WHOSE DATA IS IT ANYWAY (A Fiduciary Perspective) 2019 NCCMP Annual Conference – September 24, 2019

Moderator:



Tina Fletcher President Presenters:



David Brenner National Director of Multiemployer Consulting



John T. Long Partner

TYPES OF DATA

- Participant demographics (e.g., age, marital status, personal assets, etc.);
- Medical and prescription drug claim data; and
- Participant survey information (e.g., medical history).



IS DATA A PLAN ASSET?





TRADITIONAL PLAN ASSETS

- What constitutes traditional "Plan assets" is well defined. See, 29 U.S.C. §1002(42) and 29 C.F.R. 2520.3-101
- Questions regarding what constitutes traditional "plan assets" typically arise when (i) dealing with plan investments, and/or (ii) determining the application of fiduciary responsibility.



NON-TRADITIONAL PLAN ASSETS

- What constitutes non-traditional "plan assets" is less defined.
- According to DOL guidance, "the assets of a plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law. In general, the assets of a...plan would include any property, tangible or intangible, in which the plan has a beneficial ownership interest. The identification of plan assets would therefore include consideration of any contract or other legal instrument involving the plan, as well as the actions and representations of the parties involved." See, Advisory Opinion 93-14A.



UNANSWERED QUESTIONS...

- "Ordinary Notions of Property Law under non-ERISA law"...
 - What law applies? State law or federal common law?
 - Lack of uniformity likely...
- What constitutes a "Beneficial Ownership Interest"?
 - This term is commonly used in financial regulations and typically has a statutory meaning.
- Does the term "legal instruments" refer to the Plan's governing documents (e.g., the trust agreement) or something else?
- "Actions and representations of the parties involved"...



WHETHER DATA IS A "PLAN SSET" REQUIRES CONSIDERATION OF THE FOLLOWING...

- What does the applicable contract say?
 - The following provisions would likely need to be carefully reviewed:
 - Confidentiality Provisions
 - Licensing/Intellectual Property Provisions
 - Provisions regarding "reports" and the content thereof
- How does the Plan's trust agreement define "plan assets"?
 - Is the trust agreement part of the contract?
- Are there any relevant "actions and representations" of the parties?
 - How have the parties addressed the issue before? Has it been raised?



STAY TUNED...

Divane, et al. v. Northwestern University, et al. 2016 cv 08157/ 2018 WL 2388118 (May 25, 2018)

The United States District Court for the Northern District of Illinois refused to permit the Plaintiffs to amend their complaint to add a new count that alleged that participant data was a "plan asset." The District Court stated that "Plaintiffs cite no case in which a court has held that such information is a plan asset for purposes of ERISA." The District Court further explained that "[t]he Court has no doubt that a compilation of the information that [the service provider] has on participants has some value..., but the Court cannot conclude that it is a plan asset under ordinary notions of property rights." The District Court's ruling was appealed to the Seventh Circuit Court of Appeals. In its brief, the Appellant argued that "the District Court's conclusion that participant information is not a Plan asset was wrong." Oral arguments were conducted in May 2019. Decision pending.



FIDUCIARY RESPONSIBILITY AND THE ROLE OF "DATA"

- Access to Data is needed to fulfill ERISA reporting and disclosure obligations...
 - The Secretary of Labor has broad authority to require the production of any "data" to support information required to be filed with the DOL. See, 29 U.S.C. §1024 and 29 U.S.C. §1134.
- Access to Data is needed for administrative purposes...
 - The day-to-day needs of plan administration depend on access to data.
 - Examples include obtaining proposals from vendors, fulfilling contractual obligations with vendors, auditing claims data, etc.
- Access to Data is needed to comply with ERISA's Duty of Prudence.
 - The selection and monitoring of service providers is a key fiduciary responsibility.
 - Would a reasonable person consider not taking steps to ensure that data maintained by service providers is both protected/secure and accessible/available?



What is Data Analytics?

...analyzing available data to generate new information.

Traditional reporting provides views of data, some very detailed and elaborate whereas the purpose of data analytics is to use data to provide actionable insight.

>You can't take action on what you can't measure and monitor.



Using Data for Plan Management

- Typical approaches to benefits strategy focus on vendor management, plan design and population health management.
- Health care benefits comprise a substantial portion of employees' total compensation. Effective and efficient design, management and procurement of benefits can significantly impact your employees and retirees.
- Data analytics can be used to support all recommendations and "business case" development for sensible long-term sustainable solutions.



* Segal Consulting 10

Uses of Data

Benefit Design and Network Management
Impact of Change to Clinical Guidelines
ACO Performance—Improving Outcomes
Assessing Emerging Conditions

Prescription Drug Issues

- Identifying Abusive Rx Pricing
- Measuring Impact of Non-Adherence
- Monitoring Rx Anomalies
- Monitoring Drug Control Use
- Measuring effectiveness
 - Wellness programs
 - Behavioral Health programs
 - Onsite clinics



The Value of Health Data Mining For Plan Management

>What is the impact of plan changes implemented?

>What is the cost to comply with rules and regulations under ACA?

- How is the membership mix changing? What impact will that have on future costs?
- What medical conditions and treatments are driving cost and utilization trend?
- >How do my plan cost and utilization patterns compare to norms?
- What are the high volume and high cost providers and facilities to target for provider-specific initiatives?

Research suggests that plan sponsors can reduce or avoid future health care costs by 5% to 10% annually through the use of data mining technology.



The Value of Health Data Mining for Population Health

- How does membership compliance with treatment protocols compare to norms?
- What is the health risk of the plan participant population?
- How is the population's health risk/health status changing over time?
- Should we implement wellness or disease management programs?
- >What diseases should be targeted?
- Are the wellness or disease management programs having an impact?





Laboratory Testing Substance Use Screenings

	In-Network	Out-of-Network
Claims Paid by Fund	\$160,811	\$712,927
Cost per Screening	\$31	\$132
Number of Screenings	3.2	8.1

Most substance use drug screening claims occurred in Out-of-Network (OON) facilities. The OON cost per screening was substantially higher than the In Network cost and OON facilities had a much higher frequency of performing tests.



Population Health Management and ROI

\$

\$

\$

\$

\$

\$

\$

ROI is hard to measure

Why are baseline costs rising?

Is that because your sprograms are not working?
What other factors influence costs



Measuring Progress Instead

Instead of ROI—measure progression of chronic disease

X Segal Consulting 16

- Monitor whether outcomes are directionally favorable
- Monitor biometrics
- Monitoring anomalies
- Monitor clinical outcomes
- End result: less chronic disease in the population
- That's the ROI

What is Predictive Modeling?

...analyzing historical data to find patterns that can be used to predict future events



Complexity



Risk Factor Stratification



Stratify client populations across cost, utilization, risk and quality metrics to identify high risk, emerging risk and intervenable risk populations.



Machine Learning

- Machine learning can process more information and spot more patterns than through traditional predictive analytics and manual intervention.
 - Google has developed a machine learning algorithm to help identify cancerous tumors on mammograms
 - Stanford is using a deep learning algorithm to identify skin cancer
- >Examples of how machine learning can be used include:
 - Predict chronic diseases: Understanding risk factors for disease in large populations (identify variables to avoid hospitalizations in diabetic patients)
 - Reduce errors, waste and fraud: by analyzing irregularities in claims
 - Reduce readmissions: predict which patients are most likely to be readmitted and how they might be able to reduce that risk.
 - Reduce hospital LOS: reduce LOS by identifying patients that are likely to have an increased LOS and then ensure that best practices are followed.

Thank you! . 1100 0101010 X Segal Consulting 20