting and implementing point solution programs.

At a high level, any medical benefit that constitutes "impermissible coverage" disqualifies an individual from HSA eligibility (meaning they cannot establish or contribute to an HSA). Impermissible coverage is any coverage that provides coverage underneath the statutory minimum deductible for HDHPs. Assuming the point solution program benefits are medical benefits, and assuming employees are not paying anything for use of the benefits (e.g., deductibles, copayments, coinsurance), then coverage under the program constitutes "impermissible coverage" and renders employees HSA ineligible even if they do not actually use the point solution program benefits. For further information about HSA eligibility and impermissible coverage, see the PPI publication **Health Savings Accounts: A Guide for Employers**.

Note also that HSA funds may be used to pay for any eligible medical expense of the employee and the employee's tax dependents. Thus, as most point solution program benefits are considered medical care and therefore medical expenses,

employees can generally use HSA funds to pay for point solution program cost-sharing amounts, including deductibles, copayments, and coinsurance, but cannot use HSA funds to pay for point solution premiums other than COBRA premiums.

Potential Exceptions to HSA Rules

Point solution programs that meet certain requirements may not affect HSA eligibility. Specifically, programs that provide only "insignificant" or "preventive" benefits (as recognized by the IRS) will not adversely affect HSA eligibility. The analysis is similar to the EAP exception described above and requires a breakdown of the program-specific structure and benefits.

PPI Observation	Under legislation originally enacted in 2020, employers were temporarily able to provide first-dollar coverage for telehealth services without negatively impacting HSA eligibility for HDHP enrollees. The One Big Beautiful Bill Act of 2025 (OBBBA) made this relief permanent.

Potential Ways to Avoid HSA Ineligibility

In order to safeguard the eligibility of HSA participants, one option would be to build the point solution program benefits into the major medical plan and then charge employees the fair market value (FMV) for the benefits or services they receive. In other words, the program benefits would need to be treated as any other benefit under the plan: employees would have to pay some amount for them until the employee meets the statutory minimum deductible for the HDHP. Another option would be to limit program participation exclusively to employees enrolled in non-HSA-qualified HDHPs. Without adopting one of those two approaches, employees enrolled in the HDHP risk losing HSA eligibility upon enrollment in the point solution program. Any HSA contributions made or received after the effective date of the point solution enrollment, or made calendar year-to-date in excess of the ratable calendar year limit, would be considered excess contributions (and the employee would have to correct the HSA contribution through a taxable distribution or pay a penalty).

TAXATION OF POINT SOLUTIONS

Generally, only "medical benefits" qualify for tax exclusion for employees. (Tax exclusion means the value of the benefit is not included in employees' gross taxable income.) The value of any benefit provided to employees that is not medical care would likely need to be included in employees' gross taxable income (via Form W-2). Most health and welfare benefits provided by employers are considered medical care and are therefore excludable. However, some point solution program benefits are not medical care.

PPI Observation	Some point solutions programs may contain a mix of benefits: some that constitute medical care and others that do not. An HRA cannot reimburse taxable expenses, even if mixed with benefits for non-taxable medical care expenses. One example of a point solution program that may include a mix of medical and non-medical benefits relates to a possible component of fertility benefits. While temporary egg storage (freezing) expenses may be considered medical care (and therefore non-taxable), long-term egg storage (generally more than one year) is rarely considered a medical benefit unless it is deemed medically necessary. That means that elective long-term egg freezing benefits are taxable. Importantly, each point solution benefit should be reviewed by legal counsel to determine whether any components are medical care and therefore non-taxable.

In addition to determining if a point solution benefit is taxable, another challenge for employers is that they may not know which employees are receiving the benefit. One way to address that challenge is to have the point solution vendor communicate the benefits back to the employer, and then to have the employer report it on those employees' Forms W-2. (Employers are generally the party responsible for reporting employees' gross income via Form W-2, even if they engage a payroll provider to help administer payroll.) Another approach is to have the vendor issue a Form 1099 directly to each employee who receives a benefit under the point solution program. While the mechanics of taxation may depend on the point solution vendor's relationship with the client, employers must consider the best way to administer and report additional income related to any taxable point solution program benefits provided to employees.

REPORTING OF POINT SOLUTIONS

The FMV of point solution medical care benefits or services, including under excepted benefit EAPs for which the employer charges a COBRA premium, must be included in the "aggregate reportable cost" under the ACA's Form W-2 cost of coverage reporting. This requirement only applies to employers that filed 250 or more Forms W-2 in the preceding calendar year. For further information about cost of coverage reporting, see the PPI publication **ACA: Form W-2 Reporting Requirement**.

In addition, if the point solution program provides medical care and is not considered an EAP excepted benefit, then enrolled employees must be included in the covered life headcount for calculating and paying the PCOR fee. This is especially relevant for point solutions that are structured as a reimbursement; similar to an HRA, a reimbursement design would likely be considered a self-insured plan, and employers are obligated to pay PCOR fees on self-insured plans. For further information about PCOR fees, see the PPI publication **PCOR Fees: A Guide for Employers**.

Point solution programs that are not considered an EAP excepted benefit are subject to the CAA 2021's RxDC Reporting and Gag Clause Prohibition and Attestation requirements. For further information about these requirements, see the PPI publications **Prescription Drug Data Collection Reporting: A Guide for Employers** and **Gag Clause Prohibition and Attestation: A Guide for Employers**.

Lastly, point solution programs that provide medical care are subject to ERISA (even if they are considered an EAP excepted benefit), including the Form 5500 and Summary Annual Report (SAR) reporting requirements. Point solution programs that are integrated or wrapped together with the major medical plan can comply with the Form 5500/SAR requirements by adding the program benefits to the medical plan Form 5500. Non-integrated/non-wrapped plans must file a separate Form 5500 (and they may have to do so without a Schedule A, since many vendors take the position that their products are not "insurance products" subject to Schedule A reporting; see the Form 5500 Instructions for more information about filing Form 5500 without Schedule A).

SUMMARY

Employers that include point solution programs in their benefits offerings should be mindful of the compliance considerations related to these benefits, particularly under ERISA, COBRA, HIPAA, the ACA, and MHPAEA. In some cases, it may be necessary to confer with legal counsel to evaluate the specific characteristics of each point solution program in order to determine whether it constitutes medical care or an EAP excepted benefit.

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