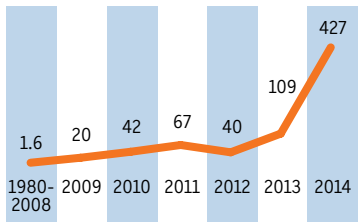


OKLAHOMA SEISMICITY

Annual number of quakes of magnitude 3 or higher



Source: Oklahoma Geological Survey

PROPERTY/CASUALTY

A seismic change shaping up

Man-made Oklahoma quakes roust insurers

BY MATTHEW LERNER

An Oklahoma Supreme Court ruling allowing lawsuits against oil and gas producers some blame for an increase in earthquakes has insurers preparing to act.

The state is one of several with extensive oil drilling and hydraulic fracturing operations to extract natural gas.

It also has seen an increase in earthquakes, which the Oklahoma Geological Survey said in an April report are likely tied to human activity, not natural causes.

The agency “considers it very likely that the majority of recent earthquakes, particularly those in central and north-central Oklahoma, (were) triggered by the injection of produced water in (oil and gas) disposal wells.”

Historically, the agency said, Oklahoma averaged 1½ magni-

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INTERNATIONAL

REFUGEES PUT NEW FACE ON LIABILITY IN EUROPE

Countries look to balance moral, legal obligations



AP PHOTO

A migrant lies on a Belgian Navy ship after being rescued from the Mediterranean Sea off Libya.

BY SARAH VEYSEY

The humanitarian crisis that has seen thousands of refugees migrating to Europe from war-torn countries such as Syria and Turkey has masked risk management challenges and costs for freight transporters and haulers.

Thousands of refugees attempting to board trains and trucks headed for the United Kingdom at the French port of Calais have caused particular headaches for compa-

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BY THE NUMBERS

- 4.1 million Syrian refugees
- 2.1 million registered in Egypt, Iraq, Jordan and Lebanon
- 1.9 million registered in Turkey
- 24,000 registered in North Africa
- 49.5% are male, 50.5% are female

Source: United Nations High Commissioner for Refugees

MERGERS & ACQUISITIONS

Fewer targets raise stakes in race to buy

Mitsui's deal for Amilin puts pressure on rivals

BY SARAH VEYSEY

Mitsui Sumitomo Insurance Co.'s plan to buy London-based Amilin P.L.C. may make future acquisitions of Lloyd's of London companies more expensive amid a declining pool of potential takeover targets.



Tokyo-based Mitsui Sumitomo said last week that it would pay about £3.5 billion (\$5.27 billion) to buy Amilin, which operates the second-largest syndicate at Lloyd's, to create “a world-leading insurance company, with an international business anchored in the Lloyd's market.”

The deal in which the Lloyd's operations would be merged follows several recent mergers and acquisitions that include Fairfax Financial Holdings' February agreement to buy Brit Insurance Holdings N.V. and XL Group P.L.C.'s April deal to purchase Catlin Group Ltd.

The Amilin deal “highlights the M&A potential for the whole Lloyd's sector,” said Sarah Lewandowski, an analyst at Haitong Securities (U.K.) Ltd. in London.

The relatively high price that Mitsui Sumitomo will pay for Amilin means that “no stock can be ruled out on valuation grounds.”

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NEWS

HEALTH CARE BENEFITS

HIGH-DEDUCTIBLE PLANS MAY LEAD TO COST HEADACHES

Shifts to consumer-driven model could backfire

BY SHELBY LIVINGSTON

When Drink Eat Well Inc. began offering health insurance to its employees several years ago, it chose a high-deductible health plan because the premiums were the most the small business could afford.

But the Lawrence, Kansas-based health food manufacturer, which does business as Hilary's Eat Well, has since found the health plan to be "not very accessible," and some of its fewer than 50 workers, many with low incomes, are avoiding the doctor rather than emptying their wallets, said Amy Dorsey, the company's office manager.

Some even have opted out of the employer-sponsored health coverage.

"We are taking a hard look this year at whether or not we would be doing better by our hourly employees ... to not offer health insurance so they could get better care and coverage through the (public exchange) marketplace," Ms. Dorsey said.

As more employers offer high-deductible health plans to cut costs and avoid the Patient Protection and Affordable Care Act's 40% excise tax on health plan costs that exceed \$10,200 for individuals and \$27,500 for families that will go into effect in 2018, there's growing con-



COST-CONSCIOUS BEHAVIORS

Percentage of consumers with employer-based insurance who made the following health care decisions based on cost in the past year

- 28%** skipped seeing a doctor
- 28%** asked for a generic vs. brand-name prescription
- 24%** skipped a prescribed medicine or took less than the recommended dose
- 20%** skipped seeing a specialist
- 18%** skipped follow-up care
- 16%** skipped or delayed a procedure or treatment

Source: PricewaterhouseCoopers L.L.P.

cern that HDHPs discourage workers from seeking necessary treatment to avoid the out-of-pocket costs. That could worsen health issues and increase medical costs down the line, health experts say.

For example, employees enrolled in consumer-directed health plans were less likely to receive medical care for chronic conditions than those in other health plans, according to a Truven Health Analytics study in April that analyzed data from 183,000 plan members from 2009-2012.

At the same time, the number of employers offering HDHPs has skyrocketed since 2009, a June PricewaterhouseCoopers L.L.P. study of 1,150 employers showed.

Some 83% of employers have an HDHP this year, almost 300% more than in 2009. In the same time period, the average in-network deductible increased to \$1,200 from \$680, according to the study and analysis of other reports.

Dr. W. Ryan Neuhofer, a primary care family physician in Lawrence who contracts directly with Hilary's Eat Well to fill in the company's insurance coverage gaps, regularly sees patients who delayed tests or X-rays because of high deductibles.

He gave an example of a recent case in which a patient with hand pain decided against a \$2,000 MRI

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MERGERS & ACQUISITIONS

Health insurer merger plans under antitrust fire

BY MATT DUNNING

Trade groups representing health care providers say consolidating four of the five largest publicly traded U.S. health insurers would reduce competition in dozens of states and possibly increase premiums.

Testifying before the House Judiciary Committee last week, senior leaders of the American Medical Association and American Hospital Association said the market concentration resulting from the proposed mergers of Anthem Inc. and Cigna Inc., and Aetna Inc. and Humana Inc. would likely drive up health insurance premiums, dis-

courage innovation and potentially erode the quality and/or quantity of medical care available to consumers.

"In practice, the concentration of market power among a handful of nationwide insurers impacts physicians' ability to facilitate individualized care," Dr. Barbara McAneny, a member of the AMA's board of trustees, said during the Judiciary Committee's Sept. 10 hearing on the state of competition in the health care marketplace.

An analysis of the proposed mergers that the Chicago-based AMA submitted to the U.S. Justice Department and the Federal Trade Commission earlier in the week

indicated the deals would thwart competition from local and regional insurers and disadvantage employers and individual consumers in as many as 154 cities in 23 states.

"Market dominance does not produce patient benefits when physicians are squeezed and networks are narrowed," Dr. McAneny said. "We're at a critical decision point on health insurance mergers, because once the handful of national payers is further reduced, there is simply no going back."

Richard Pollack, president and

See HEALTH page 27

WORKERS COMPENSATION

Looking beyond Oklahoma opt-out woes

Other states mull plans while lawsuit plays out

BY STEPHANIE GOLDBERG

Constitutional challenges to Oklahoma's workers compensation opt out law and a shakeup among the state's regulators may deter employers from abandoning the workers comp system, but states weighing opt-out legislation will likely forge ahead.

Effective Feb. 1, 2014, the state's Employee Injury Benefit Act, also called the Oklahoma Option, allows employers to opt out of Oklahoma's workers comp system and provide alternative coverage for injured workers.

Attorneys representing injured workers petitioned the Oklahoma Supreme Court earlier this year to declare the law unconstitutional, arguing that it includes no due process protections. On Sept. 30, the state's high court will hear oral arguments in *Damien Smith v. Baze Corp. Investments Inc.*

The case challenges the exclusive use of the AMA Guides to the Evaluation of Permanent Impairment, sixth edition, to evaluate permanent disability and questions whether benefit levels are adequate enough to consider workers comp the exclusive remedy for injured workers, among other things, according to Mr. Smith's attorney, Bob Burke.

Mr. Smith injured his right knee on the job in February 2014, and Baze approved his claim for workers comp benefits, Mr. Burke said. But Mr. Smith's subsequent request for permanent partial disability benefits was disputed.

Despite the challenge in Oklahoma, legislators in South Carolina and Tennessee introduced opt-out bills this year and sources say Georgia could be next.

"There used to be a time when states would tread carefully with a new issue, particularly when it was under constitutional challenge," said Bruce Wood, Washington-based vice president and associate general counsel at the American Insurance Association. "But not so, here ... (proponents) are committed."

James Mills, chief of staff and director of workers comp at the Oklahoma Insurance Department, said 55 employers have been

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Lloyd's of London identifies cities at risk

Major metropolises facing emerging threats are ranked by financial and population exposures.

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VIDEO



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GALLERY

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NEWS

TRANSPORTATION

ELECTRONIC TRUCKER LOGS
PUT BRAKES ON FATIGUE, SPEED

Insurers welcome move to strictly enforce safety rules

BY DONNA MAHONEY

New rules for commercial trucking set to be published later this month take aim at two factors that have long haunted the industry: driver fatigue and excess speed.

Driver fatigue was cited as a major factor in the high-profile June 2014 accident in which comedian Tracy Morgan was critically injured, along with two other passengers. A fourth passenger was killed when a Wal-Mart Stores Inc. truck driver failed to notice stopped traffic on the New Jersey Turnpike and hit the limousine.

Safety is at the heart of the new rules. In the most recent data available, the Federal Motor Carrier Safety Administration said 3,921 people died in trucking accidents in 2012 and that trucking accidents cost about \$50 billion a year.

To deal with excess speed, rules due for publication Sept. 20 would require commercial truck drivers to use an electronic logging device instead of a handwritten log to record their hours on the road.

So-called hours of service, which would allow driving 11 hours after a 10-hour break, are intended to ensure drivers get enough rest. During roadside safety inspections, the most common citation for commercial truckers is exceed-



New rules would require commercial truck drivers to use an electronic logging device instead of a handwritten log to record hours on the road.

ing hours of work, according to a Department of Transportation report.

"Driver hours-of-service violations and falsified driver logs continue to pose significant safety concerns," the 2011 report said.

Electronic logging also can protect trucking companies from litigation.

"From an insurance standpoint, when there is a crash, often times the driver is immediately blamed and the company is, too," said Steve Bojan, Milwaukee-based vice president of fleet risk services at Hub International Ltd. "This

electronic data can exonerate the driver and the company. When you have hard data to show that you are in the right, it really does help our industry. It helps our image and, from an insurance standpoint, that's huge."

The data can prove that a driver complied with federal rules, experts said.

"I believe mandating ELDs is going to get everybody to play by the rules," said Reggie Dupre, CEO of Lafayette, Louisiana-based Dupre Logistics. "There are some

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HEALTH CARE REFORM

Employers renew struggle to change health reform

BY JERRY GEISEL

With lawmakers back in Washington after the August recess, employer groups are renewing their drive to convince Congress to make significant changes to the health care reform law, but they know they face an uphill battle.

Much of the employer lobbying effort will be focused on a Patient Protection and Affordable Care Act provision that, when it takes effect in 2018, will impose a 40% excise tax on group health plan premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage.

Without plan design changes, eventually most group plans will be hit by the tax, numerous surveys have found.

In 2018, the first year the tax goes into effect, nearly 50% of employers expect to trigger the tax without plan design or other changes to hold down costs,

according to a National Business Group on Health survey released last month.

Business groups have argued for a variety of reasons that the tax should be repealed. One reason they give is that there is no evidence to support a key congressional assumption behind the tax: that it will generate tens of billions of dollars in new tax revenue because employers cutting benefits to avoid the so-called Cadillac tax will offset the impact of those cuts by boosting employees' taxable salaries. Few experts believe that employers will increase salaries to offset benefits cuts.

That and other arguments are being heard on Capitol Hill. For example, an excise tax repeal bill, H.R. 2050, earlier introduced by Rep. Joe Courtney, D-Conn., continues to pick up bipartisan support and



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CYBER RISKS

Ashley Madison attack shows evolving risks

Cyber exposure stakes keep escalating

BY DONNA MAHONEY

The cyber attack on the Ashley Madison website, reportedly insured by American International Group Inc. and Axis Capital Holdings Ltd., shows the evolving, escalating and expensive nature of cyber risk.

The mid-July hack of the extramarital affair website, in which the hackers reportedly demanded ransom to keep the users' information secret, has already led to litigation seeking more than \$500 million from the website owner, Toronto-based Avid Life Media Inc., and reportedly resulted in at least two suicides.

AIG reportedly provided directors and officers coverage for the website, while Bermuda-based Axis provided cyber coverage. Both insurers declined comment.

The case has raised awareness that hacking is evolving into a more sophisticated crime, causing cyber risk experts to look for ways that companies can protect their business, and their data.

A lot is at risk, Zurich Insurance Group Ltd. and the international think tank Atlantic Council said last week in an analysis of how cyber costs and benefits affect gross domestic product. While the report said cyber business could result in a "Cyber Shangri-La" cumulative net gain of \$190 trillion by 2030, the worst-case "Clockwork Orange Internet" projection is that cyber crime could sap \$30 trillion globally in net economic benefits if cyber security fails to

See EXTORTION page 26



AP PHOTO

The cyber attack on the Ashley Madison website shows the escalating nature of cyber risk.

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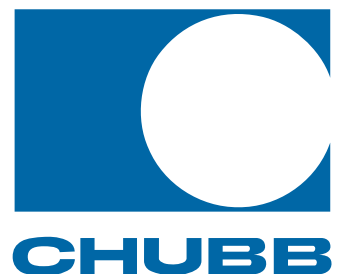


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RISK MANAGEMENT

EMPLOYERS FACE TOUGH CHALLENGES KEEPING THE WORKPLACE SAFE

ADA protections for some workers complicate the strategies

BY JUDY GREENWALD

The on-air shooting of a TV reporter and cameraman in Roanoke, West Virginia, last month provides an extreme example of a challenge facing many employers: how to protect employees from potentially violent unruly workers while also ensuring that troubled workers are afforded protections due under the Americans with Disabilities Act.

Employers face tough choices as they balance their obligations to all workers and there often are no easy answers, experts say.

Reporter Alison Parker, 24, and cameraman Adam Ward, 27, were shot by Vester Flanagan, 41, a former employee of the TV station, CBS affiliate WDBJ. He later shot himself as police pursued him.

According to news reports, Mr. Flanagan was fired in February 2013 because of documented performance and newsroom behavior issues, and the station had to call police to escort him from the building.

The more than two years since he left the station is expected to cushion the station from charges of fault in the killings, observers say.

A related issue is the standard practice of former employers providing only limited information



AP PHOTO

The WDBJ-TV staff in Roanoke, Virginia, prepares for the newscast a day after a reporter and cameraman were killed on-air by a former colleague.

when prospective employers check references (see sidebar).

Under a carve out of the ADA, employees who present a direct threat to themselves or others because of their mental condition do not fall under the law's protection, said Gregg M. Lemley, a shareholder at law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in St. Louis.

"But when does an employee constitute an imminent threat of harm" and "how on earth are we supposed to know?" asked Deirdre Kamber Todd, of the Allentown,

Pennsylvania-based Kamber Law Group. "That's really a major challenge."

The conundrum employers face is determining the point at which the "disabled" person loses the ADA's protection "because their behavior constitutes a threat to their own safety or the safety of other employees" said Mark A. Lies II, partner with law firm Seyfarth Shaw L.L.P. in Chicago.

"It's a very tough call, which is why when I get into those situations we try to avoid stereotypes and we try to look at all the facts,

because what is said is important," as well as the accompanying physical behavior, such as a clenched fist, a finger across the throat or a hand formed in the shape of a gun, said Mr. Lies.

"If you listen carefully and watch carefully, you'll see signs that an employee is saying or doing things that are threatening," said James J. McDonald Jr., regional managing partner with law firm Fisher & Phillips L.L.P. in Irvine, California.

Experts suggest employers carefully document remarks, emails and other indications of a possibly troubled employee to protect themselves from charges of violating the ADA.

"The employer has to go past complaints" that a person makes someone nervous or "looked at me funny" and provide facts to support that he or she is a direct threat to workers' health and safety, said Susan W. Kline, a partner with law firm Faegre Baker Daniels L.L.P. in Indianapolis.

If employers "are making assumptions about a mental health condition, and then act on those assumptions in a negative way, that can get them in trouble under the ADA. But if what they're observing is actual misconduct," they can take action against an

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WORKERS COMPENSATION

Injured employees more likely to win retaliation claims

BY GLORIA GONZALEZ

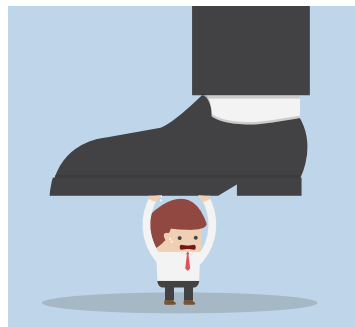
ORLANDO, Fla. — The contentious nature of the relationship between employers and their injured workers often is at the heart of the rising number of retaliation charges.

Nearly 43% of all U.S. Equal Employment Opportunity Commission charges brought in fiscal 2014 included a retaliation claim. While it is unclear what percentage of cases emanate from workers compensation claims, lawyers say retaliation claims are increasing in the workers comp sector because comp cases generally have a lower initial burden of proof

and injured workers are seen as sympathetic plaintiffs.

The most nonretaliatory reason employers give for an adverse action against an injured worker is violating the company's attendance policy, said John Daly, an Orlando, Florida-based partner at law firm Rissman, Barrett, Hurt, Donahue & McLain P.A. But the injured worker can argue that this is just a ploy, which could be enough to survive a summary judgment motion, he said.

Employers may have a general policy to fire an employee after their Family and Medical Leave Act time expires or after a pre-established time period, particu-



larly if the employee has not communicated about their return to work, but such policies will likely run afoul of laws that include the Americans with Disabilities Act cases, lawyers told attendees at the Workers' Compensation Insti-

tute conference in Orlando, Florida, last month.

"A general policy of 'You're gone after 12 weeks' is going to get you in a lot of trouble," said Jason Taylor, a Tallahassee, Florida-based partner at McConnaughay, Duffy, Coonrod, Pope, Weaver, Stern & Thomas P.A.

Employers should contact employees to advise them how much leave they have left, and that they need to return to work once their leave expires or explain why they still cannot, the lawyers said. However, employers also should properly consider and accommo-

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AGENTS & BROKERS

Millennials set to step up in P/C sector

Aging industry looks to seize on vitality

BY MARK A. HOFMANN

DALLAS — The millennial generation stands to make a major contribution to the property/casualty insurance sector as it enters a critical period, according to one insurance executive.

"There's a big, big brain drain coming to our industry," with the average age of an insurance agency employee now at 59, said Steven England, president and CEO of Global Special Risks L.L.C. in Houston.

"I believe the millennials will be major contributors to my company and the insurance industry" as a whole, he said.

But employers must reject myths about millennials, said Mr. England as he addressed a session at Dallas-based electronic insurance exchange MarketScout's ninth annual Entrepreneurial Insurance Symposium in Dallas on Sept. 2.

Mr. England ticked off three myths about millennials, who — although the exact years differ — are generally described as having been born between about 1980 and 1998.

The first myth is that they are rebellious, he said. In reality, he said, millennials are conservative — they job hop because they want to learn.

A second myth is that they "don't fit in," he said. Instead, they are team players, said Mr. England.

A third myth is that they aren't productive, he said. In reality, Mr. England said, they are more productive than other generations.

But managers have to understand how millennials operate. For example, Mr. England said that when he didn't hear phones ringing, he asked a millennial salesperson if he communicated with clients. The man replied yes, he texted them all the time.

Millennials were born into a digital world, he said: "They're always connected."

Mr. England said that studies show that there will be 400,000 millennials in the insurance

See MILLENNIALS page 29

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China's Fosun plans more insurer acquisitions

■ Chinese conglomerate Fosun International Ltd. said it planned to raise up to 11.69 billion Hong Kong dollars (\$1.5 billion) in a rights issue to fund mergers and acquisitions in the banking and insurance industry. The move follows Fosun International's earlier confirmation that it had started exclusive negotiations with the Bank of Portugal to buy Novo Banco. In May Fosun agreed to buy the 80% of Bermuda-based insurer Ironshore Inc. that it did not already own for \$1.8 billion, and in December 2014 it agreed to buy Southfield, Michigan-based insurer Meadowbrook Group Inc. for \$433 million.

Reuters

Uber to pay workers comp fund for drivers named as contractors

■ Uber Technologies Inc. has agreed to pay \$77,925 to the Alaska Workers' Compensation Benefit Guaranty Fund after the state's workers comp division accused the ride-sharing company of misclassifying its drivers as independent contractors. San Francisco-based Uber also will stop operating in Alaska unless the company classifies its drivers as employees and complies with Alaska's workers comp, unemployment and tax laws, the Alaska Department of Labor and Workforce Development said in a statement. "Misclassifying employees allows companies like Uber to avoid paying unemployment insurance, taxes and workers compensation premiums," the statement said. "The Uber settlement is part of a broader state and federal effort to reduce worker misclassification fraud." Uber admitted no wrongdoing in the settlement, an Alaska Dispatch report said.

Jury rules for farm workers in sexual harassment case

■ A federal jury in Miami returned a \$17.4 million verdict against a produce and packing firm charged with sexual harassment, including instances of rape, the U.S. Equal Employment Opportunity Commission announced. Moreno Farms Inc. in Felda, Florida, was sued in federal court last year by the EEOC on behalf of five former workers after the agency first attempted to reach a prelitigation settlement, the EEOC said in a statement. According to the suit, two sons of the owner of Moreno Farms and a third male supervisor sexually harassed multiple female employees, including acts of rape, attempted rape, regular groping and threatening to fire employees if they did not accede to their propositions. All five women involved in the suit were later fired for not giving in to the three men. The jury awarded \$2.4 million in compensatory damages and \$15 million in punitive damages to the former workers.

Final PBGC rule eases reporting requirements

■ A final Pension Benefit Guaranty Corp. rule will reduce reporting requirements for more than 90% of plan sponsors, the agency said. Among other things, the PBGC will waive reporting of certain events — such as a reduction in the number of active participants, a change in the control group and payment of extraordinary dividends — if an employer meets certain financial soundness tests, including having positive net income and no loan

defaults, or if its pension plan is fully funded. The new rule, published in the Federal Register, will apply to events occurring on or after Jan. 1, 2016.

Catastrophe bond issuance starting to slow down

■ Annual catastrophe bond issuance reached \$6.98 billion in the 12-month period ending June 30, down from the previous 12-month period's record-setting \$9.40 billion, according to a report issued by Aon Securities Inc., Aon Benfield Group Ltd.'s investment banking division. Twenty-five transactions closed during the period, down from 35 in the previous 12-month period, Aon Securities noted in "Insurance-Linked Securities: Alternative Markets Adapt to Competitive Landscape," while the average transaction size increased to a record \$279 million. The drop in catastrophe bond issuance, which included one life and one health bond, was due in part to the reaction of both traditional and collateralized reinsurance players to the heightened competition from the catastrophe bond market, the report said. It also noted that U.S. exposures continued to dominate the market, with 22 of the 25 transactions comprising U.S. risk in some capacity.

Marsh to expand in U.K. with Jelf acquisition

■ Marsh L.L.C. announced it will buy U.K. brokerage Jelf Group P.L.C. for approximately £258 million (\$397.3 million). The deal will significantly expand Marsh's retail brokerage business in the United Kingdom. Jelf, which has more than 69,000 corporate and commercial clients and 37 offices in the United Kingdom, posted revenues of £43.7 million (\$67.3 million) for the first six months of 2015, according to a Marsh statement. Jelf's directors voted unanimously to approve the acquisition, which is expected to close by next March.

Typhoon Etau slams Japan, widespread damage seen

■ Significant flooding in Japan from torrential rainfall exacerbated by Typhoon Etau has caused widespread damage to property and infrastructure, according to Boston-based catastrophe modeler AIR Worldwide. The typhoon made landfall on the Chita Peninsula last week. Flooding caused extensive damage to houses and vehicles and overwhelmed the drainage pumps for the crippled Fukushima Daiichi nuclear power plant in Fukushima Prefecture, resulting in leaks of hundreds of tons of radioactive water into the Pacific Ocean, AIR said in a statement. "Etau did not cause significant damage near the landfall location from wind or precipitation, but it has produced prodigious rainfall and flooding several hundred kilometers to the east of where it tracked across Honshu," Kevin Hill, a senior scientist at AIR, said in the statement. AIR noted that water damage to machinery and building contents drives most flood-related loss.

AIG narrows shareholder suits over 2008 federal bailout

■ A federal judge has narrowed several lawsuits against American International Group Inc. by shareholders who opted out of the \$970.5 million class action settlement that she approved

in March over the insurer's 2008 bailout. U.S. District Judge Laura Taylor Swain in Manhattan dismissed claims that she said were brought too late against AIG in the six "opt-out" lawsuits, which were filed between November 2011 and February 2015. She rejected the argument by plaintiffs that the filing of the shareholder class action gave them more time to pursue their own claims, without running afoul of statutes of limitation. Judge Swain also dismissed claims brought under state common law. The six lawsuits did not all raise the same claims against New York-based AIG.

Reuters

Kraft Heinz to shift retirees to private health exchange

■ The Kraft Heinz Co. will stop offering employer-sponsored health coverage to some of its retirees at the end of this year. About 15,000 of the Pittsburgh-based food manufacturer's Medicare-eligible retirees will instead be able to buy Medicare coverage through Towers Watson & Co.'s private OneExchange platform, a Kraft Heinz spokesman said in an email. He said the retirees will have more Medicare plan options than previously offered through Kraft Heinz's employer-sponsored retiree group plan, which will end Dec. 31. Kraft Heinz will provide subsidies to retirees' health reimbursement arrangements determined by the current cost of the plan, Kraft Heinz' current subsidy, and the effect to the retiree over five to 10 years, the spokesman said. The spokesman did not say how much of the premium costs Kraft Heinz currently pays for retirees.

States receive federal funds to combat opioid misuse

■ The U.S. Centers for Disease Control and Prevention has launched a \$20 million initiative to combat the opioid epidemic at the state level. The Prevention for States program will provide resources and expertise needed to help prevent overdose deaths related to prescription opioids, the agency said in a statement. Arizona, California, Illinois, Kentucky, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont and Wisconsin will receive annual awards between \$750,000 and \$1 million over the next four years, according to the statement. The funds will go toward enhancing the states' prescription drug monitoring programs, educating health care providers and patients about the risk of prescription drug overdose and working with health systems and insurers to help them make informed decisions, the statement said. The participating states will be monitored and evaluated, and "results and project successes will determine the impact of this program and inform future state and national efforts in preventing prescription drug overdoses," according to the CDC website.

Property/casualty pricing appears to be moderating

■ Average commercial property/casualty insurance rates were flat in August compared with July, Dallas-based electronic insurance exchange MarketScout said. The exceptions to the rule among coverage classes were commercial automobile, which increased 2%, and commercial property, which increased an average of 1%. Rates were flat for all industry classes except manufacturing, with a 1% decline, and transportation, which sustained a 2% increase.

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Lloyd's profit down on investment results

■ Lloyd's of London said pretax profit for the first half of the year fell 27.9% to £1.19 billion (\$1.81 billion) compared with that of the same period in 2014. Gross written premiums for the six months of this year rose 7.1% over those of a year earlier to £15.51 billion (\$23.53 billion), while the combined ratio deteriorated to 89.5% from the 87.4% posted during the same period in 2014. Sixty percent of the decline was the consequence of lower investment results, Lloyd's Chief Executive Inga Beale said during a presentation discussing the results, adding that the first half of last year "was really exceptional" in terms of performance, driven in large part by low catastrophe losses.

Aegon reviewing U.K. annuities business

■ Dutch insurer Aegon N.V. said it was reviewing its U.K. annuities business after British pension reform led to a halving in annuity sales. Pension changes introduced in April mean over-55s no longer need to use their pension pots to buy an annuity, which gives a fixed income for life. "As part of our on-going review of our portfolio of businesses, and our focus on drawdown and guaranteed products, we have initiated a review of our annuity portfolio in the U.K.," Aegon U.K. Chief Executive Adrian Grace said in an internal memo seen by Reuters. Annuities are also a capital-intensive business under new Solvency II capital rules due to come into force in January, insurance specialists say. Aegon's shares have fallen more than 20% after the firm said last month it expected a dip in its solvency ratio under the new rules.

Reuters

PartnerRe names Clarke president

■ PartnerRe Ltd., Pembroke, Bermuda, has named Emmanuel Clarke president, effective immediately. David Zwiener, interim CEO since Jan. 26, will remain in his role as CEO and dedicate his time to bringing Exor S.p.A.'s acquisition of PartnerRe to a successful close, at which point he will step down, the reinsurer said in a statement. The move ends speculation as to who would head the firm after it was acquired Aug. 2 by Turin, Italy-based Exor for \$6.9 billion. Mr. Clarke, who has been with the company for 18 years, had formerly been CEO of PartnerRe

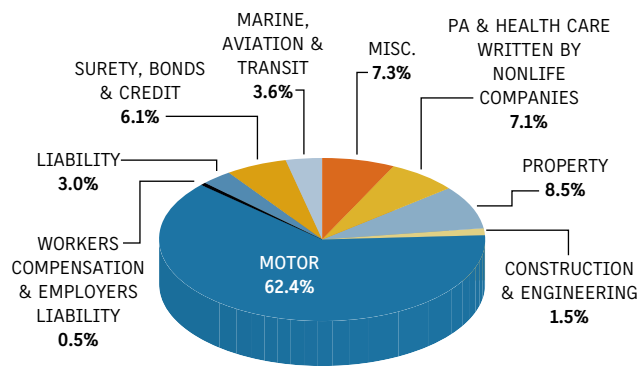
PROFILE: REPUBLIC OF KOREA

\$71.85 BILLION

With little earthquake risk to speak of and damage from annual typhoons generally minimal, the main threat to the Republic of Korea is the nuclear intentions of the communist regime in Democratic People's Republic of Korea to the north. The maturing insurance industry suffers from low capitalization because of its arcane structure, largely limited to captives of family-owned conglomerates that seek volume at the expense of profit.

◀ 2014 P/C gross premiums

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Automobile liability
- Third-party liability for gas accidents
- Third-party liability for sports centers, recreational facilities and gyms and schools, playgrounds and kindergartens
- Third-party liability for space launches and satellites
- Nuclear liability
- Personal accident for student and part-time laboratory workers

NONADMITTED

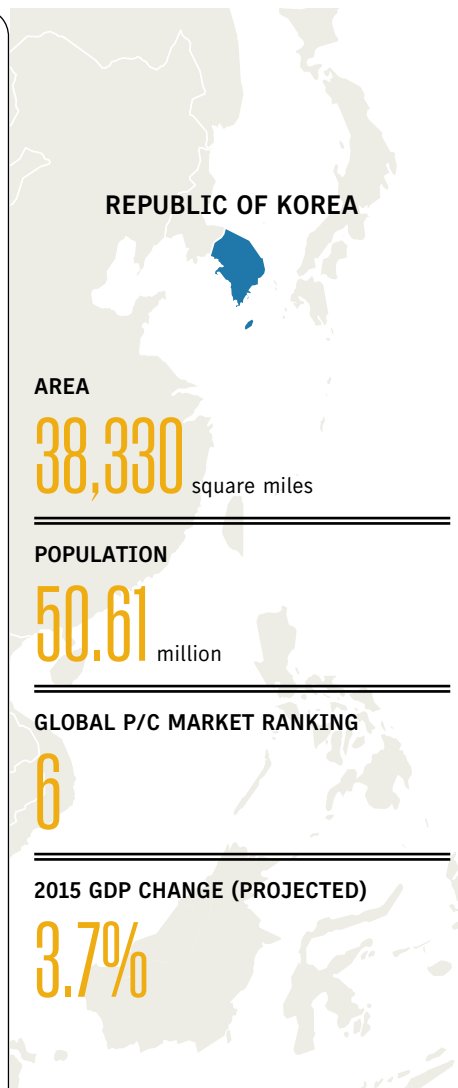
Unauthorized insurers cannot carry on insurance activity in South Korea, which requires cover to be bought from insurers authorized by the Financial Services Commission. Exceptions include aviation, import and export cargo, marine hull, travel and long-term personal accident and when three domestic insurers turn down the business.

INTERMEDIARIES

Agents and brokers have to be licensed by the commission. Even with a license, intermediaries cannot act on behalf of nonadmitted insurers, including those writing cover for the exceptions.

MARKET PRACTICE

Nonadmitted insurance legislation typically is respected, with DIC/DIL supplements for foreign multinationals the only classes known to be written abroad. Local insurers will write pure fronting policies when necessary. The Post Office and 70 cooperatives also write property/casualty cover.



MARKET DEVELOPMENTS

UPDATED MAY 2015

- The Environmental Pollution Damage Compensation and Recovery Act, passed Dec. 31, 2014, and set to take effect Dec. 31, 2015, makes polluters liable for their emissions and reduces the burden of proof to "substantial probability of causation," among other provisions.
- Legislation to amend the Fire Indemnity Act of 1973 to require cover for gas explosion, collapse and earthquake, as well as fire, along with raising injury liability and other points is pending.
- The Financial Services Commission reportedly is considering reducing the capital requirements for small underwriters writing specialty lines such as bicycle insurance.
- BNP Paribas Cardif has bought an 85% stake in Ergo Daum Direct General Insurance Co. Ltd. from Axa General and changed its name to BNP Paribas Cardif General Insurance Co. Ltd. KB Financial Group Inc. has taken a 19.5% stake in LG Insurance Co. Ltd. and is seeking an additional 10%. DAS Legal Expenses Insurance Co. Ltd. went into runoff in March.

Information provided by Axco Insurance Information Services.
www.axcoinfo.com

Global and a member of the executive management team since 2010. He was appointed head of global credit and surety in 2001 and became deputy head of global specialty lines in 2002, head of global property/casualty in 2006 and head of global specialty lines in 2008.

S&P upgrades Scor rating to AA-

■ Standard & Poor's Corp. has upgraded Paris-based reinsurer Scor S.E.'s financial-strength rating to AA- from A+. S&P said the upgrade reflects its view that the reinsurer has demonstrated a strong competitive position through resilience in pricing and technical profitability in its property/casualty business, as well as reinforcing a strong position in the

U.S. life reinsurance market. "We believe that the group has successfully withstood pricing pressures in the buyer's market in the property and casualty reinsurance industry and has also been able to defend its market share in the consolidating reinsurance sector thanks to prudent risk management and pricing discipline," S&P said in a statement.

RSA opts to sell LatAm operations

■ RSA Insurance Group P.L.C. has sold its Latin America operations to Suramericana S.A., the insurance subsidiary of Colombia-based Grupo de Inversiones Suramericana, for £403 million (\$611.3 million) in cash, RSA said. RSA, which is the subject of a takeover approach by Zurich Insurance

Group Ltd., said its Latin America operations wrote net premiums of £333 million (\$505.1 million) for the first half of 2015 with an after-tax profit of £9 million (\$13.7 million). RSA Latin America has a presence in Argentina, Brazil, Chile, Colombia, Mexico and Uruguay. The deal, which is expected to conclude by the end of 2016, is subject to regulatory approval and the senior management of each country operation is expected to remain with their respective businesses, RSA said in a statement.

Skuld diversifies into nonmarine

■ Marine insurer Assuranceforeningen Skuld is diversifying its business to the nonmarine sector and has named veteran underwriter Michael Pritchard to head a

Lloyd's of London syndicate, the Oslo, Norway-based protection and indemnity mutual said. Skuld has received approval "in principle" from Lloyd's to write nonmarine business in Skuld syndicate 1897 starting Jan. 1, with capacity up to £75 million (\$114.6 million), the P&I insurer said in a statement, adding that the special-purpose syndicate will allow emerging market capital to support the business through quota share reinsurance arrangements. Mr. Pritchard, who will be based in London as head of the nonmarine business, was the active underwriter of Beaufort Underwriting Agency's syndicate 318, owned by Munich Reinsurance Co., from 1985 to 2013. "We've known Michael for more than 20 years and his reputation and underwriting track record are first-class," Skuld President and CEO Ståle Hansen said in the statement.

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ALLIED WORLD BUILDS OUT NORTH AMERICAN BUSINESS

Q What was the impetus to move Bermuda into the North American business group?

A When you look at the Bermuda business that we have, they're North American clients — North American-based clients make up 95% of our Bermuda platform. So, we may be writing a piece of that North American client's business in our U.S. operation and a piece of that North American client's business in our Bermuda operation. So consolidating that relationship was important to us and that was part of the decision.

Further, it makes sense from a distribution platform standpoint to have Bermuda included as part of our North American operations given our business relationships with large brokers such as Marsh, Aon and Willis.

Finally, the major coverages in Bermuda in the professional liability, property/casualty and health care areas align perfectly with how we line up our four segments in the U.S. It also gives our clients a clean point of reference when they're looking at Allied World in totality.

Q&A

Q For 2015, where have you found the major challenges?

A Our major challenges are probably pretty similar to the major challenges that are going on on a macro basis. It's a constant effort for us to figure out which lines of business we want to allocate our capital to. Right now ... I think we have challenges in the property marketplace that we're addressing, simply by utilizing a little less capital in that business. We also have some challenges based on what's happening with the wholesale changes in the health care

industry and the changes that are coming out of the Affordable Care Act.

Q Conversely, where are the bright spots?

A We feel very strongly about our geographical expansion throughout North America as we continue to grow our distribution. On the product side, our excess casualty franchise in the U.S. and Bermuda continues to perform well, and we're still able to get rate in that market. It's not as much rate as we were able to get a year ago or two years ago, but it's still a good positive rate so we feel like we've got some tailwind there, and we feel strongly about that marketplace. We feel like we have great opportunities in professional lines in the (directors and officers liability insurance) space, in the (errors and omissions insurance) space, and we're allocating a healthy amount of capital to that business. Our Defense Base Act business, along with our newer specialty lines, including environmental, construction and (mergers and acquisitions), continues to be



LOU IGLESIAS

ALLIED WORLD
NORTH AMERICA

Lou Iglesias is president of Allied World North America, part of Allied World Assurance Co. Holdings A.G. The company placed its Bermuda operations in its North American business unit this year and opened offices in Miami and Toronto last year, building out its North American operations. On April 1, Allied World also closed on a \$193 million purchase of the Hong Kong and Singapore operations of RSA Insurance Group P.L.C. Mr. Iglesias recently spoke with

Business Insurance Associate Editor Matthew Lerner about the company's latest moves and current market conditions and opportunities. Edited excerpts follow.

bright spots for us as well.

We're also looking closely at the cyber space. We have a cyber book of business in the U.S. and a cyber book of business in Bermuda, and we're looking at some additional opportunities there. My general feeling is there's an opportunity for our whole industry to put more capital to work. We just have to be intelligent about figuring out the best way to do that.

Q How much did the acquisition of RSA's Hong Kong and Singapore operations add to the company?

A The RSA acquisition for us is just a great platform, an established platform in Singapore and Hong Kong, which is a part of the world that is very difficult to go into organically. It's a part of the world that we're very interested in growing our business in.

COMINGS & GOINGS

UP CLOSE: REED T. VANORSDEL

BETHESDA, MARYLAND-BASED VICE PRESIDENT OF THE EMPLOYEE BENEFITS GROUP
Alliant Insurance Services Inc.

PREVIOUS POSITION: Bethesda-based benefits consultant at Corporate Synergies Group L.L.C.

LOOKING FORWARD TO: Having new, more powerful and effective resources to make an impact on clients' needs and deliver on their expectations.

GOALS FOR NEW POSITION: To grow the presence of the Alliant brand here in the Washington, D.C., market, and by providing unmatched service and capabilities for our clients.

CHALLENGES FACING INDUSTRY: Controlling cost and delivering quality plans is the No. 1 challenge for every employer when it comes to health care. Along with cost, educating the workforce is nearly as important and as challenging. Employees are busy doing their jobs, on the road, working from home, etc., on a daily basis, so giving them access to answers about their benefit plans is an invaluable resource.

INDUSTRY OUTLOOK: I think the future is bright. I believe that the right consultants and carrier relationships



are bringing sustainable solutions to employers and employees by delivering quality of care with predictable costs.

FIRST INDUSTRY JOB: Group representative with Prudential Insurance Co. of America.

ADVICE: Outwork your competition and bring the right people to the table. Be a good listener so you can understand each client's challenges. No two clients are alike.

OUTSIDE THE INDUSTRY, A DREAM JOB: Playing professional baseball.

HOBBIES: A rare date night with my wife, golf, playing music or going to concerts.

THING MOST PEOPLE DON'T KNOW ABOUT ME: I have six children.

FAVORITE MEAL: Maryland blue crabs.

THOUGHTS ON SMARTPHONES: I'm scared one day they might be smarter than me.

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EDITORIAL

WALKING A RAZOR-THIN LIABILITY LINE

The shocking on-air shooting deaths of a television reporter and cameraman raises some disturbing, and perhaps ultimately unanswerable, questions for all employers. Alison Parker, 24, and cameraman Adam Ward, 27, were shot by Vester Flanagan, 41, a former employee of the CBS-affiliate TV station WDBJ in Roanoke, Virginia. He later shot and killed himself as police pursued him.

At the time of his termination three years previously, police escorted Mr. Flanagan from the building. But apparently there was no subsequent contact with the station or its personnel, and certainly no indication of the horrific acts he planned and implemented.

Given the situation, a sense of helplessness by employers is understandable in considering this particular episode. No organization can effectively control someone who has left their employ.

But that still leaves the issue of what to do about apparently troubled workers who remain at the firm's employ, and how businesses can balance the Americans with Disabilities Act's rule against not discriminating against workers with psychiatric issues and still keep everyone in the workplace safe.

Terminating an employee who gives his colleagues an uneasy feeling is not enough. Experts' advice is to observe and document. Troubled employees often give clues as to what they are planning, either verbally or through physical gestures, such as moving a finger across the throat, experts say.

This should help firms establish cases in which an employee loses ADA protection under the carve-out that applies to workers who pose a threat to themselves or others.

Employers also should establish a clear policy as to conduct that will not be tolerated in the workplace and apply it equally to all employees, which should help prevent their actions coming under scrutiny from the U.S. Equal Employment Opportunity Commission.

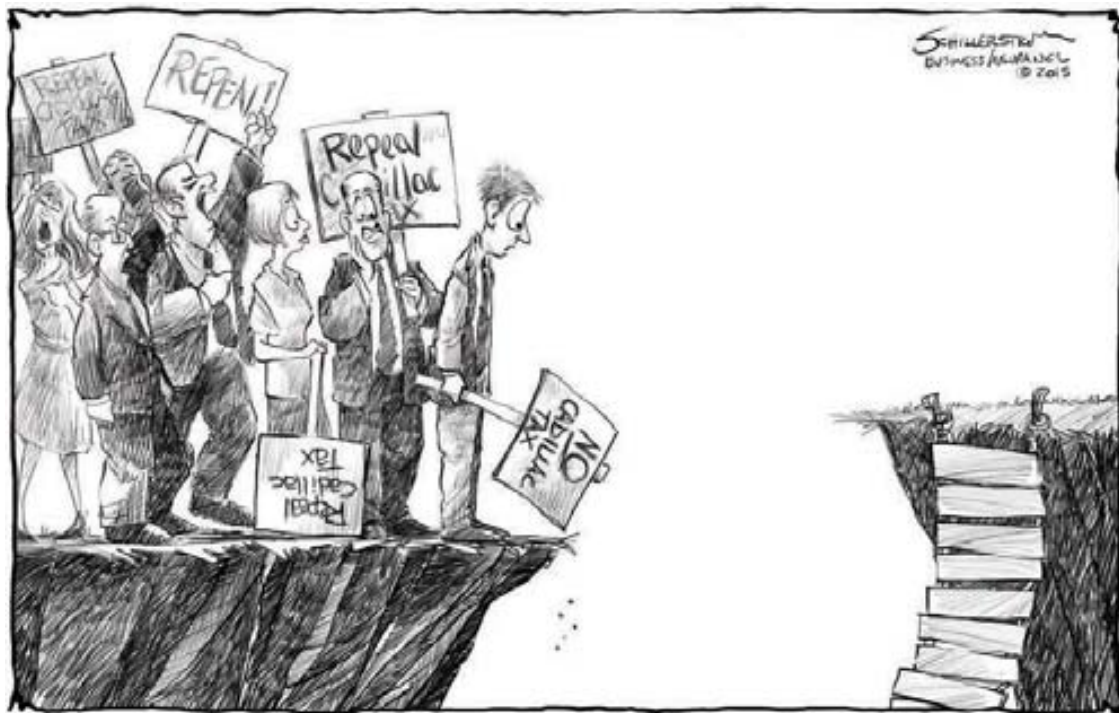
Unfortunately, there is no clearly defined guide employers can use to determine when the ADA is no longer applicable and others' safety becomes the only issue.

The prevailing issue, though, is workplace safety. And that requires — as it does in so many other instances — clear, unbiased and sound judgment on employers' part.

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SCHILLERSTROM



COMMENTARY

ASHLEY MADISON HACK STRIPS PRIVACY VEIL

It's really hard to muster much sympathy for most of the alleged victims of the Ashley Madison website hack.

After all, this is a site that describes itself as “the most famous name in infidelity and married dating” and the “most successful website for finding an affair and cheating partners.”

That sounds like a longer-winded way to say “Adulterers R Us.” Call it all-too-social social media.

Of course, we're hearing tearful confessions and angry denials among those whose names were leaked. That's to be expected, although those doing the confessions and complaining should have expected that they'd ultimately be found out.

But we're seeing something else as well: anguish among some people named as patrons of the site whose names got there for either legitimate reasons such as journalists researching stories or because someone maliciously signed them up.

What's happening with Ashley Madison underscores what we all should have realized a long time ago — put something online, and it will eventually be found out by anyone who wants to find it out. It's a trade-off for access to virtually unlimited information, an awful lot of it worthless or at least never sufficiently vetted.

If anything, the Ashley Madison hack, like every other hack before it, underscores the need for enhanced cyber security, and laws and regulations that promote security.

Lawmakers have been unable to agree on what



MARK A. HOFMANN
SENIOR EDITOR

the best approach to sharing information about cyber attacks should be. Much of the disagreement has been over the effectiveness of privacy guarantees in any legislation. Privacy concerns shouldn't be dismissed in the name of security, and finding a balance between two equally valid concerns is both difficult and critical.

In the cyber world, the bad guys are always one step ahead. It's a constant game of defense, and the good guys need an ever-more-effective arsenal to maintain security. They must be able to share information about what works and what doesn't in fending off cyber attacks without fearing they're going to face frivolous lawsuits despite the best-of-faith efforts.

Don't be surprised if in the next few weeks the names of a lawmaker or two end up being leaked as Ashley Madison patrons. That alone could force congressional action on cyber security.

Posting personal information on the Internet is risky, and posting it on Ashley Madison is stupid as well.

Fortunately, such stupidity could help bring about a smart outcome — a step toward an effective national cyber security strategy.

Prepare for the inevitable: Post-data breach class actions

Actual injury versus plaintiff anxiety will remain key to successful data breach litigation. Beth D. Diamond, global claims leader for specialty insurer Beazley P.L.C., discusses how companies can best prepare for attempted class actions in the wake of data breaches.

Lightning may not strike twice in the same place, but the same cannot be said of class action lawsuits.

For this reason companies caught in class actions stemming from data breaches would do well to consider the precedents they could set by agreeing to over-generous terms.

The good news for defendants is that the hurdles plaintiffs must surmount to bring a case to trial are significant. Numerous lawsuits have been dismissed on the grounds that the plaintiffs failed to show that they were harmed by a data breach.

One such case occurred last year and is worth reading for the clarity with which Judge James E. Boasberg of the U.S. District Court for the District of Columbia analyzes the “thorny ... issues regarding when, exactly, the loss or theft of something as abstract as data becomes a concrete injury.”

The case involved data tapes, among other items, stolen from a car parked in a San Antonio garage in September 2011. The car was owned by an employee of information technology company Science Applications International Corp., which handles data for the federal government. The tapes contained personal information and medical records relating to 4.7 million members of the U.S. military and their families enrolled in Tricare, the armed forces health care program.

There is no question that the loss of the data was embarrassing. According to letters mailed to affected service members by SAIC in November 2011, it included names, Social Security numbers, addresses, dates of birth and phone numbers, as well as a variety of medical information. It did not, however, include any financial data. Moreover, SAIC considered that the chance of the data being accessed by the thieves or any other unauthorized party was low because to do so would require “specific hardware and software.”

Numerous individuals sued, and their lawsuits were consolidated into a single action. SAIC and three government defendants — Tricare, the U.S. Department of Defense and its then-secretary, Chuck Hagel — sought to dismiss the complaint on the grounds that the plaintiffs could show no injury based on the data breach and therefore lacked standing to sue in federal court.

The key question then addressed by the court was whether, as alleged by the plaintiffs, the mere fact that their data had been stolen constituted “a distinct and palpable harm.” A number of the plaintiffs also claimed that the time and money they had spent checking their credit (though SAIC

had offered them free credit monitoring) and talking to their banks should be compensable.

In his ruling, Judge Boasberg gave these arguments short shrift, citing a variety of court opinions, including a U.S. Supreme Court decision in *Clapper v. Amnesty International USA* in 2013, that supported the view that a threatened injury must be “certainly impending” to afford plaintiffs standing to sue. If those caught up in a data breach, or any untoward event, were so alarmed that they spent time and money to protect themselves from potential harm, that would not, in itself, give them standing. In the trenchant language of the Supreme Court: “(R)espondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.”

The plaintiffs’ attorneys shot back that, due to the data breach, their clients were 9.5 times more likely than the average person to become victims of identity theft. But Judge Boasberg was unmoved. A heightened risk of identity theft, he said, is not the same as a harm that is “certainly impending” — the litmus test endorsed by the Supreme Court.

This was not quite the end of the story. The Supreme Court had also acknowledged that it had sometimes “found standing based on a ‘substantial risk’ that harm will occur,” prompting plaintiffs to “reasonably incur costs to mitigate or avoid that harm.” But Judge Boasberg concluded that the plaintiffs in the SAIC litigation did not clear that hurdle either.

While a more recent Seventh Circuit decision, in *Remijas v. Neiman Marcus Group L.L.C.*, upheld plaintiffs’ standing to sue due to “injuries associated with resolving fraudulent charges and protecting oneself against future identity theft” after a data breach, that case involved theft of credit card numbers that allegedly resulted in actual fraudulent charges on the affected individuals’ cards. This contrasts with the SAIC case, where no financial data was lost. It would still be quite difficult to establish standing in a case where the victim of a breach can show only some fear of future fraud perpetrated at his or her expense. After all, anxiety is still a far cry from the “concrete, particularized and actual or imminent” harm that the Supreme Court required.

From this, it should be clear that the precise circumstances of data breaches need to be carefully analyzed to assess the risk of successful litigation. Specialty insurer Beazley P.L.C. has helped more

than 2,200 organizations manage data breaches and address the third-party liability risks they pose. From this experience we can identify the following factors that frequently serve to diminish the third-party risk:

- More than half of the data breaches we have helped clients handle have been caused by errors or inadvertence in the organization — not theft. In these situations, it is, of course, possible that the data will fall into the wrong hands. But it is unlikely that a court would find the mere fact of such a breach constituted “certainly impending” harm or a “substantial risk” of harm.

- Data, in all likelihood, were not the principal target of many thieves. This certainly seemed possible in the SAIC case: The judge, in a characteristically colorful turn of phrase, said the tapes could be “lying in a landfill in Texas” after the thief had achieved his or her “main goal of boosting the car stereo and GPS.”

Of course, there are situations in which these defenses will not apply. In January, Judge Paul A. Magnuson of the U.S. District Court for the District of Minnesota allowed a class action against the retailer Target Corp. — the victim of a massive hacking attack in 2013 — to proceed on the grounds that the plaintiffs suffered injuries that afforded them standing.

“Target ignores much of what is pled,” the judge wrote, “instead contending that because some plaintiffs do not allege that their expenses were unreimbursed or say whether they or their bank closed their accounts, plaintiffs have insufficiently alleged injury. These arguments gloss over the actual allegations made and set a too-high standard for plaintiffs to meet at the motion-to-dismiss stage.”

Based on Judge Magnuson’s decision, Target in March agreed to settle the lawsuit for \$10 million. That \$10 million is nevertheless modest relative to the magnitude of the approximately 110 million Target customers allegedly affected by the data breach. Other settlements have been likewise low, such as LinkedIn’s \$1.25 million deal over the exposure of 6.5 million logins and passwords. Plaintiffs’ difficulty in proving damages in these types of cases ultimately mean they pose limited financial threat.

But that will not deter plaintiffs attorneys from continuing to file putative class actions after a data breach thanks in large part to attorneys fees. The Target settlement agreement, by way of example, permits plaintiffs attorneys to recover as much as \$6.75 million, in addition to the \$10 million.

Data breaches can cause consumers massive harm, as well as great anxiety. The best insurance for businesses addresses both dimensions of the problem, offering expertly coordinated first-party services to manage the breach and robust financial protection against third-party liability. In the latter arena, the distinction between harm and anxiety may prove crucial.



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SPECIAL REPORT

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Administration

Abuse triggers raise red flags for benefit managers

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Opioid abuse battle an ongoing effort

Epidemic vexes workers comp industry despite success of new strategies

BY STEPHANIE GOLDBERG

Despite a decline in injured workers' use of narcotics and the workers compensation industry's increased vigilance about the risk of overutilization and addiction, the opioid epidemic is far from over.

Early intervention strategies, prescription drug monitoring databases and drug formularies have helped reduce the use of opioids to single-digit increases in the past several years, sources said.

"There's a sense now that we're starting to get our arms around the problem, but we've by no means solved it," said Joseph Paduda, principal of Madison, Connecticut-based Health Strategy Associates L.L.C.

"It scares me that people will think, 'We've got this fixed, let's move on ... and worry about something else,' such as compound drugs. "That's a huge mistake," he said.

Compound drugs are pricy and rarely found to be medically necessary, but they account for only about 5% of drug spending, Mr. Paduda said.

Opioids, however, represent 29% of Sedgwick Claims Management Services Inc.'s drug spending, "which is huge," said Dr. Teresa Bartlett, Troy, Michigan-based senior vice president and medical director of the third-party administrator. The percentage is consistent with pharmacy benefit managers' recent drug trend reports.

While utilization is declining, the cost of narcotics has increased due to a surge in the average wholesale price of medications, PBMs such as Helios, Express Scripts Holding Co. and Coventry Workers' Comp Services reported earlier this year.

Experts say physicians should screen injured workers prior to prescribing opioids, asking if they have a history of addiction or mental illness, among other questions, to see if they're at risk for delayed recovery or addiction.

Sedgwick asks every physician it works with to do this and report patients' levels of risk — based on their answers to the questions — back to the TPA, but the company is successful just 21% of the time, Dr. Bartlett said.

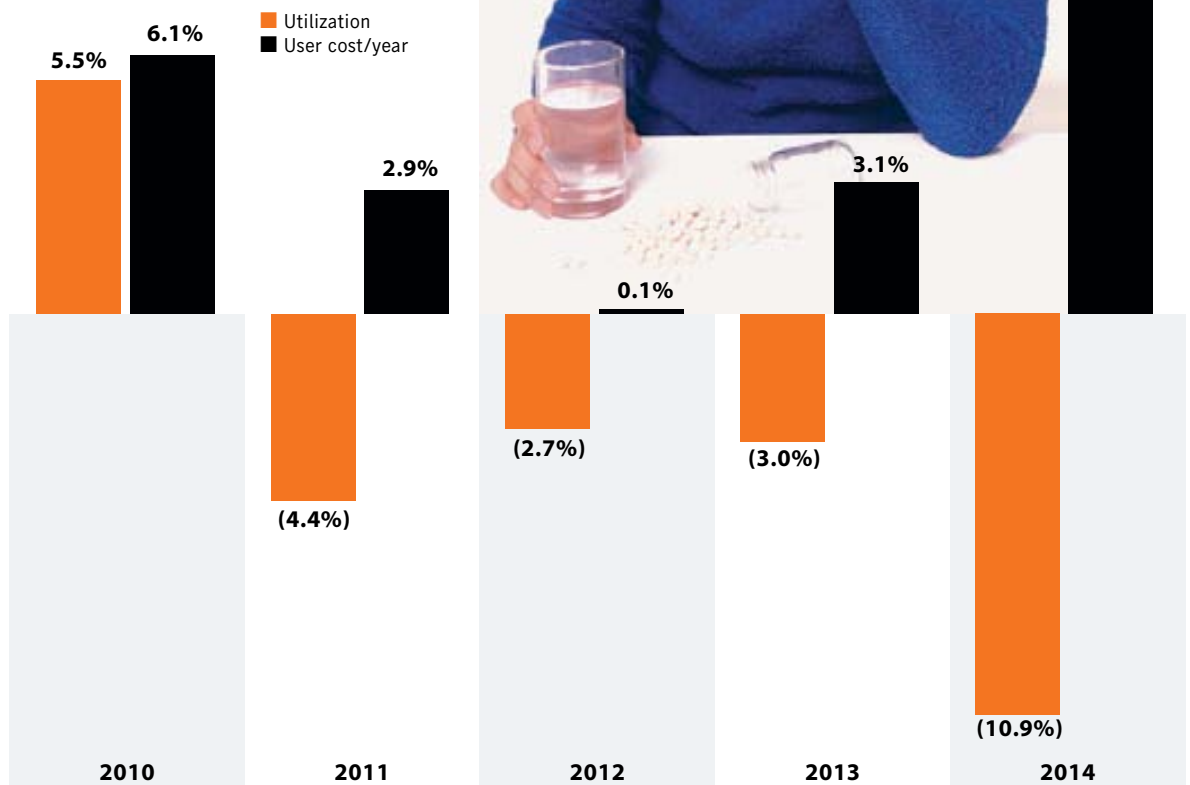
Several free risk assessment screening tools are available, but "physicians feel they understand their patients and know whether or not they're at risk for addiction or overdose," Dr. Bartlett said.

Many physicians provide opioid agreements, which detail the risks and potential side effects of such drugs, to be signed by injured workers, said Dr. Robert Hall, Westerville, Ohio-based medical director at Helios.

"It sounds like a lot of those contracts have just been signed and not necessarily reviewed," which is a missed opportunity, Dr. Hall said. Providers should walk

PRICY OPIOIDS

Narcotic prescription drugs account for the highest pharmaceutical spending and the highest utilization among injured workers. While utilization has declined since 2010, costs have increased primarily due to increases in average wholesale prices.



Source: Express Scripts Holding Co.

injured workers through the pros and cons of opioids and alternative treatment options, he said.

Despite the risks, sometimes opioids are the right course of action, such as immediately after surgery, experts said.

"Opioids are a very necessary thing for dealing with acute pain," Dr. Bartlett said. "What we talk about is really the chronic issue ... when it gets beyond a couple of weeks, you need to start worrying."

When prescribed, injured workers also should be given a weaning schedule, and improvement in their

pain levels "should be complemented by a reduction in opioids," Dr. Hall said.

Overall, there's greater focus on education, said Michael Gavin, Duluth, Georgia-based president of medical cost management company PRIUM.

"We're entering an era of informed-choice health care delivery," which Mr. Gavin described as "a nascent movement at this point."

"If a physician tells a patient, 'You need an MRI' or

See OPIOIDS page 18

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Triggers can alert benefit managers of potential cases of abuse

Proper threshold assures warnings taken seriously

BY SHELBY LIVINGSTON

RED FLAGS

Red flags in workers compensation cases signal problems that could slow an injured employee's return to work and increase costs. Examples include:

Early flags: Severity of injury, comorbid conditions, surgery anticipated

Drug treatment: Chronic or inappropriate opioid use, dangerous compound drugs, long-acting narcotics, illegal drugs

Medical treatment: Treatment outside evidence-based guidelines, multiple treating providers, worker does not comply with treatment plan

Psychosocial factors: Negative attitude toward work or treatment, lack of a support system, performance issues

Sources: Genex Services Inc., Coventry Workers' Comp Services, Express Scripts Holding Co., Broadspire Services Inc.

Third-party administrators are leveraging pharmacy and claims data to develop red flags used to alert adjusters when injured worker cases need more attention.

But as these triggers grow in number and complexity, steps need to be taken so alerts are not ignored, experts warn.

Triggers that range from inappropriate drug and medical treatment to a worker's comorbid conditions and negative mindset signal that a claim can result in high costs and warrants intervention, whether through a nurse case manager, drug utilization review or other method.

The goal of flagging high-risk cases "is to identify those as early as possible," said Ron Skrocki, Wayne, Pennsylvania-based vice president of product management and development at managed care services provider Genex Services L.L.C. "Earlier identification is going to lead to a more effective intervention and a better and faster outcome."

Most importantly, flagging iden-

tifies "potential safety issues," said Carol Valentic, Sunrise, Florida-based vice president of operations and director of cost containment at Broadspire Services Inc., part of Crawford & Co. It also "makes sure that we don't pay for things that are not covered by workers compensation."

TPAs mine claims data for information on the worker and indicators of severity and cost that are higher than normal, Mr. Skrocki said.

Genex examines the injury, the worksite, the worker's characteristics, comorbid conditions and the employer's history, he said.

For example, a worker with diabetes may signal the need for an intervention, as it will likely take longer to recover from injury than someone without diabetes. A nurse case manager may be assigned to ensure a smooth recovery period.

Some red flags, such as a negative attitude or lack of support at home, can prolong the claim but are not apparent in the data.

Workers "don't walk around with a sign saying 'love my job,' 'hate my job,' or 'lack family sup-

port," Mr. Skrocki said. To understand what's beneath the surface, it's necessary to call the case manager, he said.

Pharmacy benefit managers review their data for red flags, looking for problematic prescribing patterns, dangerous drug compounds and other safety hazards, said Jennifer Kaburick, St. Louis-based senior vice president of workers comp product, compliance and strategic initiatives with pharmacy benefit manager Express Scripts Holding Co.

Such warning signs include prolonged opioid use, harmful prescription cocktails or using narcotics for reasons other than intended, she said.

These triggers arise when a worker fills a prescription, prompting PBMs to alert an adjuster to look into a case further.

But "it's also necessary to look at the data from a proactive standpoint before the meds have been dispensed," by calculating the morphine equivalent dose — the relative potency of different narcotics to morphine — of a worker's prescriptions, Ms. Kaburick said. For example, if a worker's prescription exceeds 100 milligrams of a morphine-equivalent dose, an alert is sent telling an adjuster to review the prescription before it can be filled. Express Scripts' clients sets the morphine-equivalent dose threshold and can choose to be alerted when a worker exceeds it.

Nonformulary drugs also go through a preauthorization pro-

cess in which a team reviews whether the medications are appropriate, Ms. Valentic said. Broadspire's physicians may call the prescribing doctor to better understand the treatment plan.

It's important to understand "the overall picture" of the worker's situation to avoid unnecessary flagging, such as a worker prescribed opioids after recently undergoing surgery, said Anne Levins, Philadelphia-based director of product development and information strategy at Coventry Workers' Comp Services.

With so many potential red flags, administrators are at risk of overloading adjusters with alerts.

"Too many alerts (may) end up going on deaf ears," Ms. Levins said. So Coventry aggregates multiple alerts into one and decides on the best time to notify the adjuster, she said. It's also important to send an alert with a solution, she said.

"Just alerting without the understanding of what (the) next step is isn't going to be very beneficial," she said.

"You've got to keep tuning and monitoring" alerts, "because just sending people notes or emails without following up" isn't effective, Mr. Skrocki said.

Regarding the case, it's important to ask, "What was the outcome? Does that mean we have to educate people? Do we have to refine the triggers? Do we have to have a better delivery mechanism or workflow for the triggers?" he said. "It's not a one-and-done kind of situation."

OPIOIDS

Continued from page 16

'You need this medication,' then (injured workers) truly believe that they need it, and why wouldn't they?" Dr. Bartlett said. "Even though we might convince an injured worker, for the most part, we have to compel the doctor to change."

For that reason, Sedgwick focuses primarily on working with treating physicians to ensure they use best practices, Dr. Bartlett said. PBMs, on the other hand focus more on patient education and training, she said.

Workers comp payers "don't want to manage pharmacy in a vacuum," Mr. Paduda said. "There has to be a sharing of information and a sharing of data as well as a clear understanding of who's responsible for what."

Mr. Paduda added that the most productive thing an employer can do is ask its PBM, "What should we be doing? What's that impact going to be? And what do I need to

do to make that happen?"

The industry seems to have a handle on managing opioid use among new claims, but it's really the legacy claims, some of which are 20 years old, that drive about 75% of workers comp costs, Mr. Gavin said.

There needs to be a "holistic strategic focus on peer intervention, drug monitoring and tools like that to make sure care is being delivered appropriately," he said. "The responsibilities that payers have ... in connection with opioids is changing."

Several years ago, many employers and insurers would pay for opioids to avoid "noise from attorneys and doctors and injured workers who are upset about not getting their medications," Mr. Gavin said.

"The risks of not paying and the risks of continued payment are being rebalanced," he said. "Most medical directors are starting to say, 'I cannot continue to authorize payment for drugs that I know are dangerous and could result in further injury or potential death to the injured worker.' ... The perception of risk is shifting."

DRUGS TO COUNTERACT OPIOID SIDE EFFECTS FURTHER COMPLICATE TREATMENT

Supplemental treatments, called adjunct therapies, often are prescribed to help injured workers treat symptoms brought on by taking prescription opioids.

Common side effects include constipation, weight gain, dry mouth, nausea, lower testosterone, impotence and depression, said Dr. Teresa Bartlett, Troy, Michigan-based senior vice president and medical director of Sedgwick Claims Management Services Inc.

Sometimes patients will see that list and say, "No thanks, I'd rather tough this out for a little while than experience some of these side effects," she said.

But for injured workers already taking opioids, workers compensation insurance sometimes pays for adjunct therapies.

"There's an old adage that physicians who start patients on opioids should also start them on some sort of laxative protocol," said Tron Emptage, chief clinical officer at pharmacy benefit manager Helios in Columbus, Ohio.

Injured workers might be told to exercise, eat certain foods that help with constipation and try over-the-counter products first, Mr. Emptage

said.

Workers comp sometimes also pays for prescriptions for Viagra and Cialis, which treat erectile dysfunction often caused by opioids, Dr. Bartlett said.

"Why not lower the dose and get (an injured worker) off the opioid rather than add three or four more drugs to treat the symptoms that the opioid caused?" Dr. Bartlett said. "It's maddening and it's sad."

For one opioid, Actiq, adjunct therapies can mean dental work, Dr. Bartlett said.

Actiq, which contains the Schedule II controlled substance fentanyl, is approved by the U.S. Food and Drug Administration to manage breakthrough pain in cancer patients, but is often prescribed to injured workers.

Taking the form of a lollipop, Actiq can cause dental issues, Dr. Bartlett said.

The lollipop was "really designed for end-of-life care for people who are maybe a week to a month away from dying," she added. In workers comp "we have people in their 40s and 50s taking them all the time, and now they're losing their teeth."

By Stephanie Goldberg

QUALITIES, SERVICES EMPLOYERS LOOK FOR IN A PHARMACY BENEFITS MANAGER

Better cost controls, more efficient case management and deeper integration of data analytics top risk managers' wish lists when it comes to pharmacy benefits managers.

Finding more effective ways to contain costs is risk managers' foremost concern. Employers spent an average of \$1,583 per injured worker for prescription drugs in 2014, up 1.9% from 2013, according to a report issued this year by St. Louis-based Express Scripts Inc. A separate report, issued by Memphis, Tennessee-based PBM Helios, showed workers compensation prescription costs increased by 3.9% in 2014 from the previous year.

"It's mainly about pricing and transparency, especially as the price of specialty drugs gets more and more out of control," said Paulette Wright, director of employee population health and pension strategies at Hackensack University Medical Center in Hackensack, New Jersey.

The primary means by which risk managers rely on their PBMs to help them manage their workers comp prescription costs is through direct negotiations with drugmakers. For their part, the country's largest PBMs have been looking to increase their leverage in those negotiations, mainly through industry consolidation, including Optum Inc.'s \$12.8 billion purchase of rival Catamaran Corp. and CVS Caremark Corp.'s acquisitions of Omnicare Inc. and the pharmacy and clinic divisions of Target Stores Inc. for \$10.1 billion and \$1.9 billion, respectively.

"Pharmacy costs continue to make up a bigger and bigger portion of our total workers comp budget every year," said Scott Clark, risk and benefits officer at Miami-Dade County Public Schools in Miami. "The PBMs' presence in the industry and their ability to garner the best discounts from pharmaceutical companies and then pass those discounts on to us is paramount."

Mr. Clark said PBMs also could improve the quality and depth of their communications with patients.

"It's really important that we have an opportunity to partner with our PBM in conjunction with my third-party administrator in order to give our injured claimants a chance to really understand the best methodologies for getting their scripts filled that not only meet their needs, but also keep them on their medications so we can get them healed and back to work," he said. "The messaging our employees receive from the PBM should also include information about what the district is spending to provide those prescriptions. Because these benefits are essentially free from the employees' perspective, they often don't really understand what the real costs are to do this."

Risk managers say they want to

boost efficiencies in their prescription case management strategies.

"Case management needs to take a look at the recovery of an individual in a more holistic way, where we look at all of the meds that an individual is using to make sure that they're compatible," said Ellen Shew Holland, associate vice president and chief risk officer at Southern Methodist University in Dallas. "Then we'd look at the cost associated with those meds and whether long-term usage is beneficial, or whether we can get the individual recovered without them. There

needs to be a whole pain management or medical management review and then an assessment by the occupational doctors as to whether the meds are working well for the patient."

In particular, risk managers said PBMs' ability to leverage data analytics and complex automated utilization alerts is more critical.

"What I really need and rely on my PBM for is that analytic edge that they give me, and that's the qualified pharmaceutical history we get when we look at utilization on our workers compensation claims," said Amy Pechacek, direc-

tor of risk management for Milwaukee County, Wisconsin. "If I have an employee being treated by multiple doctors and being prescribed the same narcotics by more than one physician, I rely on my PBM to catch those red flags immediately and investigate."

"On the flip side," she said, "if I have an injured worker with multiple doctors but not disclosing different medications to all of them, they could be prescribed medications that contradict or don't interact well with each other. I need a PBM to pick up on that as well."

Although data collected from

several PBMs indicates that opioid use has fallen, effectively managing misuse remains a critical issue.

"Any good PBM ought to have a very well-orchestrated and articulated structure for effectively assisting me in managing those employees that are on long-term opioid and other pain prescriptions, so that we're not working at cross purposes," Mr. Clark said. "I would expect the PBM to have a strategy for managing that and hopefully getting those claimants off of those long-term pain medications."

By Matt Dunning



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CLOSED FORMULARIES GAINING GROUND AS MORE STATES ADOPT GUIDELINES

BY GLORIA GONZALEZ

The adoption of closed drug formularies for state workers comp programs is gaining momentum, although improvements on several fronts may mask unintended consequences.

Ohio, Oklahoma, Texas and Washington state have implemented closed drug formularies grounded in evidence-based medicine guidelines for their workers comp programs, with Arizona, Arkansas, California, Louisiana, Maine, Michigan, Montana, Nebraska, North Carolina and Tennessee weighing or taking similar steps.

Formularies make it more difficult for physicians to prescribe drugs such as opioid painkillers since they require proof that non-formulary drugs are medically necessary for injured workers.

Texas and Oklahoma based their formularies on the Official Disability Guidelines published by Encinitas, California-based Work Loss

Data Institute. Tennessee has adopted the guidelines for the formulary it will launch next year and Arizona, Arkansas and Louisiana apparently are leaning in that direction.

The guidelines are popular among states partly because of their limited implementation and maintenance costs and the ease of adopting their N and Y drug lists, said Mark Pew, senior vice-president at PRIUM, a Duluth, Georgia-based medical management company. On the flip side, states must adopt the guidelines in full because the institute does not allow changing its content, although a state can create carve-outs via legislation or rules, he said.

However, the use of “Y” drug (preferred) and “N” drug (requiring preauthorization) lists results in a “black-and-white formulary” that fails to acknowledge certain drugs may be appropriate in some situations, but not others, said Joseph Paduda, principal of Madison, Con-

necticut-based Health Strategy Associates L.L.C. and president of trade association CompPharma.

“The binary nature of the Y and N process is a gross simplification of what formularies should be,” he said.

Compelling outcomes in Texas also factor into the guidelines’ popularity, Mr. Pew said.

The number of injured employees receiving N drugs fell 65% and costs dropped 83% for new claims for injuries suffered on or after Sept. 1, 2011, the Texas Department of Insurance said of the first implementation phase of its comp formulary. Utilization and costs also declined for legacy claims, with costs dropping from \$1.42 million in August 2013 to \$290,000 in September 2014.

“At first blush, the results in Texas look remarkably good.”

Joseph Paduda, Health Strategy Associates L.L.C.

“At first blush, the results in Texas look remarkably good,” Mr. Paduda said.

The American College of Occupational and Environmental Medicine Practice Guidelines is another option unless states feel they need to create

their own formularies, Mr. Pew said. Washington state — the earliest adopter of a closed drug formulary in 2004 — did just that and was able to implement a more restrictive formulary because of the monopolistic nature of its workers comp system.

While it’s not known which treatment guidelines California will adopt, the characteristics of the state’s comp system could indicate a general approach, experts said.

“It’s too early to say what direction California is going to go, but I think they’re leaning toward a Texas model because of applicability versus a Washington model because it’s monopolistic,” Mr. Pew said.

Not all stakeholders support evidence-based closed drug formularies for workers comp programs.

Robert Rassp, a Sherman Oaks, California-based attorney at Law Office of Robert G. Rassp

representing workers comp claimants, said such formularies are geared to cost containment and limit physicians’ ability to treat their individual patients.

“I don’t think the formularies that exist promote or encourage individualized medicine,” he said. “It’s not about what’s best for the patient. It’s how to save money.”

But patients are not automatically barred from receiving specific drugs just because they are not in the formulary, said Johnnie Hanna, pharmacy program director at the Ohio Bureau of Workers’ Compensation in Cincinnati, a monopolistic state that established its own drug list in 2011.

“The idea that a formulary is a reason someone would not get a drug they needed is absolute nonsense,” he said.

The Ohio bureau has reported significant utilization and cost declines, including a 74% drop in skeletal muscle relaxants, a 25% decline in narcotics and a total drug cost drop of 16%, for a total of \$20.7 million, in fiscal year 2014 compared with fiscal year 2011.

“You cannot approach it from a fiscal perspective,” Mr. Hanna said “If you do, you lose the moral high ground and you will lose support from some of your constituencies.”

For several stakeholders, the critical unanswered question is what happens to patients who lose access to opioids because of a closed drug formulary.

While the majority likely receive opioids through their group health plans or Medicare, “I think it’s highly likely that some portion of claimants who are no longer receiving opioids are accessing street drugs,” Mr. Paduda said. “I have no idea what percentage, but you can’t just stop taking opioids.”

And there is the possibility these injured workers are turning to heroin, although it is difficult to prove a direct correlation. A July U.S. Centers for Disease Control and Prevention report indicated 45% of people who used heroin also were addicted to opioids.

DRUG STANDARDS TIGHTENING

An effort by federal agencies to tighten controls on

hydrocodone combination drugs has had a noticeable but difficult to quantify effect on such prescriptions for injured workers.

The U.S. Drug Enforcement Administration placed hydrocodone combination products in a more restrictive category of controlled substances, alongside morphine and oxycodone, effective last October. The reclassification from Schedule III to Schedule II means that prescribers must issue a new prescription and no phone-in refills are allowed, according to the U.S. Food and Drug Administration.

Vicodin, a hydrocodone-acetaminophen combination drug, has been the No. 1 prescribed medication in Coventry Workers’ Comp Services’ workers comp business, but it also has had the largest decline in utilization over the past three years, dropping 7.8% last year.

“I don’t know how much is attributable to the regulation specifically, but it’s definitely more difficult to obtain those prescriptions,” said Dannielle Foroozandeh, Coventry’s director of pharmacy product development based in Orange County, California.

Less certain is the effect of designating tramadol as a Schedule IV controlled substance last year.

Schedule IV drugs are defined as having a low potential for abuse and a low risk of dependence.

“I don’t think it made as big of a splash,” Ms. Foroozandeh said.

Tramadol had a 6.3% increase in utilization in 2014, according to an analysis by pharmacy benefit manager Helios published in March.

“Tramadol going up slightly is partly because of hydrocodone, because you can do refills for tramadol,” said Tron Emptage, chief clinical officer at Helios in Columbus, Ohio.

By Gloria Gonzalez

Customized formularies help employers curb costs

Employers work with their pharmacy benefit managers to customize formularies for their injured workers, but they tend to be most heavily involved when they have staff with medical expertise or are trying to address the overuse of a drug in their workers compensation programs.

In states such as Texas that have adopted workers comp formularies, employers generally are more likely to incorporate additional limits for narcotics, antidepressants, muscle relaxants and other drugs, said Brigitte Nelson, senior vice president of workers compen-

sation clinical management at Express Scripts Holding Co. in Cave Creek, Arizona.

“Most of our clients will customize to some degree,” Ms. Nelson said.

While many will ask pharmacists to advise them on what the formularies should look like, employers with nurses or medical directors tend to be more vocal about whether or not specific drugs should be in the formularies, she said.

And most employers will tell their PBMs to exclude drugs such as cancer medications not intend-

ed for workers comp pain management, or limit drugs such as sleep aids not meant for long-term use, she said.

Employers also are concerned about injured workers using opioids in combination with skeletal muscle relaxants because of the potentially serious safety risks, with Express Scripts data indicating that nearly half of injured workers took such combinations in 2014, Ms. Nelson said.

Employers are also working with their PBMs to create formularies that address pricey compound drugs, said Donald Lipsy, manag-

er of regulatory, communications and compliance at First Script Network Services in Tucson, Arizona, a unit of Coventry Workers’ Comp Services.

Compounds accounted for 7.7% of all managed drug spending in 2014, up from 4.5% in 2013, and 28.1% of all unmanaged drug spending, up from 20.1% in 2013, according to a Coventry First Script report in June.

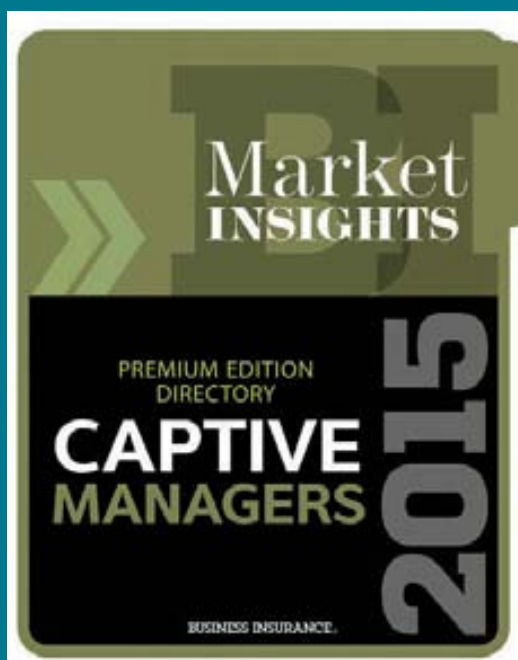
“I think that’s one of the reasons people are paying attention, because it’s difficult to control for those,” he said.

By Gloria Gonzalez

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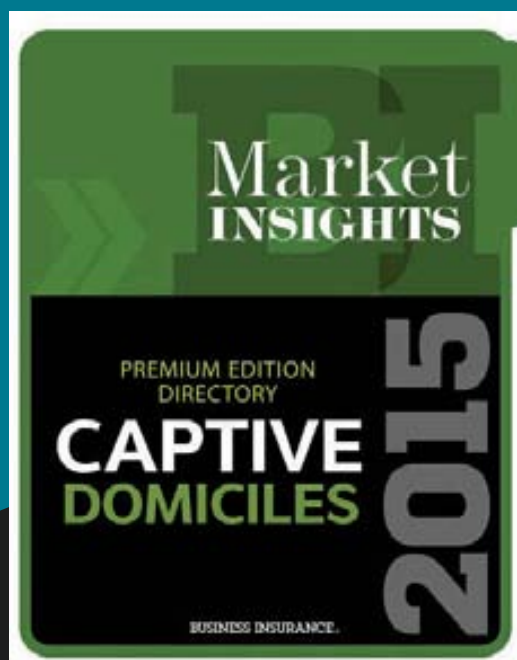
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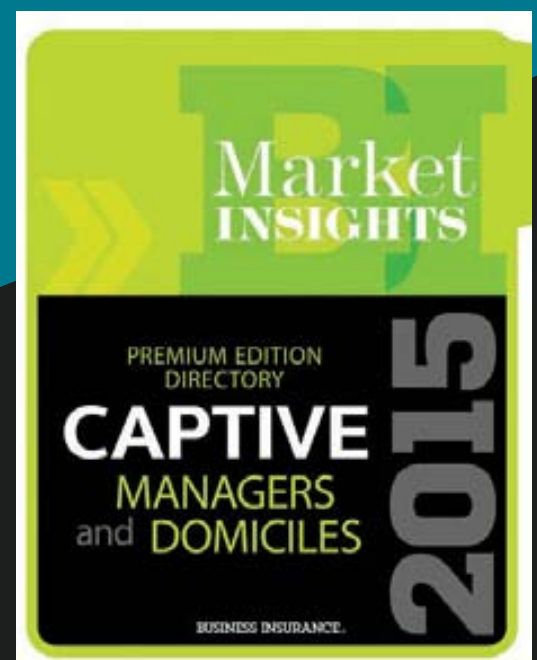
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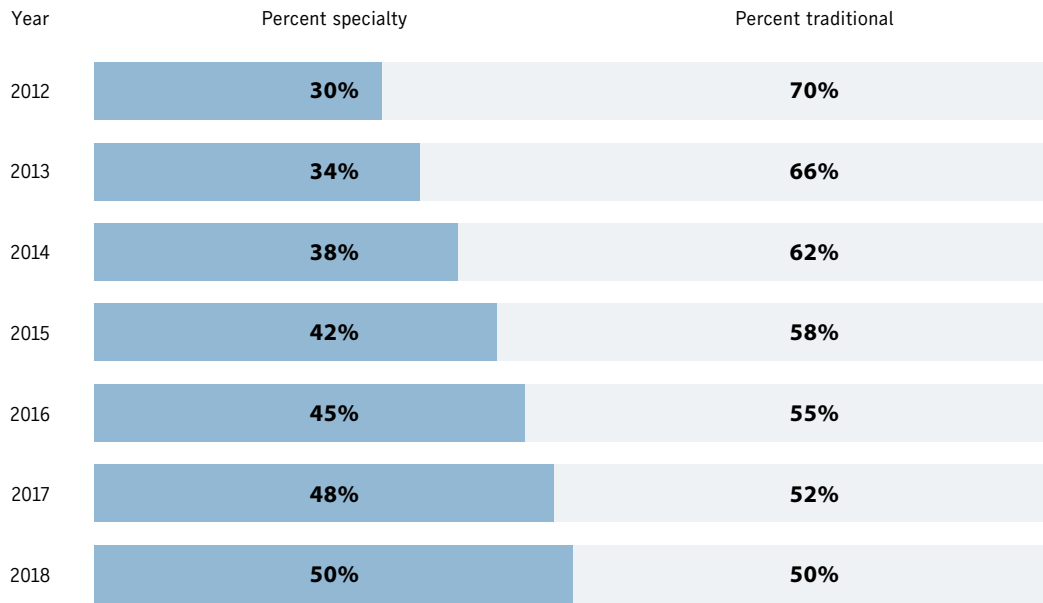
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SPECIALTY DRUGS

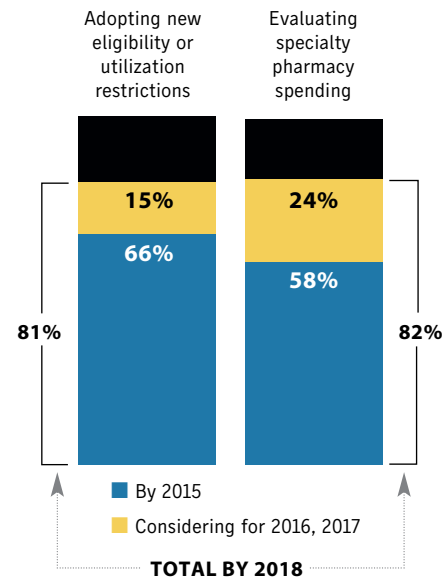
Specialty drugs, which accounted for 30% of group health plan costs in 2012, are projected to equal traditional prescription drugs in 2018.



Source: Artemetrx Specialty Drug Solutions L.L.C.

BENEFITS CHANGES

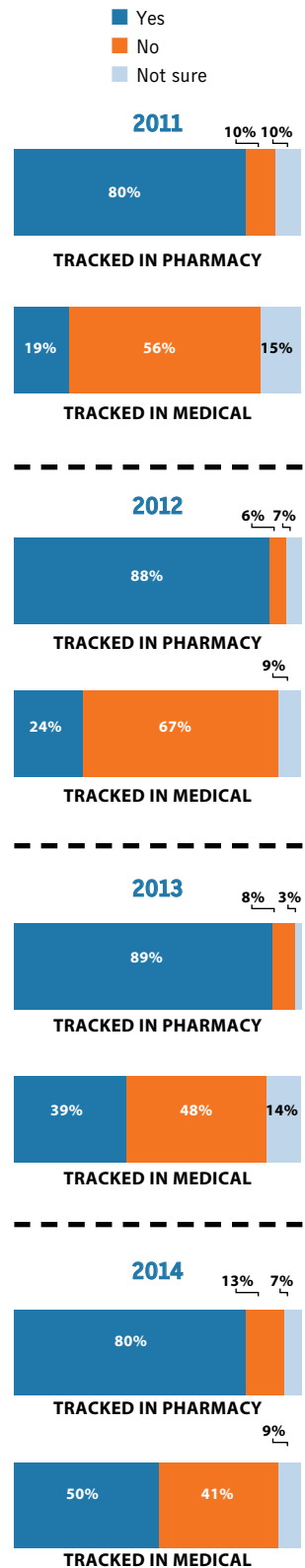
Employers are considering a variety of strategies to reduce prescription drug costs. They include:



Source: Towers Watson & Co.

TRACKING

Employers that track specialty drug spending are most likely to do so through their pharmacy benefits than their medical benefits program.



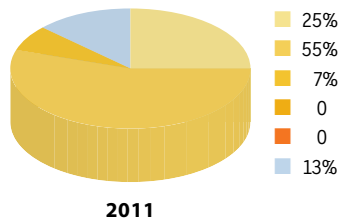
Source: Pharmacy Benefit Management Institute L.P.

SPECIALTY DRUGS

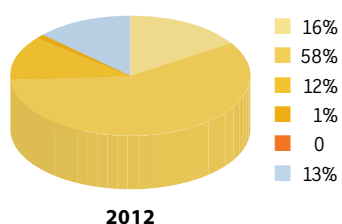
Pharmacy benefits spending attributed to specialty drugs

PERCENTAGE

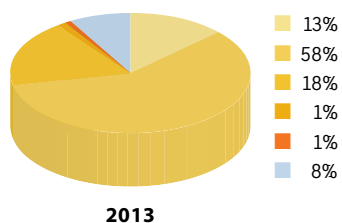
- Less than 10%
- 10%-25%
- 26%-50%
- 51%-75%
- More than 75%
- Not sure



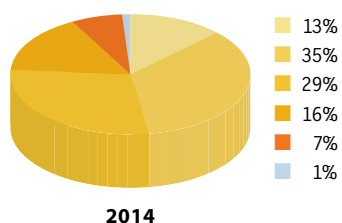
2011



2012



2013

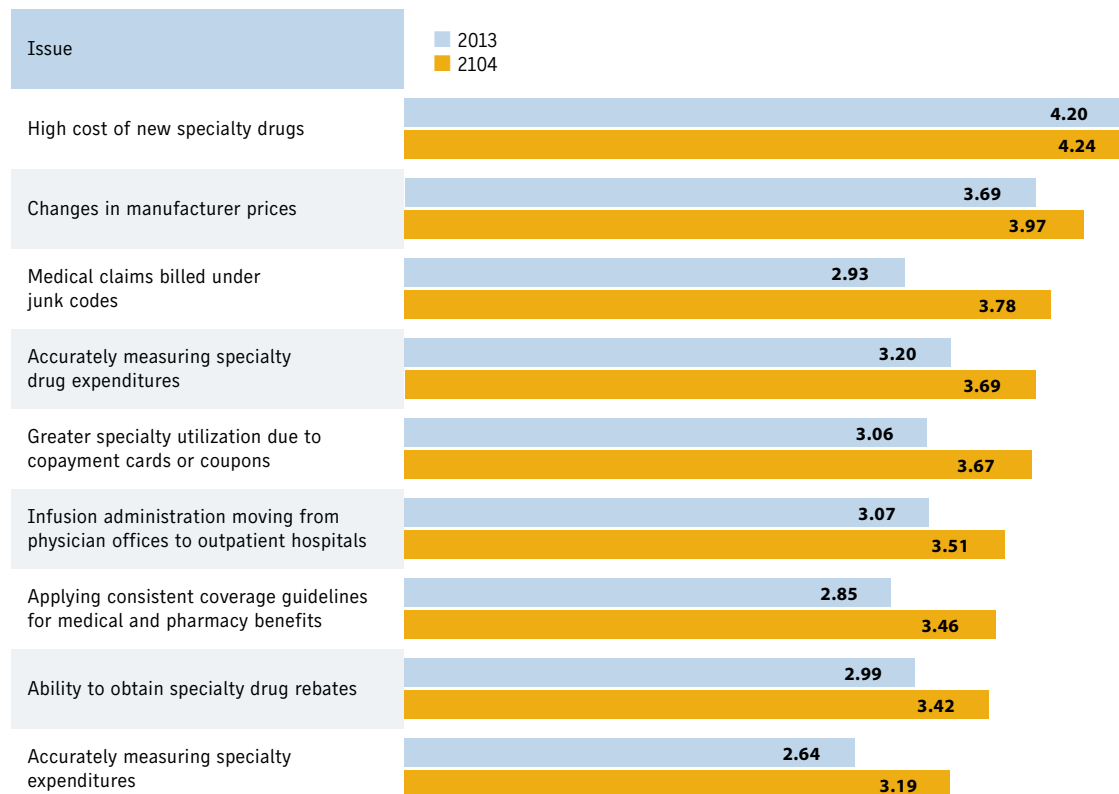


2014

Source: Pharmacy Benefit Management Institute L.P.

SPECIALTY DRUG MANAGEMENT

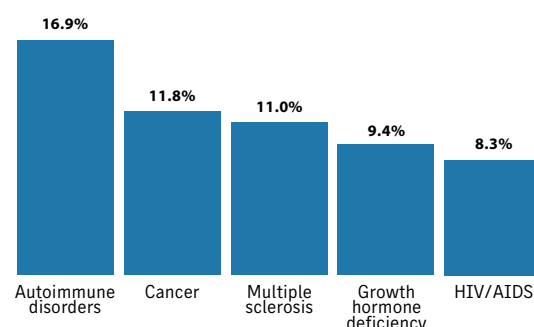
Top issues employers face in managing the cost of specialty prescription drugs measured on a five-point scale, with 5 indicating the highest level of interest



Source: Pharmacy Benefit Management Institute L.P.

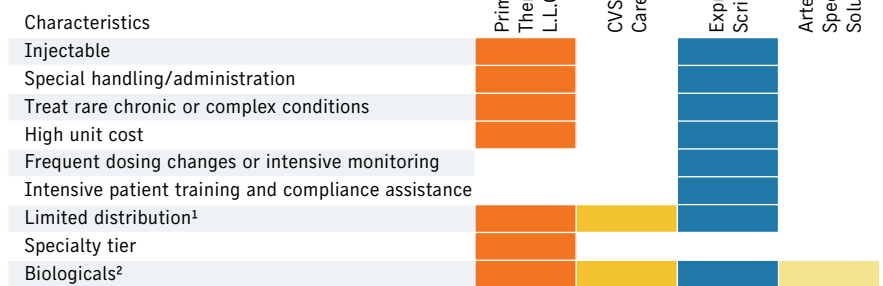
BIGGEST PRICE JUMPS

Specialty drugs that had the greatest increases in costs in 2014 compared with 2013



Source: Catamaran Corp.

WHAT ARE SPECIALTY DRUGS?*



* Blanks are unknown; ** For additional information, see CVS Caremark universal specialty drug list.
 1 CVS Caremark and Express Scripts have multiple specialty drug lists for different clients. 2 Biotech drugs are produced using living organisms, often using genetic engineering of yeast or bacteria.
 Source: Milliman Inc.

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BUSINESS INSURANCE®

XL Catlin launches crime policy in U.S.

XL Catlin has launched a commercial crime insurance policy aimed at helping U.S. businesses recover from corporate crime.

The policy provides protection against loss of or damage to money, securities and other property resulting directly from theft committed by an employee. It also protects against losses from check forgery, and losses from fraudulent entry or change in electronic data, Dublin-based XL Catlin said in a statement.

The policy is available on a primary, excess and quota share basis with policy limits up to \$25 million. Coverage is provided by XL Catlin insurance unit XL Insurance America Inc., according to the statement.

“From embezzlement and forgery to securities fraud and theft, businesses of all sizes are vulnerable to an expanding variety of crimes and criminal schemes that can be executed by their own employees or outside parties,” New York-based Greg Bangs, chief underwriting officer of XL Catlin’s global crime insurance business, said in the statement. “This new policy protects companies from the financial impact of criminal activity that can, in turn, damage profitability and business processes as well as a company’s reputation.”

Survey to opens lens on safety perceptions

Liberty Mutual Insurance Co. will offer its commercial lines customers the Liberty Mutual Safety Climate Survey, a service that helps them identify targeted areas for improving safety.

The safety climate survey will help companies differentiate between employees’ measurement of safety and the perception of the company’s safety culture, Liberty Mutual said in statement. The survey is for companies with 100 or more employees and is made up of statements that are meant to gauge employees’ perceptions of senior management’s commitment to safety.

The safety climate survey is mainly for companies with strong safety records that want to improve further, according to the statement.

“Practical application of the safety climate surveys can help companies identify ways to make focused adjustments to safety management systems that, over time, can strengthen safety cultures,” James Blaser, service director, Liberty Mutual Risk Control Services said in the statement.

Insurance practice serves car, truck dealerships

Cross Insurance, Bangor, Maine, has launched a franchised dealer practice to serve the needs of new car and truck dealerships.

The Cross Insurance Franchised Dealer Practice combines Cross Insurance’s property/casualty and employee benefits divisions. The property/casualty side will provide core property and garage coverage lines, professional liability, cyber,

PRODUCTS & SERVICES

Willis, AIG policy for midmarket auto-renews

Willis Group Holdings P.L.C. and American International Group Inc. have launched an automatically renewing insurance policy for middle-market buyers in the United Kingdom.

The policy, called Evergreen, covers major insurance classes under a single contract with no renewal date. It continues indefinitely and has a six-month cancellation clause, the companies said in a joint statement, and regular reviews will be undertaken “to ensure the correct level of protection is maintained at all times, complemented by risk management support.”

Evergreen “provides all the benefits of standard insurance but removes the requirement for an annual renewal,” Nicolas Aubert, CEO of Willis GB, said in the statement.

Evergreen “strengthens the relationship (clients have) with their broker and insurer by embedding the discipline of reviewing their insurance and risk management needs when change occurs and not just for an annual renewal,” said Jacqueline McNamee, U.K. managing director of AIG, in the statement.

Middle-market buyers are defined as clients that spend between £200,000 and £1.5 million (\$307,820 and \$2.3 million) on insurance, Willis and AIG said.

and other exposures, while the benefits side will coordinate ancillary lines, work-site coverage, retirement programs, business continuity and perpetuation planning services, Cross Insurance, a subsidiary of Cross Financial Corp., said in a statement.

The practice will be co-led by Michael J. McInnis Sr. and Scott S. Colford. Based in Bangor, they will both serve as vice presidents, according to the statement.

Hiscox adds comp to entertainment cover

Specialty insurer Hiscox USA has joined with MIS Insurance Services L.L.C. to include workers compensation in its entertainment policy.

Hiscox USA’s Hiscox One entertainment insurance policy covers risk across

all aspects of the entertainment business, Hiscox USA said in a statement.

MIS Insurance Services will handle back-office processing. This will enable Hiscox to have more control over underwriting decisions, according to the statement.

“We view the entertainment business as a huge growth opportunity for Hiscox,” Joanne Richardson, media and entertainment practice leader at Hiscox USA, said in the statement. “If there’s even one coverage in our entertainment policy that we don’t underwrite and control ourselves, we’re limiting the opportunities we can pursue. That’s the problem we were facing at the beginning of this year with workers’ compensation, and that’s why we decided to bring workers comp in-house.”

Insurer, law firm offer cyber cover for banks

Wholesale broker ABA Insurance Services Inc. has teamed with law firm Baker & Hostetler L.L.P. to offer a cyber insurance product for banks that are insured through ABAIS.

This service is to help banks prepare for and prevent data security incidents, Mayfield Heights, Ohio-based ABAIS said in a statement.

ABAIS-insured banks will have access to Cleveland-based Baker & Hostetler’s team of incident response attorneys through a hotline. A free one-hour consultation will be provided to banks that experience a data breach or suspected data breach. Pre-breach consultations to develop a privacy incident response plan are also available, according to the statement.

“ABA Insurance Services is excited to provide our insureds access to Baker-Hostetler’s incident response team,” Lisa Micciche, product manager with ABA Insurance Services, said in a statement. “Banks are a high-value target for hackers, and BakerHostetler’s expertise will help banks mitigate that risk.”

Economic and political risk evaluation service offered

Global risk consultancy Control Risks Group Holdings Ltd. and independent global advisory firm Oxford Economics have launched an Economic and Political Risk Evaluator service.

The Economic and Political Risk Evaluator provides customized political and economic risk forecasting services, the companies said in a joint statement.

Eleven variables that they found are the most relevant for assessing political and economic risk. They are sovereign risk, exchange rate, trade credit, political stability, ideology/policy, international relations, business environment, operating cost, market demand, security environment, and social cohesion, an Oxford Economics spokesman said.

Control Risks and Oxford Economics have developed a model to assess 164 countries, giving them an overall risk score. Economists and political analysts, assessed each country, the spokesman said.

DEALS & MOVES

AssuredPartners expands with Nashville acquisition

AssuredPartners Inc. has acquired Nashville, Tennessee-based insurance broker Bandy Van Cleave & Williamson L.L.C.

Terms of deal were not disclosed.

Bandy Van Cleave & Williamson offers property/casualty, group life, health and disability insurance, pension plan and personal insurance coverage and services to small-to-midsize businesses, AssuredPartners said in a statement.

The staff will continue working from its Nashville office, reporting to Bob Van Cleave and Chuck Williamson, according to the statement.

NFP acquires specialty broker in real estate, construction

Insurance broker NFP Corp. said it has acquired Insurance Management Associates, a commercial property/casualty insurance broker offering specialty expertise in the real estate, construction, retail, manufacturing and wholesale industries.

Terms of the deal were not disclosed.

IMA principals Scott Stegall and Lisa Levin-Stegall will each assume the role of vice president of NFP Property & Casualty and will report to Terrence Scali, NFP Property & Casualty’s CEO, New York based NFP said in a statement.

NFP Property & Casualty’s current Mount Laurel, New Jersey, location will merge with IMA’s Voorhees, New Jersey, office, and the combined operation will provide additional resources for NFP’s existing benefits firms in the Greater Philadelphia region, according to the statement.

Ryan Specialty buys rival wholesale brokerage

R-T Specialty L.L.C., the wholesale brokerage unit of Ryan Specialty Group L.L.C., has acquired specialty wholesaler A.J. Renner & Associates from USI Holdings Corp.

Terms of the transaction were not disclosed.

Chicago-based A.J. Renner was founded in 1985 as an excess and surplus lines brokerage specializing in life science, pharmaceutical and other health care related companies, according to an R-T Specialty statement.

Following the close of the transaction, the core of the A.J. Renner life science team will join Chicago-based R-T Specialty, the statement said.

According to *Business Insurance’s* latest directory of insurance wholesalers, A.J. Renner reported gross revenues of \$4.3 million in 2014, off 17.7% from 2013.

Hub International acquires West Coast brokers

Chicago-based insurance broker Hub International Ltd. has acquired the assets of Yakima, Washington-based EmSpring Corp. and Simi Valley, California-based Arrow Insurance Service Inc.

Terms of neither acquisition were disclosed.

EmSpring is a provider of employee benefits solutions and has locations in Yakima, Bellevue, and Spokane, Washington. Arrow provides specialty retail insurance and program administration for the pool and spa service industry.

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LOGGING

Continued from page 4

unsafe operators out there that are giving our industry a black eye. It makes everyone adhere to the hours of service, and you will have less fatigued drivers and that will make roads safer.”

An April 2014 study by the Department of Transportation and the Federal Motor Carrier Safety Administration found there were 11.7% fewer crashes for trucks whose drivers used electronic logs versus written logs. The study examined 83,000 crashes from 2008-2012 processed by the Virginia Tech Transportation Institute's Center for Truck and Bus Safety.

The study also found that drivers using electronic logs had 53% fewer hours-of-service violations.

Electronic logs do affect safety, said Rich Bleser, senior vice president and fleet specialty practice leader at Marsh Risk Consulting in Milwaukee.

“It brings a lot more visibility to what the driver is doing — the when, where and how,” Mr. Bleser said. “The ELD mandate is estimated (by the Federal Motor Carrier Administration) to affect 3 million vehicles and help prevent, in their estimation, approximately 20 fatalities, and close to 430 injuries each year for an safety benefit of \$395 million.”

Federal agencies also have proposed rules on excessive speed and its role in an estimated 1,115 fatal truck crashes annually on roads with speed limits of 55 mph or more.

A proposal that was due to be published in August but has been delayed would require installing and using what's known as a speed limiter or governor to cap the maximum speed allowed for commercial trucks.

“We are definitely proponents of the speed limiter technology. We think it makes the roads



safer,” said Mike Gramm, Chicago-based head of trucking business lines at XL Catlin. “In our world, the excess liability world, it's not just the number of crashes, it's the severity of them.”

“We have an opportunity to measurably improve safety,” said Sean Garney, director of safety policy at American Trucking Association. From crash studies, speed is cited as the critical pre-crash event 18% of the time, he said. “To be able to reduce that will without a doubt improve safety.”

Mr. Bleser said there's a problem, though.

“The challenge is that when you limit the speed of truck and not automobiles, that differentiation poses a different set of hazards,” he said, such as cars moving into oncoming traffic to pass slower trucks.

Scott Grenerth, regulatory affairs director of the Grain Valley, Missouri-based Owner-Operator Individual Drivers Association, said he has seen how speed limiters affect traffic during 13 years of driving a truck.

“Speed limiters cause the traffic to just not flow. You'd be driving along and there's a truck only allowed to go 55 mph and, in some states, the speed limit is up to 75

or 80. This is not an issue of safety; it's a business model where some companies can get the fuel efficiency that they want to get,” Mr. Grenerth said.

Overall, the rules are viewed as steps in the right direction.

“The fatality rates on America's highways, when it comes to commercial trucks, have been improving consistently over the last 40 years and our general view is that America's roads are continuing to get safer on a per-mile basis through a lot of things like new technology, better enforcement and better education in equipping commercial drivers. These are some of the tools that help make America's roads safer,” Mr. Gramm said.

“Transportation as an industry is going to continue to grow; products have to get where they need to go. There really is a push in the transportation industry of all modes to be as safe as possible and the reason that transportation has gotten safer is the push from the insurance industry,” Mr. Bojan said.

“The insurance industry has vigorously requested that the fleets that they insure implement improved safety practices” and even helped them achieve the safety improvements, he said.

EXTORTION

Continued from page 4

keep up.

“Over the past five years, we've gone from hobbyist hackers breaking into networks for notoriety to an environment where organized crime, both in Eastern Europe and the U.S., is aggressively monetizing their hacking,” said Brad Gow, a New-York-based senior vice president with Endurance Insurance, a unit of Endurance Specialty Holdings Ltd. “That's a dynamic that has changed the game for companies, as well as the insurance carriers who are trying to cover them.”

“We haven't seen a lot of instances like Ashley Madison where they try to extort to not release information. That was

more prevalent five or even 10 years ago,” said Nick Economidis, a technology underwriter at London-based Beazley P.L.C. Today, “it's more targeting and theft of credit card information rather than to extort for money to not disclose business information,” or “crypto locker” attacks where hackers take control of a business system and demand ransom to unencrypt the data.

Gamelah Palagonia, New York-based senior vice president and cyber risk specialist at Willis North America Inc.'s FINEX unit, said the Ashley Madison case was an unusual attack because of the threat to shut the business down.

“Reports by security experts indicate their data was already posted to online forums before the formal threat was made anyway. If Ashley Madison had cyber coverage, the policy trigger would be

unauthorized access,” Ms. Palagonia said.

There are best practices companies can follow to mitigate the risk, Mr. Gow said. They include being vigilant about backing up data, ensuring that servers and endpoints are updated regularly and — most importantly — training employees to use safe email practices and not browse the wrong websites.

“A company can have the best protection in the world, but if an employee clicks on a bad link, the system is compromised,” Mr. Gow said.

Cyber insurance also is a way to mitigate such risks, with more insurers offering the coverage and more companies buying it in the wake of a series of high-profile hacks in recent years.

“All businesses need (cyber) coverage, because you don't know

what's going to happen in the future. You can't regulate the criminal mind. All you can do is secure your systems, train your employees and have the proper procedures and privacy policies in place. Insurance is a great tool to finance a cyber claim, but it shouldn't be your first line of defense,” Ms. Palagonia said.

“We know (companies) have certain delicious data that is highly valuable, such as law firms, accounting firms — all those firms that have other people's data, that's all delicious data,” said Jody Westby, CEO of Washington-based consultant Global Cyber Risk L.L.C. “If a company has delicious data, they need to decide what they would be willing to pay.”

“If (a company's) data gets posted like the Ashley Madison database was, then competitors

exclude employees' pretax contributions to health savings accounts and flexible spending accounts.

Potential changes to those ACA provisions “could get a thorough congressional review” in the months ahead, said Geoff Manville, a principal with Mercer L.L.C. in Washington.

On the other hand, congressional interest is lagging for another ACA change sought by employers: changing the law's provision that defines full-time employees as those working an average of at least 30 hours a week.

Employers and their congressional backers want the definition to be changed to define full-time employees as those working an average of 40 hours a week, reflecting real-world employer practices.

That definition is important, since employers not offering coverage to at least 70% of their full-time employees this year and 95% in 2016 and succeeding years will be hit with a penalty of \$2,000 per full-time employee, starting next year. But congressional interest in making such a change has lagged.

“There is very limited Democratic support in the Senate. Democrats are holding the line against passage, and I doubt that President Obama would sign such a major change” to the ACA, Mr. Manville said.

On the regulatory side, employers expect the IRS to propose guidance on the excise tax early next year. Among issues that need clarification are whether employer costs in running on-site health care clinics should be included as a health plan cost for excise tax calculation purposes.

On the other hand, regulators have shown little interest in releasing rules on an ACA provision that requires employers with at least 200 employees to automatically enroll employees in a group plan in situations where employees don't choose a plan.

“I'm not detecting much regulatory interest in that one,” Mr. Manville said, referring to the automatic enrollment provision.

ACA

Continued from page 4

now has over 140 co-sponsors.

“That is a pretty sizeable group,” said Gretchen Young, senior vice president of health policy at the ERISA Industry Committee in Washington.

“There is truly bipartisan support for repeal,” added James Klein, president of the American Benefits Council in Washington.

But both Ms. Young and Mr. Klein, as well as others, acknowledge the chance of repeal is slim.

“We are realistic about the chances. The Obama administration and some members (of Congress) are opposed to repeal. We do have our work cut out for us,” Mr. Klein said.

One big challenge is convincing lawmakers that the prime rationale for the tax — that the tax will be a big revenue raiser and generate funds to help offset the government's cost in providing premium subsidies to the lower-income uninsured obtaining coverage in public exchanges — is false.

“There is that belief that too much revenue would be lost,” said Allison Klausner, a principal with Buck Consultants at Xerox in Washington.

“While there is significant momentum to repeal the tax, we recognize that the congressional agenda is crowded, with not a lot of time,” said Steve Wojcik, vice president of public policy for the NBBG in Washington.

In addition, even if Congress does repeal the excise tax, there aren't — at least not yet — enough votes to overturn a near-certain presidential veto, observers say.

Others say that while repeal of the excise tax is a long shot, lawmakers may consider changes to the excise tax. These could include linking the health care plan cost trigger to annual increases in health care costs rather than to the consumer price index, or modifying the excise tax provision to

can use that data to lure customers away or undercut them in price,” Ms. Westby said.

“Hackers are smart, and they will find a way into the system; detecting hackers quickly is the key,” said David Maimon, Baltimore-based associate professor of criminology and criminal justice at University of Maryland. “It will take some time for the hacker to find what they are looking for. If we can come up with a solution to quickly detect and identify a hacker, then having a hacker is not a problem.”

“This should be the premise on which all computer scientists, cyber security professionals and criminologists should work on. At some point, you will have a hacker on the system no matter what you do, but the question is how soon you can respond to a hacker,” Mr. Maimon said.

HDHP

Continued from page 3

recommended by an urgent care physician. After six months of pain, she saw Dr. Neuhofel, who contracts X-rays for \$25 from an X-ray provider in the area, but surgery was unable to fully repair the fractured bone. "Had she found the scaphoid fracture in the first few weeks, a surgery would've likely saved the bone and a life of arthritis," Dr. Neuhofel said in an email.

"It's kind of a catch-22," said Dave Ratcliffe, Washington-based principal in the health and productivity practice with Buck Consultants at Xerox. "You're reducing utilization, which is a benefit, and you're shifting costs to the employee," but if employees don't understand their benefits and forgo necessary care, that could "lead to higher expenses later."

The American Academy of Pediatrics agrees. In a 2014 statement in the journal *Pediatrics*, it said, "HDHPs discourage use of nonpreventive primary care and thus are at odds with most recommendations for improving the organization of health care."

Mr. Ratcliffe said employees may not understand that preventive care, which includes a physical or screenings for certain health conditions, is fully covered. And even if they do, preventive services could lead to other, more expensive care, he said.

On the flip side, HDHPs are reducing costs: The PricewaterhouseCoopers study said the percent of consumers forgoing medical care reached 40% this year, up from 29% in 2009.

"Generally, the reduction in the use of health care services in high-deductible health plans is concentrated in services that are somewhat lower value," said Dr. Jeff Levin-Scherz, Boston-based

national co-leader of the health management practice at Towers Watson & Co. and an assistant professor at Harvard Medical School. "People wait an extra day before they go to see a doctor for their sinus infection, and ... they happen to get better and they never get care." The patient's "health isn't adversely impacted," he said.

An analysis by Cigna Corp. published Sept. 8 said there is little evidence that consumer-directed health plans adversely affect low-income populations. And in a separate Cigna study, when comparing the insurer's CDHP members with managed care plan members, both showed the same or higher compliance with 500 evidence-based medical practices 96% of the time, a Cigna spokesman said in an email.

If high-deductible health plans are implemented effectively, "we could have less waste in our health care system, and we could have more empowered consumers,"



HEAR INTERVIEW

Visit *Business Insurance's* multimedia Web page to hear

Dave Ratcliffe, Washington-based principal in the health and productivity practice with Buck Consultants at Xerox Corp., discuss how HDHPs can be structured so employees don't skimp on needed medical care with *Business Insurance* Staff Reporter Shelby Livingston.

said Ceci Connolly, PricewaterhouseCoopers' Boston-based managing director of its Health Research Institute.

But for the plan to work as intended, employees need information about their choices, how the plan works and procedure prices, she said. Otherwise, it would be like buying a car "and not being able to get information

about ... all of those elements you want when you decide which one you're going to buy."

Transparency tools that help workers shop around for the best prices are one solution, she said.

Employers can also provide incentives for employees to get biometric screenings and health risk assessments so they know what health issues need to be addressed, Buck Consultants' Mr. Ratcliffe said.

Another option is to take the highest-value procedures and exclude them from the deductible so workers don't skimp on necessary care, Dr. Levin-Scherz said. Employers can also contribute to a health savings account upfront so workers have the funds when they need them.

"The important thing is to design the insurance program ... as well as the way of communicating it such that we limit the chances that people will forgo very valuable care," Dr. Levin-Scherz said.

HEALTH

Continued from page 3

CEO of the AHA in Washington D.C., was similarly critical of the proposed mergers in his comments to the committee.

"More consolidation would leave consumers with fewer and, no doubt, more expensive options for coverage," Mr. Pollack said during last week's hearing. "It would diminish the insurers' willingness to be innovative partners with providers and consumers to transform care."

Mr. Pollack's written testimony to the committee was particularly critical of Anthem's proposed \$54 billion acquisition of Cigna, which he said would reduce competition "on a massive scale."

"The Anthem/Cigna transaction threatens to reduce competition in at least 817 markets across the U.S. serving 45 million consumers," Mr. Pollack said, citing the AHA's findings in a 33-page analysis of the deal submitted to federal antitrust regulators in August.

That analysis, Mr. Pollack said, indicated that the threat to competition from Anthem's proposed purchase of Cigna would span more than 100 cities and rural counties.

The AHA issued a separate analysis of the proposed \$37 billion merger of Aetna and Humana Sept. 1, warning that the deal would create a single entity dominating the Medicare Advantage market in more than 1,038 counties in 38 states.

The AMA and AHA analyses were conducted according to the Herfindahl-Hirschman Index, the standard by which federal antitrust regulators evaluate resulting market concentration of potential mergers.

"Claims of offsetting efficiencies cannot ameliorate the competitive harm from this deal," Mr. Pollack

said in his written testimony. "Insurers have a dismal track record of passing any savings from an acquisition on to consumers, and there is no reason to believe that this transaction would be any different."

Dan Durham, executive vice president of the insurers' advocacy organization America's Health Insurance Plans in Washington D.C., said during the hearing that large-scale mergers have indeed harmed health care consumers, though he was referring to ongoing consolidation among hospitals and physician groups.

"There is substantial evidence in peer-reviewed research that shows that a significant share of health care cost increases are driven by dominant providers charging higher prices," Mr. Durham said, citing a 2014 study published in the *Journal of the American Medical Association* that showed per-patient cost increases of between 10% and 20% after hospital or health system acquisitions of physician groups.

Industry experts said the AMA and AHA critiques of the proposed mergers are hardly surprising, given the extent to which the resulting combined health insurers would increase their leverage over providers in pricing negotiations.

"They're making it known that it's not just a political point, but that there is legitimate economic justification for true analytic consideration of these mergers and whether they're ultimately good or bad for the marketplace," said Rob Fuller, of counsel at Los Angeles-based law firm Nelson Hardiman L.L.P.

"I certainly support the idea that this is not going to be good for hospitals and doctors," Mr. Fuller said. "Over time, I think insurance companies are going to lose the need for innovative solutions, and I don't think the insurance companies are going to pass any savings on to consumers or employers."

CONSOLIDATION CRUNCH

Analyses published by the American Medical Association identified more than 150 cities and counties in which consolidation among four of the nation's largest health insurers would diminish competition. Using the Herfindahl-Hirschman Index, the standard by which federal antitrust regulators evaluate the resulting market concentration of potential mergers, the top 10 locations where competition would be most negatively affected by the proposed mergers are:

RANK	ANHEM INC./CIGNA CORP.
1	Racine, Wisconsin
2	Milwaukee-Waukesha-West Allis, Wisconsin
3	St. Joseph, Missouri-Kansas metro area
4	Mansfield, Ohio
5	Oakland-Fremont-Hayward, California
6	Cleveland-Elyria-Mentor, Ohio
7	San Jose-Sunnyvale-Santa Clara, California
8	Toledo, Ohio
9	Akron, Ohio
10	Clarksville, Tennessee-Kentucky metro area

RANK	AETNA INC./HUMANA INC.
1	Owensboro, Kentucky
2	Bowling Green, Kentucky
3	Racine, Wisconsin
4	Kankakee-Bradley, Illinois
5	New Orleans-Metairie-Kenner, Louisiana
6	Milwaukee-Waukesha-West Allis, Wisconsin
7	McAllen-Edinburg-Mission, Texas
8	Brownsville-Harlingen, Texas
9	Johnson City, Tennessee
10	Lake Charles, Louisiana

Source: American Medical Association

Ed Kaplan, New York-based senior vice president and national health practice leader at The Segal Group Inc., said past health insurer mergers have typically resulted in some measure of pricing relief for employers, particularly those that self-insure their group health plans.

"History and experience show us that consolidation has forced the pricing down, but it's starting to compress a little bit, and the question becomes how much more does the industry think it can get from providers," Mr. Kaplan said.

OKLAHOMA

Continued from page 3

approved to opt out of the state's workers compensation system, and the department is seeing renewals of that coverage.

While the number of employers choosing to provide alternative coverage is consistent with expectations, adoption has been relatively slow due to drops in workers compensation cost and "litigation uncertainties," said Bill Minick, president of Dallas-based Partnersource, an alternative workers comp consultant unit of Arthur J. Gallagher Risk Management Services Inc.

The reform law also moved the state from a court-based adjudication system to an administrative process and established the Oklahoma Workers' Compensation Commission, which has been heavily criticized.

Violations of the state's Open Meeting Act and a lack of funding reportedly led the agency's executive director and two of its three commissioners to resign in recent months.

Former commissioner Troy Wilson said in his resignation letter to Oklahoma Gov. Mary Fallin that he "had no idea how difficult it was going to be to stand up a new agency and that it would involve so many conflicts and difficulties." He noted that "many mistakes were made including under funding and our acceptance of poor legal advice."

And former commissioner Denise Engle, who now is a risk management consultant at Arthur J. Gallagher & Co. in Oklahoma City, said in an email to *Business Insurance* that her "primary goals as commissioner were to help set up the new agency and establish permanent rules to guide it. Once those goals were met, it was time for me to return

to the private sector."

However, Ms. Engle told *Business Insurance* in September 2014 that, "as with any new agency, it is hard to determine exactly what funds are needed to begin and, although very thrifty, it seems that we were a bit short in budget allocation."

Controversy surrounding the Oklahoma Workers' Compensation Commission and "issues they had were largely motivated by political issues and were natural to the formation of a new regulatory entity," Mr. Minick said. "I haven't heard anyone suggest that the growing pains and exceptionally litigious trial bar in Oklahoma is deterring other states from considering workers compensation reforms or approving options to workers compensation."

Despite the shakeup at the commission and challenges to the Employee Injury Benefit Act, the National Council on Compensation Insurance Inc. has filed for a 14.8% reduction in workers compensation loss cost rates through the state system, to take effect Jan. 1, 2016. It's the third consecutive rate cut filed by the Boca Raton, Florida-based workers comp ratings organization for Oklahoma, following a 7.8% decrease in 2015 and a 14.6% decrease in 2014.

The decrease "really comes down to the comprehensive reform package," Mr. Mills said, adding that it likely won't entice employers who've opted out to re-enter the workers comp system.

"I've heard employers talk about savings they've been able to create (through alternative coverage) while providing equal and better service for their employees who are injured, and the numbers that they've provided have been much greater even than this 14.8% decrease," Mr. Mills said.

QUAKES

Continued from page 1

tude 3 or greater quakes a year. But that rate has increased since 2013 and now averages 2½ magnitude 3 or greater quakes per day.

“It’s an emerging issue,” said Steve Weisbart, chief economist and senior vice president at the Insurance Information Institute in New York. “There’s a lot of interest in it.”

To add to insurer concerns, the Oklahoma Supreme Court ruled in June that a homeowner may proceed with a damage claim in state court, a procedural ruling in a case on which lower courts have not yet weighed the merits.

In *Sandra Ladra v. New Dominion L.L.C. et al.*, the Prague, Oklahoma, woman sued following a 2011 magnitude 5 quake, which she alleged caused part of a fireplace to collapse and resulted in severe leg injuries. The state high court rejected assertions that only the Oklahoma Corporation Commission could rule on the issue.

“District courts have exclusive jurisdiction over private tort actions when regulated oil and gas operations are at issue,” the court wrote in its unanimous ruling. “Appellees confuse the statutory grant of exclusive jurisdiction to the (Oklahoma Corporation Commission) to regulate oil and gas ... with the jurisdiction to afford a remedy to those whose common law rights have been infringed by either the violation of these regulations or otherwise.”

The ruling opens the way for further litigation.



AP PHOTO

Maintenance workers inspect a spire on Benedictine Hall at St. Gregory’s University in Shawnee, Okla., which toppled after two earthquakes hit in less than 24 hours in 2011.

“We know now that affected landowners — businesses, individuals — can file lawsuits in Oklahoma district court, which is our court of general jurisdiction, and proceed ahead against these oil and gas companies,” said Gordon Amini, general counsel of the Oklahoma Insurance Department in Tulsa.

“This decision could have an impact on commercial activities if insurers will now have to defend these cases with the related expenses, along with the potential for an increase in indemnity settlement pay-

ments,” said Gerry Finley, Princeton, New Jersey-based senior vice president of casualty underwriting at Munich Reinsurance America Inc.

Should the situation progress and trigger claims, insurers are poised to exclude, limit or write the coverage for the companies extracting the gas and oil differently.

“I would assume that if, in fact, this became a bigger problem and we started to see losses coming out of it and underwriters starting to pay claims, I think that’s when you will see the underwriting community pay-

ing more attention to it and looking to manage that risk” by exclusion, sublimit or pricing, said Duncan Ellis, U.S. property practice leader at Marsh L.L.C. in New York. “The underwriting community wants to be able to underwrite for any risks of loss that exist, meaning understand what it is and price for that risk accordingly.”

Should there be losses, “you would see insurance companies at least try to underwrite it differently,” said Rick Miller, U.S. property practice leader at Aon Risk Solutions in Boston. “If in fact there were a decent amount of activity from earthquakes that was deemed to be tied to this man-made activity, I think underwriters would look at that accordingly and will probably still offer a product, but they will price for it.”

Some insurers already are changing coverage related to man-made quakes.

“At this point, we are not aware of significant activity in terms of revising liability forms. We have seen some modest activity regarding modification of earthquake coverage offered under property policies,” said Munich Re’s Mr. Finley, who declined to cite specifics.

“This is still an emerging issue. We have not seen wide use of restrictive policy language because there are still a number of markets that will provide coverage to the hydrofracking segment without restriction. However, some markets have chosen to avoid risk with hydrofracking exposure altogether and others have been selective regarding the type of risk they’ll write,” said Robert Shine, managing director of the leadership council and director of Americas underwriting, XL Catlin in New York.

WCI

Continued from page 6

date specific requests for additional time off and be ready to demonstrate that an injured worker’s absence causes an undue hardship.

Seemingly innocuous actions or comments by an employer could be grounds for a retaliation charge from injured workers, particularly if they suggest an adverse action may be forthcoming, attorneys said.

Without detailing specifics that would violate confidentiality, Mr. Taylor described a recent retaliation claim that resulted in a verdict of more than \$100,000 for the injured worker. The worker, who initially refused to return to work despite being assigned a light-duty desk job, succeeded in part because emails led the jury to conclude that the company was seeking to fire a problematic employee, he said.

In one email, a human resources staffer directed a fellow employee to track the days an injured worker did not call in or show up to possibly be used in a disciplinary case. While employers should document such absences and communications, mentioning potential discipline helped create the impression that the employer wanted to terminate the employee, Mr. Taylor said.

“We’ve all probably written emails that are worse than this,” Mr. Daly said.

LLOYD’S

Continued from page 1

she said in a note to investors. “Despite further pressure on ... rates, the Lloyd’s sector represents a relatively attractive investment opportunity right now, in our view.”

Intense reinsurance competition — particularly for property catastrophe business, where an abundance of alternative capital has helped push rates down — is one potential driver for an uptick in Lloyd’s M&As, said Dennis Sugrue, director and reinsurance sector specialist for the Europe, Middle East and Africa region at Standard & Poor’s Corp. in London.

Smaller reinsurers with a concentrated business mix are the most likely candidates for M&A, he said.

While fewer potential acquisition targets remain, some London and Bermuda players are likely to be open to mergers to diversify, he said.

“Lloyd’s is a hugely attractive platform” for insurance companies seeking to expand their international footprint, because it offers access to global licenses and highly rated underwriting paper, among other things, said Andrew Holderness, global head of the corporate insurance group at law firm Clyde & Co. L.L.P. in London.

For the past five years or so, there has been a great deal of interest from insurers eager to



gain a Lloyd’s presence, he said.

Setting up an operation at Lloyd’s takes time and overcoming several regulatory hurdles, but buying an existing platform is a quicker route to getting established in the market, he said.

The number of potential takeover targets, however, is getting ever smaller, with just four publicly traded vehicles that have not been involved in M&As and “a handful of private concerns that might be interested in selling,” said Mr. Holderness.

This scarcity of takeover targets may drive up prices, he said.

Potential sellers may use expressions of interest to drive up the bidding, which could prompt buyers to offer a high initial price to avoid competitive bids, he said.

“So, who is next as the feeding frenzy in nonlife continues?,” analyst Eamonn Flanagan, head of the Liverpool, England, office of

Shore Capital Group Ltd., asked in an investor note. “At this stage, it would not be wise to rule anyone out in our view.”

Dublin-based Beazley Group P.L.C. “offers considerable diversification benefits to a bidder and terrific exposure to liability lines,” while Hamilton, Bermuda-based Hiscox Ltd. “remains the quality play in Lloyd’s, with an excellent retail offering in the United Kingdom, United States and Europe,” he said.

Hamilton-based Lancashire Holdings Ltd. “has superb units inside Lloyd’s, outside Lloyd’s and within the alternative capital space,” Mr. Flanagan said.

London-based Novae Group P.L.C. “is cheaper and smaller, but doesn’t offer the scale or transformational nature of its peers. However, it is now a very tidy, well-managed operation,” he said.

Insurers’ need to diversify “to

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Andrew Holderness,
Clyde & Co. L.L.P.

reduce reliance on reinsurance lines of business” where pressure is greatest is one potential M&A driver, Ms. Lewandowski said.

“The Lloyd’s sector is particularly attractive in this instance with exposure to, and innovation in, smaller, niche lines of business,” she said. Lloyd’s players often have expertise in specialty lines such as kidnap and ransom, fine art, equestrian and cyber coverage.

Beazley’s and Hiscox’s specialized exposures, for example, “produce attractive returns on equity, which should be attractive to potential acquirers,” she said.

“Given the attractions of the Lloyd’s sector, continued pressure in reinsurance pricing and the diversification that the specialist underwriting segments bring, we believe no company can be ruled out as a potential target,” Ms. Lewandowski said.

REFUGEES

Continued from page 1

nies seeking to transport goods, sources say.

The legal and moral imperative to save lives in the Mediterranean means shipowners must have procedures to help their crews deal with emergencies, experts say.

Groupe Eurotunnel S.E., which operates the rail and vehicle shuttle tunnel between France and the United Kingdom, said it has spent an extra €13 million (\$14.5 million) on security measures in the first half of the year to deal with the refugees.

More than 37,000 attempts reportedly have been made by refugees to breach the tunnel to the United Kingdom.

According to the U.K. Freight Transport Association, Operation Stack — a joint initiative between Kent police and the Port of Dover where trucks are parked or “stacked” on a freeway in southern England to ease congestion at the Port of Dover — cost U.K. freight operators more than £21 million (\$31.9 million) following its implementation in July after refugees stormed the channel tunnel entrance in Calais.

As well as the sometimes tragic humanitarian issues, there are very real risks for freight operators, said Peregrine Storrs-Fox, risk management director at London-based freight transport insurer TT Club.

Besides a potential loss of earn-

AVOIDING STOWAWAY COMPLICATIONS

Under the U.K. Immigration and Asylum Act 1999, anyone responsible for transporting a clandestine entrant to the United Kingdom can be fined. Shipping firms can avoid a fine if they can show that they were not aware that an entrant was concealed in their vehicle and that an effective system to prevent the carriage of clandestine entrants was in place, among other things. Among actions transporters can take to protect themselves, the U.K. Border Force advises that they watch their vehicle being loaded, padlock all doors and make certain there has been no tampering with security devices.

By Sarah Veysey



ings because of congestion and delays at ports, there is a risk of damage to goods and fines for illegal transportation of immigrants if refugees board trucks without drivers' knowledge, he said.

Driver safety also is at risk, he said.

One way to avoid some risks is for truckers to park facing south rather than north to lessen the likelihood that refugees will try to get inside the trailer, Mr. Storrs-Fox said.

Freight transporters should have procedures to help drivers check for unwanted passengers and what to do if they do find them, including contacting authorities, he said.

Forensic firms can assess any

damage to goods, particularly perishables, he said, but the ultimate receiver of the goods may reject the cargo, which could spark significant costs and prompt insurance claims, he said.

If a truck inadvertently transports an illegal immigrant, the freight operator could be fined. Such fines are insurable and can be appealed, Mr. Storrs-Fox said, adding that freight carriers should demonstrate that the appropriate steps were taken.

The crisis highlights the need for companies to have sound risk strategies, said Nick Miller, head of fast moving consumer goods at London-based supply chain consultant Crimson & Co.

He said U.K. importers and

exporters should look to their U.S. counterparts' example during recent strike-related disruptions along on the West Coast and use several ports. While this might increase costs, it reduces the risk of disruption and helps customer loyalty.

Under the International Convention for the Safety of Life at Sea, ships' masters are obliged to help ships in distress.

Many craft that have been used to transport refugees across the Mediterranean during the crisis typically have been small, overloaded and unsuitable for such passage, protection and indemnity club Skuld said in an advisory to members.

Shipowners operating in the area should be prepared to assist in sea rescues, Skuld said.

“It would be prudent for crews to be briefed on the situation in advance of entering the Mediterranean and for procedures to be discussed and implemented for the eventuality that this type of situation will be encountered,” the marine insurer said.

One step could be to have bottled water, blankets and medical supplies on board, it said. While this may entail extra costs, it also likely would reduce the risks of a rescue operation.

One source, who asked not to be named, said the extra pressure of coast guards in the current refugee crisis has resulted in commercial ships having to take refugees aboard, resulting in cargo damage and delays in delivering the cargo.

MILLENNIALS

Continued from page 6

industry by 2020. Millennials already comprise 30% of the national workforce, the same percentage as the baby boomers and a greater percentage than Generation X, which is sandwiched between the two larger cohorts.

“Providing an internship is extremely important” in attracting millennials to the insurance industry, he said. But any internship must involve meaningful work opportunities to attract the best and brightest, he said.

Millennials also want mentors, he said. They want to work for companies with strong values and work/life balance. If millennials don't get what they want from their jobs, they find other jobs, he said.

Office culture is “very important.” Millennials don't want to feel like an “8-to-5 prisoner.”

Courtney Kerr, MarketScout

“The companies that win the battle for talent will win the battle,” he said.

A panel of millennial insurance industry employees followed Mr. England's address and discussed some questions that have arisen about their generation's work habits. For example, when asked if earbuds should be worn at work, Allison Warmuth, a health care team leader with American International Group Inc. in Boston, replied, “I go for both earbuds.”

She said she thinks there is a perception that millennials wear earbuds at work for entertainment, but in reality it's a way to keep focus and get things done, she said.

When asked about how to recruit millennials to the insurance industry, MarketScout account executive and production underwriter Courtney Kerr, said that office culture is “very important.” Millennials don't want to feel like an “8-to-5 prisoner,” she said.

Insurers face a marketing challenge in recruiting millennials, said Ms. Warmuth. Insurance is viewed as a “stodgy industry,” she said.

Retention is also an issue. “We want to be part of the organization actually driving the business,” said Brian Tucker, an assistant vice president in broker Roach Howard Smith & Barton's Fort Worth, Texas, office.

Elizabeth White, president of Atlanta-based Peachtree Special Risk Brokers L.L.C., moderated the panel discussion.

SAFETY

Continued from page 6

individual, said Elizabeth Bille, vice president and associate general counsel at the Alexandria, Virginia-based Society for Human Resource Management.

Mr. McDonald said in ADA cases the courts “are generally indulgent toward employees with disabilities, but most courts draw the line where an employee becomes violent, whether the violence is an outgrowth of a disability, or not, and so I think employers should not be as afraid of a lawsuit as they should be concerned about the safety of their employees and their clients and their customers.”

Employers should establish conduct standards for everyone “regardless of whether that person has a mental health issue or the person is just having a bad day,” said James S. Urban, a partner with Jones Day in Pittsburgh. “The EEOC would be fine with that as long as it's a uniformly enforced policy.”

Actions employers could take include requiring an employee to take a medical leave of absence until he's cleared to return by a mental health professional, said Robin E. Shea, a partner at law firm Constangy, Brooks, Smith &

EMPLOYERS OFTEN SHY AWAY FROM GIVING NEGATIVE REFERENCES

Many employers' problems with troubled workers can stem from the hiring process, because former employers are reluctant to provide more than basic information — dates of employment, position and possibly salary — fearing a defamation lawsuit.

Experts say 39 states grant immunity from liability for good-faith references about a former employee, but that provides only a defense to litigation and does not avoid it.

The Virginia TV station whose former employee killed a reporter and cameraman before taking his own life was reportedly unaware of difficulties previous employers reportedly had with him. The station said in a statement, “As part of WDBJ's standard protocol his background check resulted in positive references.” However, Mr. Flanagan's former news director at a Florida station has reported he was terminated there after he became “pretty confrontational.”

“We have a system that's effectively broken” in the current legal environment, said Gregg M. Lemley, a shareholder at law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in St. Louis.

Prophete L.L.P. in Winston-Salem, North Carolina. Employers also can refer the worker to the firm's employee assistance plan, if available, experts say.

But that still does not address situations that lack concrete evidence, just an uneasy feeling about

an employee. “Once the employee crosses the line into misconduct, the employer is free to act on that,” said Richard D. Tuschman, a partner with Goodz & Tuschman p.l.l.c. in Plantation, Florida.

“The difficulty lies where an employee is suspected of having a

“It's a question of weighing the risk of getting sued for defamation against what one might believe is a moral responsibility to advise the prospective employer that an employee might be dangerous,” said Richard D. Tuschman, a partner at Goodz & Tuschman P.L.L.C. in Plantation, Florida.

One way to deal with this is to call a job applicant's former supervisor, said James J. McDonald Jr., regional managing partner with law firm Fisher & Phillips L.L.P. in Irvine, California.

“Many supervisors, if they have a great employee they were sorry to hear have leave, will give a good reference,” he said. But if the employee was a problem, they more likely will provide dates of employment.

Former employers can also convey information in subtle ways, such as “just a pause in a conversation, a deep breath or a question like, ‘Who else are you considering for the position?’” Mr. Tuschman said. “It sends a clear message to the prospective employer that this perhaps it not the employee they want to hire.”

By Judy Greenwald

mental disability and the employer's concerned that the employee may strike out and engage in violence, but the employee hasn't done anything yet, hasn't made any direct threats,” Mr. Tuschman said. “I don't know if there's an easy answer.”



Fraud was so nice, she tried it twice

Despite being on probation for insurance fraud, a former Los Angeles County probation officer has been arrested for trying to defraud another insurer.

In the original case, Robyn Palmer, 30, was convicted in May 2014 of insurance fraud, forgery and grand theft for illegally collecting disability payments from Allstate Insurance Co., the Los Angeles Times reports citing the California Department of Insurance. Ms. Palmer received five years' probation and was ordered to pay about \$31,000.

Despite the ongoing Allstate charges and subsequent probation, Ms. Palmer reportedly managed to collect another \$24,000 from American Family Life Assurance Co. AFLAC eventually called in state authorities, who launched a second investigation that led to Ms. Palmer's arrest, the Times reported.

"Palmer's nerve in allegedly collecting disability benefits fraudulently while serving probation for doing the same thing to another insurer is egregious," California Insurance Commissioner Dave Jones said, according to media reports.

Funeral home accused of faking deaths

Nothing, they say, is certain except death and taxes. But a funeral home that allegedly falsely reported the deaths of more than 100 people is now facing a court battle with an insurer that accuses it of fraud.

West Des Moines, Iowa-based Homesteaders Life Co. last month filed a complaint against Gatens-Harding Funeral Home Inc. and its owners, Chad R. Harding and Billie J. Harding, according to the West Virginia Record.

In the suit, filed in the U.S. District Court Southern District of West Virginia, Homesteaders alleges that the Poca, West Virginia-based funeral home falsely reported the deaths of 111 people who had signed up for pre-need funeral contracts and collected almost \$1 million from the insurer.

Under the alleged scheme, Homesteaders paid commission to Chad Harding for customers with the contracts.

Then, on the "death" of a customer, Homesteaders would release funds to the funeral home.

According to the complaint, however, some 111 of those customers had not died, and no funeral service had been performed.

GOLF TOURNAMENT'S CASH GIVEAWAY IN THE WEEDS WITH INSURERS



A golf tournament's generous promotional giveaway has landed it in the rough with its insurer. Billionaire resort owner Jim Justice had offered cash prizes to spectators at the 18th hole if any golfer got a hole-in-one there during the PGA's July Greenbrier Classic at the Greenbrier Resort in Sulphur Springs, West Virginia.

According to media reports, two golfers — George McNeill and Justin Thomas — sank holes-in-one on the 18th at the Old White TPC course.

Mr. Justice paid out \$18,900 in crisp, fresh bills (at \$100 per person) to fans for the first shot and \$173,500 (at \$500 per fan) for the second, plus the tournament paid an additional \$75,000 to charities of the golfers' choice.

The tournament's charity arm, Old White Charities, had purchased insurance that covered such payouts, but underwriters were quick to grab the rule book and look for penalty strokes.

According to media reports, the insurers have filed suit in U.S. District Court in Beckley, West Virginia, claiming the charity didn't pay its latest premium of \$106,470, which was due a day before the tournament began. If that fails, the policy purportedly requires a bankable hole-in-one be a minimum of 170 yards, while the underwriters argue the aces on the par-3 18th hole were hit from only 137 yards.

As the dispute spills over to the 19th hole, both sides can express relief there wasn't a third hole-in-one: The payout would have been \$1,000 per fan.

Business Insurance isn't all business all the time, and we know you're not either. So visit www.businessinsurance.com for more Off Beat stories and monthly photo galleries featuring the best of the weirdest news about insurance, fraud, liability issues and related topics that make people and companies do funny, silly and strange things.

Disability payout for Wi-Fi allergy

A former French radio producer has been awarded a disability grant from a court in Toulouse, France, for her allergy to electromagnetic radiation from common household items including TV and radio transmitters, microwave ovens and mobile phones.

Marine Richard is allowed to claim £580 (\$893) per month for three years, news reports said.

Ms. Richard believes she suffers from electromagnetic hypersensitivity. Those who



are sensitive to electromagnetic fields experience headaches, sleeplessness, ear pain when using a mobile phone, skin tingling and problems with concentration and memory, which forces them to avoid objects that emit radiation in the home, according to scientists who have studied people who believe they have the condition.

French courts have refused until last month to pay disability allowances to individuals suffering from the peculiar condition.

EHS sufferers in France have reportedly established "radiation-free" colonies in the countryside because people who are sensitive to electromagnetic fields allegedly benefit from living in remote areas. The 39-year-old Ms. Richards now lives in a barn without electricity in a remote area in the mountains of southwest France, according to reports.

Her lawyer, Alice Terrasse, said the ruling set a legal precedent for "thousands of people," news reports said.

Cyber fridge loses its cool

Consumers who like their refrigerators to keep food cold and display their Gmail calendars should beware.

Samsung's newest smart fridge lets users link their Gmail calendars to a screen in the door.

However, Pen Test Partners L.L.P., a U.K.-based firm that detects flaws in computer



systems, says hackers can steal a fridge owner's Gmail login by joining that person's Wi-Fi network, The Register reports.

The fridge says it provides Secure Sockets Layer, or SSL, encryption, but it doesn't check to make sure the other server has the right certificate to obtain

encrypted data, according to media reports.

Samsung told media outlets that, "at Samsung, we understand that our success depends on consumers' trust in us and the products and services that we provide. We are investigating this matter as quickly as possible. Protecting our consumers' privacy is our top priority, and we work hard every day to safeguard our valued Samsung users."



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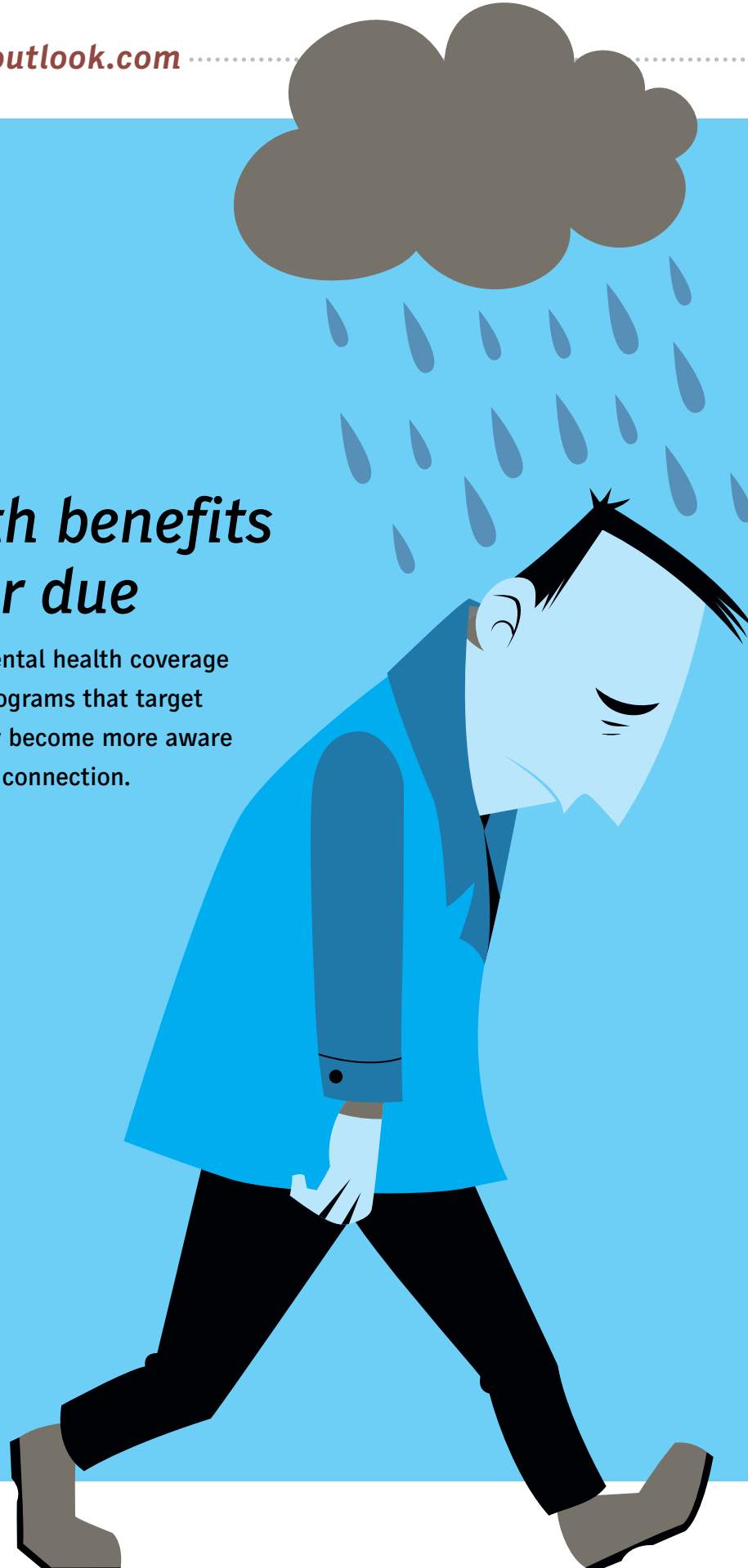
Facts and figures from the latest research on U.S. employee mental health benefits, including sources of stress, strategies employers use to deal with work-related stress and employers' motivation for dealing with workplace stress

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..... www.crainsbenefitsoutlook.com

Mental health benefits get their due

Employers are weaving mental health coverage into existing benefits programs that target physical well-being as they become more aware of the mind-body connection.



**Helping employees
is your passion.
Helping you is ours.**



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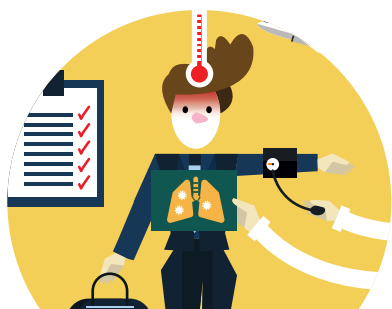
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Companies target hearts and minds

Realizing that the mind and body go hand-in-hand, many employers are weaving mental health coverage into existing benefits programs that target physical well-being.

Page 4



Health Care

Though few companies have incorporated medical tourism into their benefits strategy, domestic medical centers of excellence are poised to change that. **Page 8**



Retirement & Investment

Federal law mandates employers run nondiscrimination tests on their 401(k) plans, but firms can avoid the hassle by instituting a safe harbor program. **Page 12**



Voluntary Benefits

As more employers adapt exchange platform software, they are also using these tools to help employees make better benefits choices. **Page 17**

Questions & Answers

Annette Guarisco Fildes, president and CEO of the ERISA Industry Committee, discusses many of the issues and effects of the health care reform law as they relate to employers. **Page 20**



International Benefits

U.S. companies are adding wellness incentives to their offerings for workers on assignment in foreign countries. **Page 21**

Research & Data

Mental health coverage on the rise; employer motivation to relieve work-related stress; top four sources of employee stress **Page 22**

Holistic focus improves health, profit

Employers are continuing on their journey to offer benefits packages with a holistic focus to better meet employee needs as well as the corporate bottom line.

The effort, long associated with chronic disease such as diabetes, has turned to stigma-steeped mental health. The reason is simple: Cost- and productivity-conscious employers recognize that “you can’t really separate the mind from the body,” said Clare Miller, director of the Partnership for Workplace Mental Health, a program of the American Psychiatric Foundation, in Arlington, Virginia.

Caterpillar Inc., for one, understands this well. “We don’t present ‘health’ or ‘wellness’ information where (mental health/substance abuse) topics aren’t included,” said John Pompe, manager of integrated health programs at the Peoria, Illinois-based construction equipment maker.

Programs to address workers’ psyches include wellness rooms and yoga, along with access to walking trails and employee assistance programs.

Such ease of access is taking the forefront with growing interactive options.

Growing benefits options are spawning increasingly sophisticated decision-making support tools, a crucial guide to help employees navigate the open-enrollment maze.

Based on demographics and other data, the tools recommend benefits that best suit employees’ needs and pocketbooks.

Going so far as to break out costs into monthly premiums and out-of-pocket expenses, they address need to make benefit-shopping a “consumer-type experience, just like you’d go to Amazon and buy a book,” said Scot Marcotte, Chicago-based director of talent and human resource solutions with Buck Consultants at Xerox.

Eleven percent of employers use interactive benefit options now, a number expected to hit 34% in the next three to five years.

Retiree planning is not left out of this sea change in development and delivery. Take the safe-harbor 401(k). Authorized by Congress in 1996, the investment vehicle levels the playing field between high earners, those making \$120,000 or more annually, and everyone else. In exchange, employers forgo annual means testing of their retirement plans. Some 30% of employers have switched to such plans, including Lockton Cos. L.L.C.

“We wanted to be leading-edge, while we also wanted to be sure that associates had adequate savings in a retirement plan, as well as easing plan administration,” Theresa Schnelle, vice president of human resources operations, said in explaining why the Kansas City, Missouri-based insurance broker and consultant switched from a traditional 401(k) setup.

This issue explores in depth these trends and their ramifications, along with new directions in medical tourism and expatriate wellness.

Cover Story



Realizing that the mind and body go hand-in-hand, many employers are weaving mental health coverage into existing benefits programs that target physical well-being.

Benefits winning war over stigma in mental health

BY KAREN PALLARITO

Employers are stepping up efforts to connect employees and their families to mental health benefits/programs because they recognize that poor mental health raises costs and impedes productivity and safety in the workplace.

Cost- and productivity-conscious employers recognize that “you can’t really separate the mind from the body,” said Clare Miller, director of the Partnership for Workplace Mental Health, a program of the American Psychiatric Foundation, in Arlington, Virginia.

Employers also are realizing that mental health can affect physical well-being and vice versa, so many are weaving mental health into existing programs, said Ms. Miller, whose organization collaborates with employers to promote effective mental health care.

This is increasingly important with the shift to a service- and knowledge-based economy. As reported in *Business Insurance* from the Disability Management Employer Coalition’s 2015 conference, a presentation outlined the threat of common mental health issues — depression, anxiety and adjustment disorders — to knowledge-based workers.

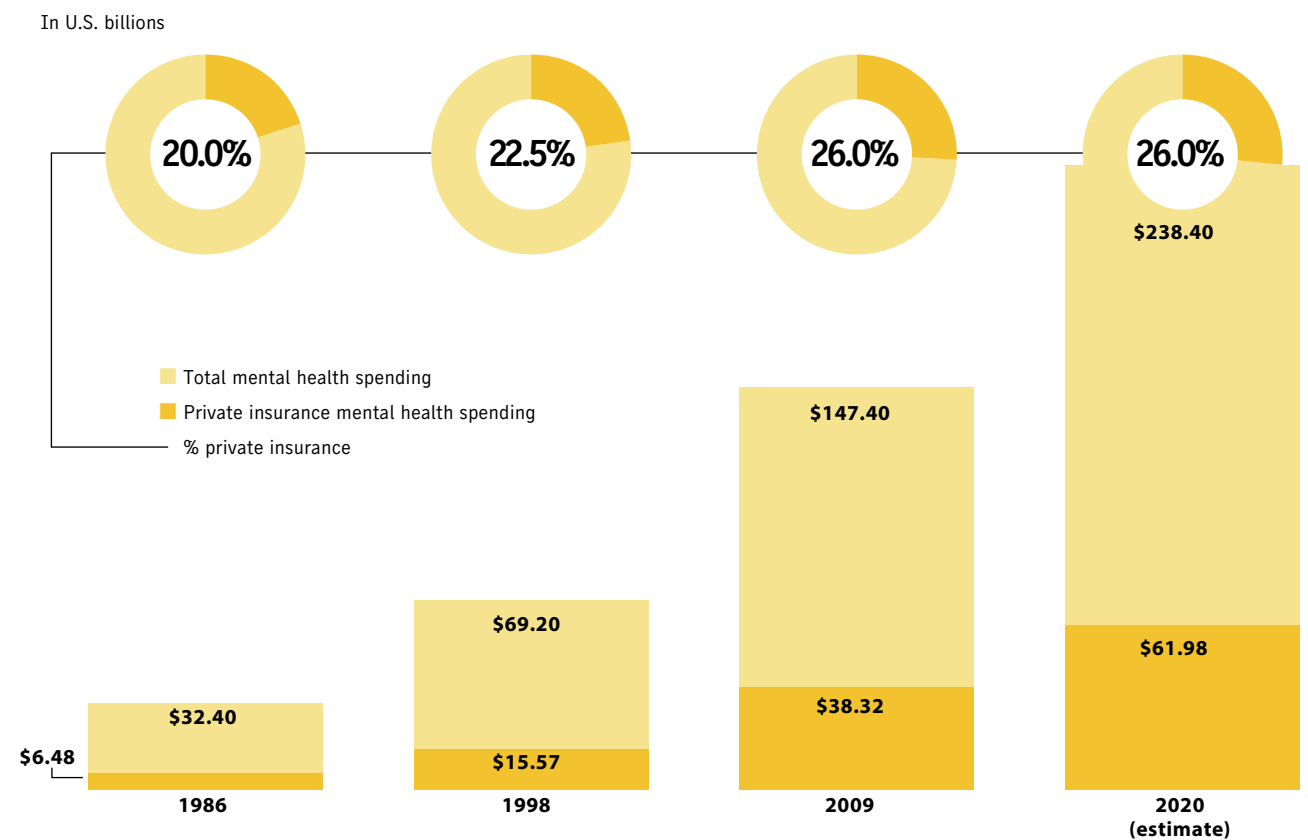
Citing a 2012 study in the *Journal of the American Medical Association*, conference speakers noted that depression will rank first in total economic burden among all high-income countries by 2030.

Employers are responding, stepping up efforts to connect workers and their families with mental and behavioral health benefits and services.

Caterpillar Inc., for one, is creating a “total employee well-being” strategy. John Pompe, manager of integrated health programs at the Peoria, Illinois-based construction equipment maker, said it is working to ensure that mental health and substance abuse “get sufficient bandwidth” among other health topics.

For instance, generic psychotropic medi-

U.S. spending on mental health



cations, those used to treat depression, anxiety and stress, are in the zero-copay tier of the company’s pharmacy benefits plan. And at large facilities, the company maintains “wellness rooms” or “wellness walls” where employees can grab a map of local walking paths and a brochure on the employee assistance program.

In 2016, six of the company’s 12 annual wellness campaigns will be dedicated to mental health, substance abuse or social issues, and even physical health topics such as managing diabetes will highlight mental and behavioral aspects, Mr. Pompe said.

“We don’t present ‘health’ or ‘wellness’ information where (mental health/substance abuse) topics aren’t included,” Mr.

Pompe noted.

Health risk appraisals, for example, often include questions about a person’s mental status. Of 32 large employers responding to a 2008 survey question about HRAs, all said they routinely ask about mental health and 78% ask about mental status and substance abuse, according to the National Business Group on Health.

Aggregated, deidentified data help businesses and health plans deploy programs targeting risks, such as stress and depression.

In disability and absence management, mental health screening and referrals to employee assistance programs are becoming more prevalent. DMEC’s 2014 employer

survey, for example, shows 32.9% screen for psychological or psychosocial issues, up 3 points from 2012. Even if a worker is out on a chronic back injury, addressing co-morbid depression, for instance, may reduce costs and speed an employee's return to work, studies suggest. That is because people who suffer from chronic disease are more likely to have depression, which can contribute to work absences and presenteeism, says the U.S. Centers for Disease Control and Prevention.

More employers are looking to promote strong mental health in the workplace and prevent situations that trigger the need for services, said Kathleen Mahieu, leader of Aon Hewitt's Behavioral Health Solutions practice in Norwalk, Connecticut. They offer the more traditional employee assistance programs, but also meditation and yoga, to help workers cope with daily life, she said.

One in four U.S. employees experiences a mental or substance abuse disorder, according to the CDC. Alcohol abuse, depression and anxiety are the most common such diagnoses in the workforce, the CDC says.

Most large and midmarket employers cover mental health and substance abuse services through their health benefit plans. Under federal parity legislation, those benefits must be on par with employers' medical coverage (see related story, page 7).

Many employers, especially those with more than 1,000 workers, also offer employee assistance programs as a core benefit. EAPs traditionally provide mental health and substance abuse-related services and referrals, and many have expanded their repertoire to include preventive services, such as smoking cessation, relaxation techniques and mindfulness meditation.

Yet too few employees seek help for mental disorders, substance abuse and other behavioral health conditions.

Based on interactions with employer clients, Ms. Mahieu observes that 5% to 6% of employees use mental health services under their health benefits plans. By contrast, slightly more than 13% of adults in the U.S. receive treatment for a mental health problem, according to the Substance Abuse and Mental Health Services Administration.

Paul Fronstin, director of the Employee Benefit Research Institute's Health Research and Education Program, in Washington, said he would expect the percentage of workers accessing those benefits to be lower than for the general adult population because employees tend to be healthier and may be concerned about privacy or discrimination.

Likewise, behavioral health experts say users of EAP services as a percentage of all employees often fails to exceed the single digits — typically 3-4%, experts say. The Employee Assistance Professional Association does not calculate a national EAP utilization rate due to large variations in programs based on employee populations and other factors.

"You're almost always comparing apples to oranges," said Marina London, a licensed clinical social worker and EAPA's manager of Web services in Arlington, Virginia. It makes more sense for companies to track their own utilization over time, she said. At Caterpillar, which combines onsite and offsite EAP services, U.S. employee utilization was 7.6% in 2014.

Mental illness and substance abuse costs U.S. employers an estimated \$80 billion to \$100 billion annually, including in productivity and employee absences, according to the NGBH in 2005 data, the most recent available.

The International Risk Management Institute Inc. in Dallas says the concept of "behavioral risk management" — identifying and addressing mental and behavioral

health problems that affect workplace costs and productivity — has been around since the mid-1990s. Author Rudy Yandrick's 1996 book, "Behavioral Risk Management: How to Avoid Preventable Losses from Mental Health Problems in the Workplace," was among the first to advance the concept.

In 2006, DMEC began surveying members on their use of behavioral risk management. The number of employers including a behavioral health component in their coordinated disability/absence management program has swelled to 60% in 2014 from 31% in 2006.

"We've come a long way in 10 years, but we're still not where we need to be," said Terri Rhodes, DMEC's CEO, in San Francisco. Employers recognize the toll of behavioral health conditions in the workplace, "but not many employers, I think, feel they can impact it," she said.

Employee suicides and events such as the Germanwings crash in the French Alps in March in which the co-pilot since was found to suffer severe depression and downed the plane, killing 150, also highlight safety concerns stemming from untreated mental illness.

To boost participation in behavioral health offerings, employers must overcome the social stigma associated with having a mental disorder and seeking treatment for it. The percentage of employers who say the perception of stigma by several measures rose considerably in DMEC's 2014 survey from 2012. More than 24% of employers in 2014 say the stigma associated with having a psychological or psychiatric problem has increased, up from 7.6% in 2012. More than 25% agree that the stigma of using EAP services has increased, up from 3% in 2012.

Another potential barrier is the lack of coordination of mental health services among vendors and between an employer's medical plan and its vendors. Fragmentation can frustrate efforts to ensure that employees get timely case management services and that employers receive data on the number of cases being managed, as an example.

Ms. Rhodes advises employers to dig deeper into the integration question: "Tell me how you connect the dots when someone has (a Family and Medical Leave Act) event? How are you connecting the dots if it's a mental health issue?"

Engaging employees in mental health and substance abuse services also remains a huge challenge. That's where technology may come into play.

Minneapolis-based Ceridian HCM Inc., through its LifeWorks EAP, introduced a video counseling program in July 2014. So far, about 2% of the population needing clinical counseling for issues such as stress, depression and family relationship troubles, has used the service.

Worker age is also a consideration for employers. Video, texting and other technologies are considered crucial for connecting with millennials. "That's where we should be heading," Ms. London said.

"Tell me how you connect the dots when someone has (a Family and Medical Leave Act) event? How are you connecting the dots if it's a mental health issue?"

Terri Rhodes,
Disability Management
Employer Coalition



Mental health coverage struggles for parity

Federal parity legislation has altered the benefits landscape, putting mental and behavioral health coverage on par with medical/surgical benefits — at least in theory.

It's up to employers to ensure that their health plans are in compliance, but examples of unequal benefits suggest that gaps remain.

"Plans and employers are still responding to the law," said Clare Miller, director of the Partnership for Workplace Mental Health, a program of the American Psychiatric Foundation, in Arlington, Virginia.

Long-awaited final rules implementing the Mental Health Parity and Addiction Equity Act of 2008 were published in November 2013. The rules took effect for plan years beginning on or after July 1, 2014, affecting most employer-sponsored benefits.

The latest parity law shored up and expanded protections under a previous law, the Mental Health Parity Act of 1996.

Gone are financial and treatment limits affecting out-of-pocket costs and the number of mental health days or visits allowed under a plan. But many of the law's parity provisions aren't as cut and dried.

So-called "nonquantitative" treatment

limits affect everything from managed care protocols, such as step therapy and prior authorization, to restrictions due to geography, facility and provider specialty.

For example, under federal rules, an employer health plan that precertifies all inpatient admissions to a psychiatric facility must also precertify all inpatient admissions for medical/surgical conditions.

The American Psychiatric Association has been fielding complaints from psychiatrists who say they sit on the phone for hours to obtain prior authorization for generic medications.

"It's hard to imagine a scenario where that would not be a violation of the parity law," Ms. Miller said.

While employers don't need to be experts on the law, they should familiarize themselves with its requirements. Employers should also consult their third-party administrators or insurers about how their health plans fulfill regulatory tests under the law.

Milliman Inc. and the Partnership for Workplace Mental Health have developed a free guide to help employers navigate the law's intricacies.

Employers may download the guide at www.workplacementalhealth.org.

By Karen Pallarito

MENTAL HEALTH PARITY FINAL REGULATIONS

Requirement

Health plans must ensure that the financial requirements and treatment limitations applied to mental health and substance use disorders are not more restrictive than those applied to medical surgical benefits.

Plans required to comply

Self-funded and fully insured plans, with special opt out rules for self-funded state and local government plans and specific exemptions for retiree-only plans and plans facing increased costs.

The applicability of mental health parity requirements has been significantly expanded as a result of the Affordable Care Act rules concerning essential health benefits, as well as November 2013's final rules.

Mental health coverage required

No, but if offered, mental health coverage should follow the same rules as those applied to medical coverage; they should not be more restrictive.

Federal vs. state regulation

The federal mental health parity regulation does not supercede any state mental health mandates. It allows states to continue to enforce any parity requirement deemed stronger than federal law.

Source: U.S. Department of Labor

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Rethinking medical tourism

BY MATT DUNNING

Employers' interest in offering medical tourism coverage to their employees has remained steady in the past few years, but relatively few companies have incorporated it into health benefits strategy.

Once the subject of considerable buzz in the health benefits industry, global medical tourism has largely failed to catch on with the vast majority of employers, experts say.

Only 2% of employers polled in Chicago-based benefits broker Aon Hewitt's 2015 Health Care Survey reported that their health benefit plans include coverage for high-cost medical procedures performed in foreign countries, down from 4% in 2012.

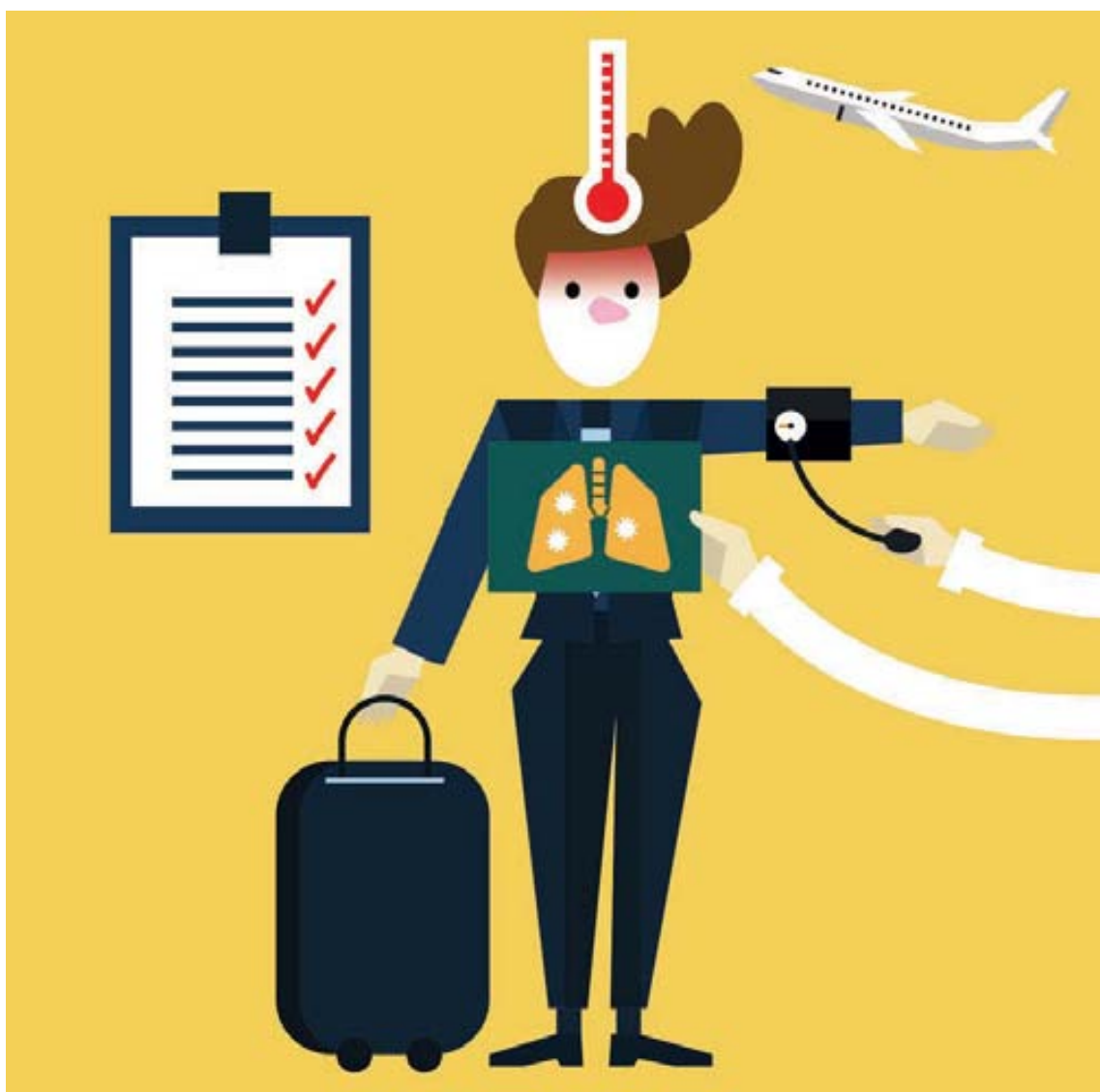
"Most employers have steered clear of global tourism programs for a few reasons, not the least of which being employees' unwillingness to travel internationally," said Dr. Bruce Sherman, medical director of population health management at Buck Consultants at Xerox in Cleveland. "There's also the cost of administering the programs, which might not be appreciably different from the cost of domestic programs but are comparatively higher given the low utilization, as well as the liability issues tied to patient complications following procedures done outside of the U.S."

Instead, experts said employers' interests are shifting toward domestic medical tourism as a means of improving the quality and cost-efficiency of their employees' health care, particularly as access to specialized medical centers of excellence becomes more widely available.

Twenty-two percent of employers polled in January by New York-based benefits consultant Towers Watson & Co. offer coverage for certain medical procedures performed in national or regional centers of excellence, and 16% plan to do so in 2016. Additionally, 37% of employers polled said they are considering adding the coverage by 2018.

"What's happening is that health insurers are broadening their use of centers of excellence," said Shari Davidson, vice president of the National Business Group on Health. "Each one of the health insurers has their own set of criteria, process for review and tracking methods for patient results. We're also seeing a small but not insignificant number of large employers contracting directly with centers of excellence."

The specific treatments and procedures covered under most employer-sponsored domestic medical tourism programs — as well as the number of centers of excellence



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TOP INTERNATIONAL DESTINATIONS FOR MEDICAL TOURISM

Country	Treatment	Estimated savings*	Cities	Online
Antigua	Addiction and Recovery	40%	St. John's	crossroadsantigua.org
Barbados	Fertility/in-vitro fertilization	40-50% (IVF)	Bridgetown	www.barbadosivf.com
Brazil	Cosmetic surgery	20-30%	Sao Paulo, Rio de Janeiro	www.pitanguy.com.br
Costa Rica	Dentistry	30-70%	San Jose	www.mezadentalcare.com
Hungary	Dentistry	40-75% (for restorative and cosmetic procedures)	Gyor, Budapest	www.villanyident.hu
India	Orthopedics, cardiology	50-85% (for restorative and cosmetic procedures)	New Delhi, Mumbai, Bangalore	www.wockhardthospitals.com
Israel	Fertility/IVF	30-50% (IVF)	Jerusalem, Tel Aviv	eng.sheba.co.il/Sheba_Hospitals
Malaysia	Health screenings	70% (full health screening)	Kuala Lumpur, Penang	www.princecourt.com
Mexico	Dentistry, Bariatrics	30-60% (dentistry) 40-70% (bariatrics)	Monterrey, Tijuana, Juarez, Puerto Vallarta	www.monterreyhealthcarecity.com
Singapore	Cancer	30-40%	Singapore	www.hopkinsmedicine.org/singapore
South Africa	Cosmetic surgery, cardiology	40%	Cape Town, Johannesburg	www.surgeon-and-safari.co.za
Thailand	Medical, sex reassignment	40-75%	Bangkok, Phuket	www.bumrungrad.com/pai.co.th
Turkey	Vision	40-50% (Lasik)	Istanbul	worldyelasik.com

* When compared to similar treatment in the United States
Source: Patients Beyond Borders

in a given network — vary to some extent depending on an employer's insurer or network provider, as do the types of health plans they offer employees and their historical medical claims experience.

The most common procedures for which employees can be directed to a medical center of excellence include organ and tissue transplants, joint replacement surgery, cancer treatment and major cardiovascular procedures — the average cost of which can vary by as much as \$100,000 from one state to another.

To date, experts said adoption of domestic medical tourism has been limited mainly to larger employers, mainly due to the volume of patients needed to satisfy the hospital systems, specialty clinics and other health care providers designated as centers of excellence by insurers and third-party network vendors.

Olivia Ross, associate director of the San Francisco-based Pacific Business Group on Health, said the group's Employers Centers of Excellence Network is open to employers of all sizes, "but with the caveat that we would do

an ROI assessment with the employer ahead of time."

"A lot of it depends on how strong their benefits steerage is going to be," Ms. Ross said. "Right now, you still have to have right around 5,000 covered lives in order for the value proposition to be there. That's coming down, but it's the reason we don't have smaller employers using the ECEN program."

Aside from the prospective increase in patient volume and the general prestige that comes with the designation, most medical providers that contract with insurers or intermediaries as centers of

Centers of Excellence in 2016

Many large employers will include medical centers of excellence for certain high-cost procedures in their health care provider networks in 2016, but only some will use incentives to drive utilization.

Transplants

Will offer with incentives	16%
Will offer without incentives	50%
Will not offer, but considering	15%
Will not offer	29%

Bariatric surgery

Will offer with incentives	12%
Will offer without incentives	39%
Will not offer, but considering	19%
Will not offer	30%

Knee, hip or spine surgery

Will offer with incentives	18%
Will offer without incentives	19%
Will not offer, but considering	31%
Will not offer	32%

Cardiac/cardiovascular procedures

Will offer with incentives	9%
Will offer without incentives	22%
Will not offer, but considering	30%
Will not offer	39%

Cancer treatment

Will offer with incentives	3%
Will offer without incentives	26%
Will not offer, but considering	31%
Will not offer	40%

Fertility treatment

Will offer with incentives	6%
Will offer without incentives	11%
Will not offer, but considering	22%
Will not offer	61%

Other procedures

Will offer with incentives	2%
Will offer without incentives	1%
Will not offer, but considering	11%
Will not offer	84%

Source: National Business Group on Health

Health care

MEDICAL PROCEDURES COMPARATIVE COSTS

As of April 2014

Procedure	U.S. cost*	Costa Rica	India	Malaysia	Mexico	Singapore	South Korea	Taiwan	Thailand
Average savings when compared with U.S.		45 to 65%	65 to 90%	60 to 80%	40 to 60%	25 to 40%	30 to 45%	40 to 65%	50 to 75%
Coronary artery bypass graft	\$88,000	\$31,500	\$14,400	\$20,800	\$37,800	\$54,500	\$29,000	\$21,000	\$23,000
Heart valve replacement, bypass	\$85,000	\$29,000	\$11,900	\$18,500	\$34,000	\$49,000	\$33,000	\$18,000	\$22,000
Hip replacement	\$33,000	\$14,500	\$8,000	\$12,500	\$11,500	\$21,400	\$15,500	\$10,500	\$16,500
Knee replacement	\$34,000	\$9,500	\$7,500	\$12,500	\$12,800	\$19,200	\$15,000	\$12,000	\$11,500
Spinal fusion	\$41,000	\$17,000	\$9,500	\$17,900	\$22,500	\$27,800	\$18,000	\$18,000	\$16,000
In-vitro fertilization cycle, no medication	\$15,000	NA	\$3,300	\$7,200	\$7,800	\$9,450	\$7,500	\$4,800	\$6,500
Gastric bypass	\$18,000	\$11,200	\$6,800	\$8,200	\$13,800	\$13,500	\$12,500	\$13,000	\$12,000
4-implant porcelain bridge	\$23,000	\$9,500	\$7,200	7,800	\$8,500	\$12,000	\$10,500	\$9,500	\$10,500
Implant-supported dentures (upper and lower)	\$10,500	\$4,400	\$3,500	\$3,800	\$4,200	\$6,400	\$5,800	\$4,600	\$3,900
Full facelift	\$12,500	\$4,500	\$3,500	\$5,500	\$5,250	\$8,750	\$5,900	\$5,600	\$5,300
Rhinoplasty	\$6,200	\$3,400	\$2,800	\$3,600	\$2,800	\$4,750	\$4,700	\$3,500	\$4,300

*U.S. costs vary based on location, materials and equipment used and patient individual requirements/needs. Figures are published averages and reflect more common incidence of cost. All figures are in U.S. dollars.

Non-U.S. estimates include all treatment related costs but exclude travel and accommodation. Figures are averages and reflect more common incidence of cost. All figures are in U.S. dollars.

Source: Patients Beyond Borders

excellence do so for the relative stability and ease with which they're compensated for the care they provide, experts said.

In exchange for lower prices than would be available through traditional provider networks, insurers and third-party network vendors generally agree to pay medical facilities designated as centers of excellence a bundled, upfront sum for procedures performed in a given plan year.

Experts said that though reducing health care costs is often employers' primary motivation for exploring the addition of out-of-state centers of excellence to their benefit plans, their decisions to add them is usually driven by a desire to improve the quality of care available to their employees.

Typically, domestic medical tourism benefits are voluntary, with employees free to decide whether to use a regional or national center of excellence rather than their local in-network health care provider.

However, experts said some employers are beginning to use financial incentives such as cost-sharing exemptions and travel expense coverage to drive higher utilization.

Nearly half of the firms that indicated they're planning to offer coverage for knee, hip and spinal surgeries through centers of excellence said they also plan to attach some type of incentive to it, according to a survey of large employers conducted in May and June by the

National Business Group on Health.

Other employers are even more assertive. According to Aon Hewitt's 2015 Health Care Survey, 12% of employers have narrowed their benefit plan's coverage for certain high-cost procedures to include only centers of excellence, and another 48% are considering doing so within the next 3-5 years.

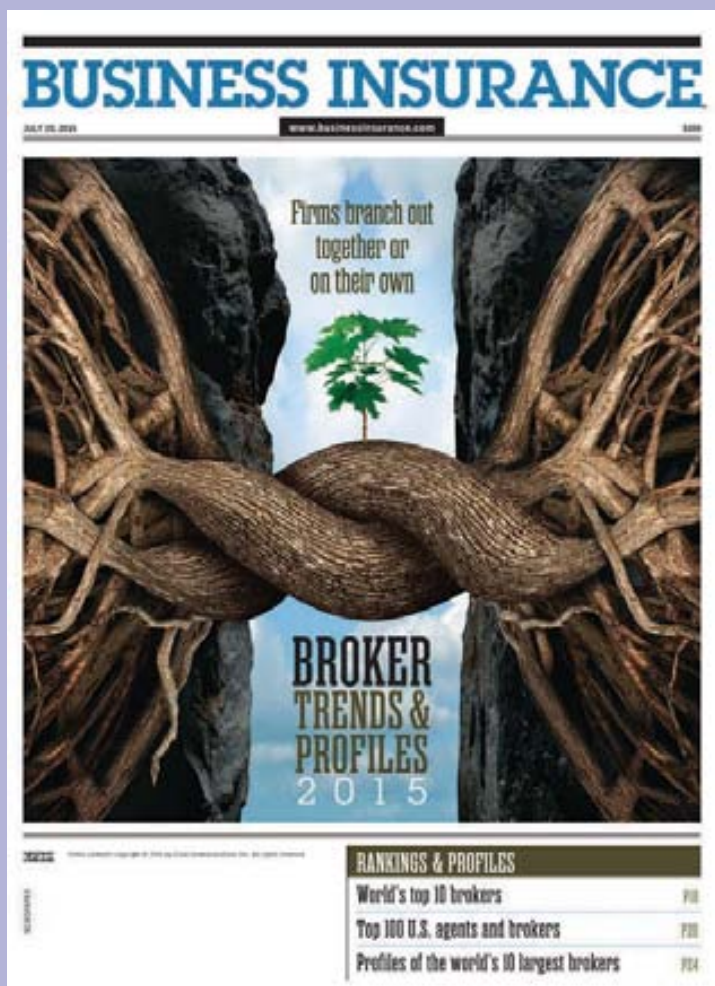
"We believe employers should be requiring the use of centers of excellence for some procedures, such as transplants and bariatric surgery," said Sue Willette, a Minneapolis-based senior vice president and health care strategist at Aon Hewitt. "It's more about the long-term quality of care than it is about reduced pricing."

"We believe employers should be requiring the use of centers of excellence for some procedures, such as transplants and bariatric surgery."

Sue Willette, Aon Hewitt

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Retirement & Investment



Thousands of employers have launched 401(k) plans with a safe harbor design or converted traditional plans into safe harbor plans since Congress authorized them under a 1996 law.

Finding a safe harbor for 401(k)s

BY JERRY GEISEL

For Lockton Cos. L.L.C., the appeal of moving to a 401(k) safe harbor plan design — which exempts employers from running federal tests to prove that their retirement plans don't favor higher-paid employees — was obvious.

"We wanted to be leading edge, while we also wanted to be sure that associates had adequate savings in a retirement plan, as well as easing plan administration," said Theresa Schnelle, vice president of human resources operations at the Kansas City, Missouri-based insurance broker and consultant, which adopted the design about a decade ago for its then-nearly 2,000 employees.

Lockton is not alone. Thousands of employers — from corporate giants to professional firms with just a handful of employees — have launched 401(k) plans with a safe harbor design or converted traditional 401(k) plans into safe harbor plans since Congress authorized them under a 1996 law. The Internal Revenue Service issued implementation rules a few years later.

Though the exact number of 401(k) plans with safe harbor designs isn't known, surveys have found that at least 30% of 401(k) plans use a safe harbor design, which is more expensive than a traditional 401(k) because the employer has to contribute to it even if the employee does not.

If a plan meets the safe harbor criteria set by Congress in 1996 or in a 2006 law covering 401(k) plans with an automatic enrollment feature, it is considered to be nondiscriminatory, eliminating the need for federal tests to make sure the plans

don't favor highly compensated employees — those being paid at least \$120,000 a year.

Under two widely used safe harbor designs, employers contribute to the 401(k) an amount equal to at least 3% of compensation for each eligible non-highly compensated employee; or match 100% of employees' deferrals, up to at least the first 3% of compensation, and 50% of employees' contributions up to the next 2% of compensation.

Those and other safe harbor plans, with or without automatic enrollment, exempt employers from running nondiscrimination tests on their 401(k) plans.

Those tests determine whether contributions of highly paid employees exceed those of lower-paid employees by statutorily set amounts. Flunking the tests means employers have to return so-called excess contributions to highly compensated employees.

Eliminating that prospect is the driving force behind employer adoption of 401(k) safe harbor plan designs, experts say.

"The last thing employers want to do is return retirement money," said Sam Henson, director of legislative and regulatory affairs with Lockton Retirement Services in Kansas City, Missouri.

Doing that "is bad for morale. It means that higher-paid employees are getting less of a benefit than they counted on," added Jack Abraham, a principal with PricewaterhouseCoopers L.L.P. in Chicago, that benefit being less taxable income and more savings for retirement.

"That does not go down well" with them, said Rob Austin, director of retirement research in the Charlotte, North Carolina, office of Aon Hewitt.

It also helps corporate plan administrators avoid such delicate situations as

"We wanted to be leading edge, while we also wanted to be sure that associates had adequate savings in a retirement plan, as well as easing plan administration."

Theresa Schnelle, Lockton Cos.

SAFE HARBOR DESIGNS

Under two widely used safe harbor designs, employers contribute to the 401(k) an amount equal to at least 3% of compensation for each eligible non-highly compensated employee . . .

3%

100%
100%

. . . or match 100% of employees' deferrals, up to at least the first 3% of compensation, and 50% of employees' contributions up to the next 2% of compensation.

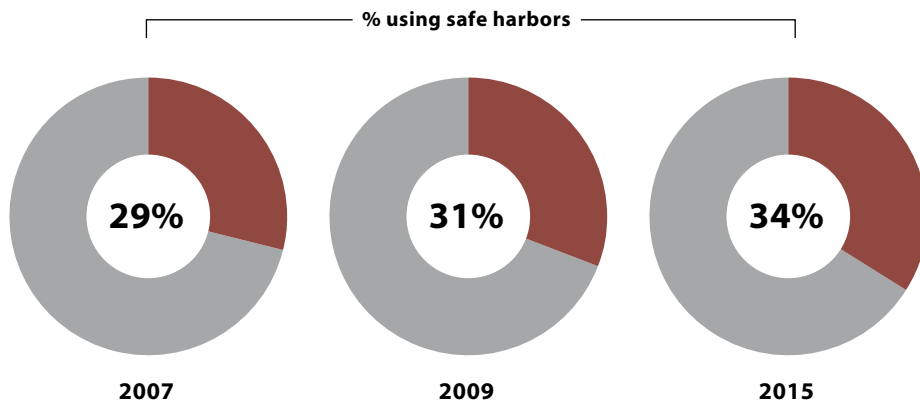
"The last thing employers want to do is return retirement money."

Sam Henson, Lockton Retirement Services

Retirement & Investment

The 401(k) safe harbor approach

The percentage of employers using safe harbors, which eliminate the need to run nondiscrimination tests on their 401(k) plans, has risen gradually in recent years.



having to notify top executives that a portion of their 401(k) plan contributions will be returned.

“How would you like to have to go to the corporate CEO and say, ‘You are going to have some of your 401(k) plan contributions returned, and your taxes will be higher?’” said Cynthia Zaleta, a principal with Buck Consultants at Xerox in Atlanta.

Depending on the timing, returned funds can force those employees to file amended tax returns.

“You avoid the hassle factor” with safe harbor 401(k) plans, said Julie Pelletier, a retirement plans solutions consultant with First Allied Retirement Services Inc. in Walnut Creek, California.

But adopting a 401(k) safe harbor plan design will, in most cases, increase employers’ costs, because the designs typically are much more generous than previous plans.

For example, under one widely utilized non-safe harbor design, employers will match 50% of employees’ salary deferrals, up to the first 6% of pay.

Employers adopting a popular safe harbor plan design are required to contribute an amount equal to 3% of employees’ pay, even for employees who don’t contribute anything to the plan.

Those mandated employer contributions are more than many employers want or can afford to contribute.

“For some employers, opting for a safe harbor design can be very expensive,” said Michael Weddell, a senior consultant with Towers Watson & Co. in Southfield, Michigan.

Adopting a safe harbor plan “can mean higher employer contributions,” added Amy Reynolds, a partner in the Richmond, Virginia office of Mercer L.L.C.

Source: Aon Hewitt



401(k) safe harbor plans skirt annual federal fairness tests

Employers have a way to escape the hassle of running annual federal nondiscrimination tests on their 401(k) plans.

Those tests, laid down by a 1986 tax law, are used to determine that salary deferrals made by employees making at least \$120,000 in 2015 don’t exceed — by amounts set by federal law — deferrals by rank-and-file employees.

Besides having to return excess contributions by highly compensated employees if their plans fail the tests, employers can eliminate the whole hassle if their plans

qualify for one of several 401(k) safe harbor designs.

Those designs were set by a 1996 law and took effect in 1999.

In one widely utilized safe harbor, an employer must match 100% of employees’ deferrals, up to the first 3% of pay and 50% of deferrals on the next 2% of pay.

In another, an employer must automatically contribute to employees’ 401(k) accounts an amount equal to 3% of pay.

Regardless of which safe harbor is selected, employees must be immediately vested in employer contributions.

If all the conditions are met, the plans are automatically considered nondiscriminatory, eliminating the need for the tests.

Then, as part of 2006 legislation that tightened defined benefit pension plan funding rules, lawmakers added new safe harbors for employees automatically enrolled in 401(k) plans, unless they object and opt out.

To qualify for one, employers offering automatic enrollment have to fully match employees’ salary deferrals on the first 1% of pay and then match 50% of deferrals on the next 5% of pay. Under the other, employers have to contribute an amount equal to 3% of employees’ pay. In addition, employees participating in automatic enrollment plans have to defer, at a minimum, 3% of pay for up to the first two years, with the deferral requirement rising by 1 percentage point annually until hitting 6%.

By Jerry Geisel

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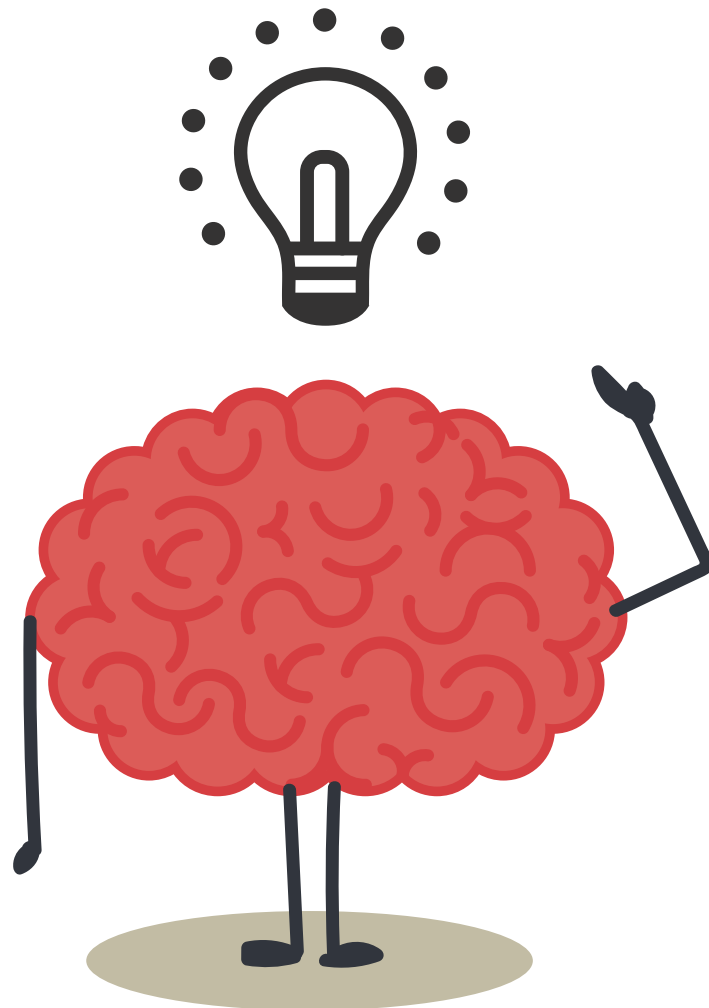
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Savvy tools to help pick and choose



Though decision support technology has been around for years, it is growing more sophisticated — and crucial — as benefits become more complex.

BY SHELBY LIVINGSTON

As employers continue to shift workers to consumer-directed health plans and private exchanges, more are offering technology-based decision support tools to help employees build and utilize a tailored benefits package.

Selecting benefits traditionally has been confusing, but decision support tools aim to make it easier for workers to make an informed and accurate choice, experts say.

“Decision support always comes down to, ‘how can we help that individual get to the best mix of plans or programs that are right for their needs?’” said Scot Marcotte, Chicago-based director of talent and human resource solutions with Buck Consultants at Xerox. “We try to draw on what we know about the individual already, and then help tailor the options with the decision support.”

Decision-support tools often combine employee-specific demographic data, such as age and location, with personal preferences to produce a customized benefits package, including health plan and voluntary benefits.

Employers provide the demographic data and their employees’ past usage of medical benefits, if available, and employees answer questions online about their lifestyle and plan preferences, such as if they smoke or how many prescriptions they fill each month. Some decision support providers include national claims data as well.

The tools then use algorithms to recommend the plan and benefits that best suit the employee’s needs and break out the cost, including monthly premiums and out-of-pocket expenses.

Though decision support tools have been used for years on benefits administration platforms, they are becoming crucial as benefits choices grow, experts say.

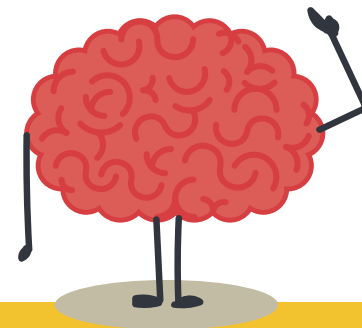
The advent of private exchanges with their wide options has created a need to make benefit-shopping a “consumer-type experience, just like you’d go to Amazon and buy a book,” Mr. Marcotte said.

And as employers move toward private exchanges, the greater choice can increase confusion among employees, said Shandon Fowler, Charleston, South Carolina-based director of product management for marketplaces with technology provider Benefitfocus Inc. Including decision support tools in the enrollment process may increase understanding and effectiveness of the benefits offered, he said.

According to Aon Hewitt’s 2015 Health Care Survey, conducted from November 2014 to January, 11% of employers reported they were increasing their health plan options coupled with decision support tools. Four percent of employers said they planned to in 2015, and 39% planned to in the next three to five years.

Only 3% of employers offered benefits through a private exchange this year, and 22% plan to in three to five years, according to the same survey.

Voluntary Benefits



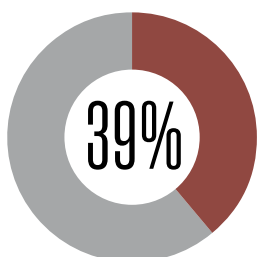
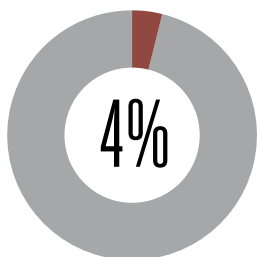
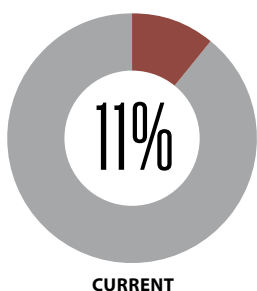
Decision-making tools available on private exchanges

Exchange	Tools for decision-making
Aon P.L.C.	Three types: plan comparison, network coverage, need help
Array Health Solutions Inc.	Smart fit (plan selection tool)
Bloom Health Ltd.	Bloom health adviser (via phone or email)
bswift L.L.C.	Ask Emma (decision support system)
ConnectedHealth	Recommendation engine (proprietary decision-making system)
Connecture Inc.	Three types: plan comparison, network mapping, out-of-pocket calculator
Liazon Benefits Inc. Bright Choices	Modeling tool: Health expenditure scenarios
Mercer L.L.C.	Online decision support tool
Towers Watson & Co. One Exchange	Online decision support, benefits advisers (phone/email)

Source: Company websites

DECISION TIME

The number of employers adding decision support tools to increased health plan options



Source: Mercer L.L.C.

“If you put 150 health plans in front of a person, they’re going to have no idea what is the right plan for themselves,” Mr. Fowler said. In a “complex decision environment” decision support tools are a must, he said.

But even with a handful of plans, “research shows that generally speaking, people have no idea which plan is going to be better for their needs with the information that has traditionally been provided to them,” he said.

Decision support tools also have a holistic focus, helping workers include voluntary benefits as well as a medical package.

The real issue now is “how you consider the other products that you need ... to have a complete picture of a financially secure and healthy family,” said Vinay Gidwaney, Boston-based co-founder and chief product officer of benefits technology provider Maxwell Health.

“It’s really more of a holistic look, rather than saying, ‘Let’s look at what medical plan this person should be enrolled in. Then let’s go look at the dental plan.’ Making each of those elections separately doesn’t end up with oftentimes the optimal elections for the employee,” said Rae Shanahan, executive vice president with technology provider Businessolver Inc. in Des Moines, Iowa.

Instead, using the demographic data and employee preferences, decision support tools help fill the gaps in med-

ical coverage or supplement the employee’s plan with extra benefits to accommodate his or her lifestyle.

For example, Willis’ exchange platform, Willis Advantage, might recommend a high-deductible health plan to a low-risk, healthy 27-year-old who would need protection in the event of a catastrophe, said Rob Harkins, Boston-based practice leader for private exchanges with Willis North America Inc.

If that individual told the decision support software he hikes or runs often, the tool may also recommend an accident benefit in addition to the high-deductible plan, he said.

Maxwell Health’s decision support tool may even recommend a meal delivery service, a subscription babysitting service or a fitness device, depending on the employee’s demographic and what the employer chooses to offer.

Decision support tools help employees make the best use of their benefits, but they also relieve employers of many administrative duties, Mr. Harkins said.

Large companies often have to “staff up” during open enrollment to answer workers’ benefits questions, a process that can be time consuming and laborious, he said. Decision support reduces that need, he said.

And experts say decision support gives employees a more accurate and personalized recommendation for benefits than a benefits manager or human

resources team can.

“It’s very atypical for a person at a benefits fair table to sit with someone and even have the resources to make a projection on their out-of-pocket expenses on half a dozen plans,” said Don Garlitz, Salt Lake City-based senior vice president with benefits technology provider bswift L.L.C.

White Plains, New York-based yogurt and dairy product maker Danone North American Cos. is rolling out the Benefitfocus decision support tool for November’s open enrollment. Typically, a two-person benefit team fields Danone employees’ questions, but the team often must provide “very broad and fairly generic” examples of how certain health plans work, said Tracy Beane, health and benefits manager with Danone.

The decision support tool will help employees make a “personal decision that’s more targeted on how they use a plan,” rather than based on impersonal examples, Ms. Beane said.

Though decision support is “not a perfect science” now, “there’s a lot of development going on across the industry ... to make for a more appropriate and elegant process as well as a recommendation,” Mr. Harkins said.

And developers are getting creative. The next generation of tools may offer voice interaction, like the iPhone’s Siri, Mr. Marcotte said. “We’re seeing more of that possibility coming to play probably over the next year or two.”

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Tech tools help employees make smart decisions

Technology-based decision support tools come in a variety of forms. At Chicago-based bswift L.L.C., the "Ask Emma" decision support tool uses national claims data and the employee's demographic information, salary and number of dependents to determine the "most economical plan options" for the user, said Don Garlitz, bswift's Salt Lake City-based senior vice president.

Employees also can answer questions about how they plan to use the coverage or defer, he said.

"As you go through the tools, she's interactive," he said of Ask Emma. If the employee defers, the decision support relies on the data provided by the employer. But answering the questions "gives us a little better sense of where that person's utilization might fall for the year," he said.

Charleston, South Carolina-based benefits technology provider Benefitfocus Inc. works with each employer to determine five to seven questions that "get at these eligibility and preference-based decision points and help us come up with what we call the 'best plan recommendation,'" said Shandon Fowler, the company's director of product management for marketplaces.

"We know that consumers spend not a ton of time during open enrollment," he said, so the decision support helps "make the most of that time that they spend."

Decision support "takes some different forms," said Scot Marcotte, Chicago-based director of talent and human resource solutions with Buck Consultants at Xerox. "When the individual is going through the election process, for example, we might help them with some just-in-time education or content. If they are going through a medical choice, we might help them ... narrow down to two options or three options instead of 40 or 50," he said.

Businessolver Inc.'s MyChoice tool looks beyond an employee's risk tolerance and behavior to the "emotional" side, "because buying insurance isn't always a rational decision," said Rae Shanahan, the firm's Des Moines, Iowa-based executive vice president.

MyChoice factors in not only whether a worker has enough savings to pay a full \$5,000 deductible when catastrophe strikes, but whether they can emotionally stomach it. If not, then a high-deductible health plan with the lowest premium may not be the best option, Ms. Shanahan said.

While many decision support tools gather employee preferences by asking a series of questions, Boston-based Maxwell Health's tool uses demographics alone.

The company works with the employer to pinpoint "different cohorts that exist within their population," then predicts the "lifestyle bundles" of benefits most likely to appeal to those populations, said Vinay Gidwaney, the provider's Boston-based co-founder and chief product officer.

"Instead of you making 10 different little decisions and frankly being exhausted by the first three ... you're recommended the right way to think about (benefits) and then can dig into the details if you choose," he said.

By Shelby Livingston



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Annette Guarisco Fildes ERISA Industry Committee



Annette Guarisco Fildes is president and CEO of the ERISA Industry Committee in Washington. Ms. Fildes joined ERIC, which represents the nation's largest employers on a broad array of employee benefit issues, this year. She previously was executive vice president for the Retail Industry Leaders Association in Arlington, Virginia. Before that, Ms. Fildes held senior executive positions in the public policy and government affairs departments of General Motors Co. and Honeywell International Inc. where she was involved in health care and pension issues. In an interview with Editor-at-Large Jerry Geisel, Ms. Fildes discussed a broad array of issues related to the health care reform law from an employer's perspective. Edited excerpts follow.

Q

A little more than five years ago, President Barack Obama signed the Patient Protection and Affordable Care Act into law. We know what the positive aspects of the ACA have been: millions of previously uninsured Americans have gotten health insurance coverage. From a large-employer perspective, what have been the law's achievements?

A Certainly, the extension of coverage to many of the previously uninsured is an important achievement of the law. But from a large-employer perspective, the law caused a diversion of resources to unnecessary and very costly compliance burdens, mandates and taxes that are not really doing anything to improve the quality of care or, frankly, address health care cost issues.

Q Given that, what provisions of the law would you like to see changed?

A As you know, large employers, especially the members of our trade association, ERIC, provided coverage for employees and their families long before the Affordable Care Act was even conceived. We did it without an employer mandate, reporting requirements and the 40% excise tax (that has come to be known as the Cadillac tax). Those are really the three provisions that we are working with Congress to repeal.

Q What is the likelihood of those changes becoming law?

A Change is always difficult to achieve. We are hopeful. We see bipartisan support for some of these measures. We are working hard to ensure that all members of Congress appreciate that these do not help provide coverage to anybody, nor do they help to improve the quality of care or lower the cost of health coverage.

Q Is there a No. 1 ACA provision that should go?

A Certainly: the Cadillac tax. That is the one that is most onerous on employers, as well as the health care plan coverage reporting requirements. The regulatory burdens far outweigh the benefit of reporting this information to the Internal Revenue Service.

Q Group health care coverage is very expensive. Why shouldn't a portion of that cost be subject to a federal excise tax? (Starting in 2018, a 40% tax will be levied on that part of group health insurance premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage.)

A If Congress wanted to devise an excise tax, we ought to look at what they are trying to achieve by imposing it. If it was, like in the case of the 40% excise tax, designed to discourage generous plans, then they should address generous plans. But the way the provision was enacted and is being interpreted, it impacts employers simply because of where their employees happen to be located. Employers can't change where they are located. While perhaps the tax was well-intentioned, the results are really quite damaging. Employers now have to spend time trying to figure out how to avoid paying the taxes.

Q What is your agenda for regulators?

A We are working with regulators on changing the reporting requirements that employers have to meet to prove they are providing coverage to employees under the ACA's employer mandate. (Employers with 50 or more full-time employees must report 2015 health care plan enrollment information early next year to the IRS.) Since employers have been providing coverage long before the employer mandate, we think the reporting requirements could be much more straightforward: Simply allow us to check the box that we provide coverage to at least 95% of our full-time employees. But don't require us to collect information — sensitive private information like Social Security numbers of employees' dependents — and have us keep that information and send it to the Internal Revenue Service.

Q Should employers be optimistic that regulators will come out with flexible rules?

A We are very hopeful that regulators will take a more reasoned approach, for example, on the coverage reporting requirement. We are pleased that the Treasury Department is taking a thoughtful approach with respect to the ACA's health plan excise tax. They are asking for comments first ... We have provided substantial comments to them to help ensure that if the excise tax is not repealed, that the regulations are targeted enough that they don't sweep in some good things employers are doing, such as providing on-site health clinics or wellness programs. We don't want those costs to be included in the calculation of the excise tax.

Q Of course, employers could terminate their plans and give employees money to offset premiums to buy coverage in public insurance exchanges. So far, though, few employers have shown much interest in this approach. Why not?

A There are a lot of different reasons. First of all, the cash you would give employees in lieu of coverage would be taxable. That is a big discouragement. Secondly, employers play a very important role in designing plans that work and allow them to attract and retain employees. I think employees like it. They consider employer health plans a valuable benefit. So employers don't want to take away a benefit they are providing to employees.

Change is always difficult to achieve.

We are hopeful. We see bipartisan support for some of these measures.



International Benefits

More U.S. companies take wellness show on the road

BY SARAH VEYSEY

U.S. companies that send employees on overseas assignment increasingly are providing those staff with wellness programs, and the trend is set to grow.

As companies globalize and increasingly rely on staff posted overseas to achieve business-critical results, so must they take steps to safeguard those employees' health and well-being, experts say.

"We are seeing more employers manage the health of their mobile employee population more strategically," said Amy Laverock, a partner in Mercer L.L.C.'s health and benefits business in New York.

"The mobile population is often critical to achieving success overseas, and health issues of the employee or family members can derail an assignment," she said. "We are seeing more multinationals wanting to ensure support for well-being — encompassing physical health, financial health and emotional health — is available to all employees globally.

"Progressive companies understand the impact that this can have on individual and corporate performance, risk management and brand," she added.

In a study of 88 multinational companies undertaken in 2012, the most recent data available, Towers Watson & Co. found that 58% provided wellness programs for so-called "internationally mobile employees."

Of those, the study showed, 74% provided health screenings, 69% behavioral health services and 67% health promotion.

MetLife Inc. offers wellness programs and initiatives for employees on assignment.

According to the life insurer, those programs and initiatives drive cost containment and help keep employees well while overseas.

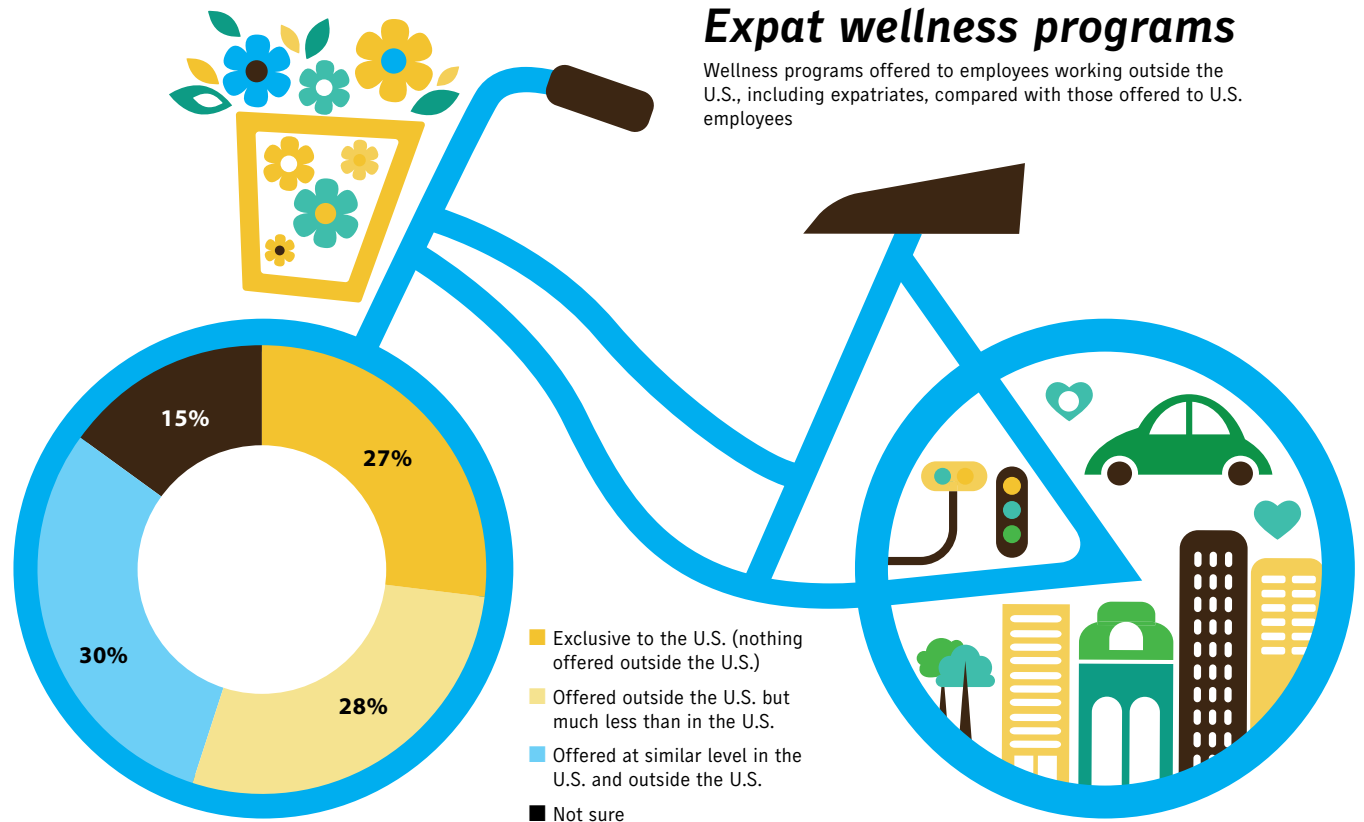
Services the company offers to employees placed abroad include the provision of online wellness tools, maternity care and disease management.

MetLife also provides regional programs to address local issues, it said.

For example, because of an increase in diabetes in the Persian Gulf region, MetLife and LifeScan Inc., a diabetes solution unit of Johnson & Johnson, jointly developed a diabetes management program for workers in that area.

Some health risks — such as obesity, tobacco use and cardiovascular disease — are global in nature, so a company operating in many countries would include such risks in any employee wellness program for overseas staff, said Stephanie Pronk, a senior vice president at Aon Hewitt.

But companies typically tailor their



approach to the cultural issues, country-specific health issues and the local environment in the countries they operate, among other things, she said.

Some employers engage in preassignment wellness activities to ensure that workers are well-prepared before heading abroad, experts say.

This likely would include ensuring that employees have had the appropriate vaccines for their destinations, as well as education about local health issues, experts say.

"Some employers even require health affidavits for taking certain precautions," such as anti-malarial drugs in high-risk areas, said Mercer's Ms. Laverock.

While programs are tailored to local factors, the best-practice approach to designing wellness programs is the same abroad as it is for the United States, Ms. Pronk said.

Many employers have recognized that emotional support for employees stationed abroad is extremely important, said Ms. Laverock, and "so many employers are offering employee assistance support prior to and during the overseas assignment."

"Employers are providing these on a stand-alone basis or may leverage such programs available from expatriate medical insurance, in addition to other health education, engagement, screening and preventive care vehicles," she said.

"Specific or bespoke financial incentives are generally not targeted at this popula-

tion," Ms. Laverock added.

Employers in the technology and professional services fields are leading the way in providing wellness programs for overseas staff, Ms. Pronk said.

"With respect to employee health in general, the pharmaceutical, financial services and high-tech sectors have typically led in terms of the provision of comprehensive health and wellness programs around the world," Ms. Laverock said.

Wellness programs for employees abroad typically are structured to fit local market dynamics, Ms. Pronk said.

Those programs may be less sophisticated than those for staff based in the United States, Ms. Laverock noted.

"While employers in the United States may be used to offering sophisticated wellness programs that include a comprehensive suite of tools and resources to focus on behavior change, in general wellness programs are much simpler for local nationals overseas," she said.

Financial incentives are less common than in the United States because of cultural considerations and an often more limited local vendor marketplace, she said.

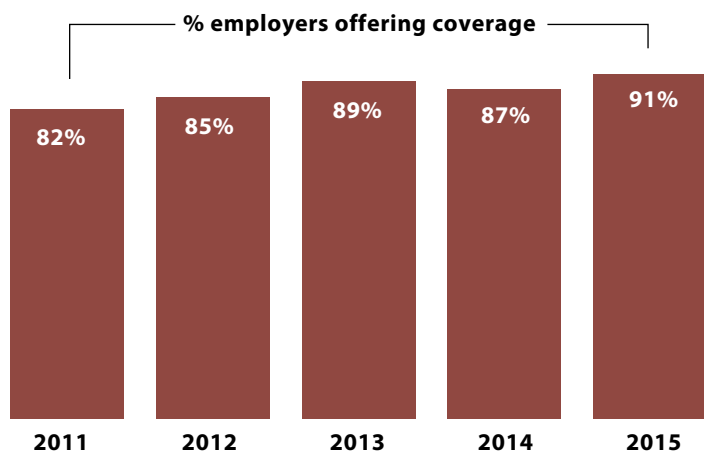
This means that many employers use on-site clinical resources, government, non-governmental organizations and insurers to provide services.

"The mobile population is often critical to achieving success overseas, and health issues of the employee or family members can derail an assignment."

Amy Laverock, Mercer L.L.C.

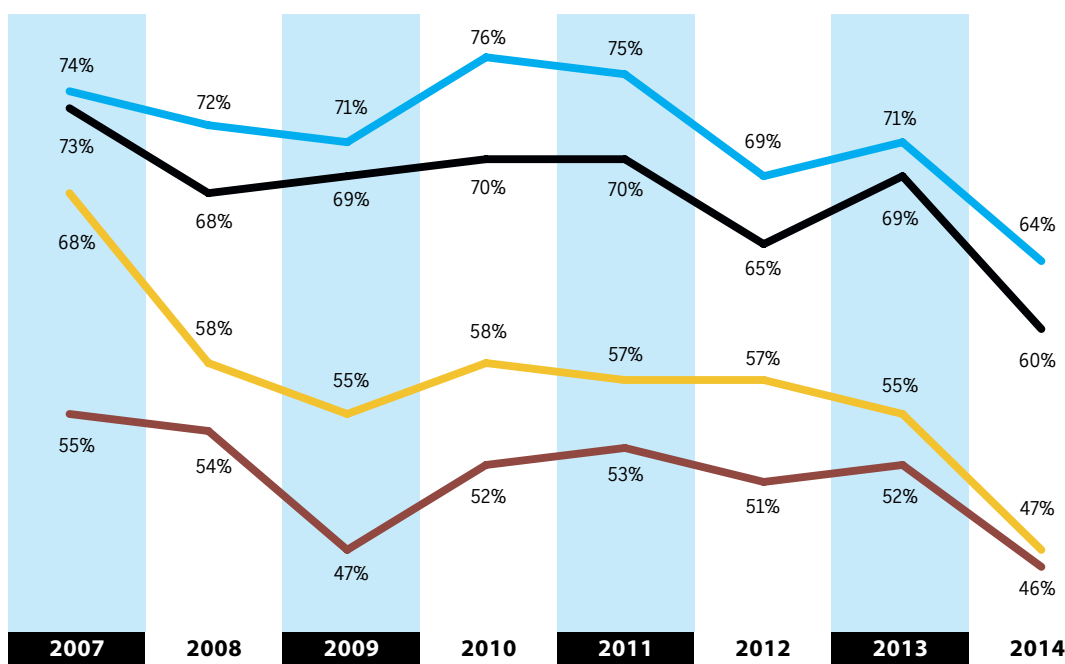
Research & Data

U.S. employee benefits: Mental health coverage on the rise



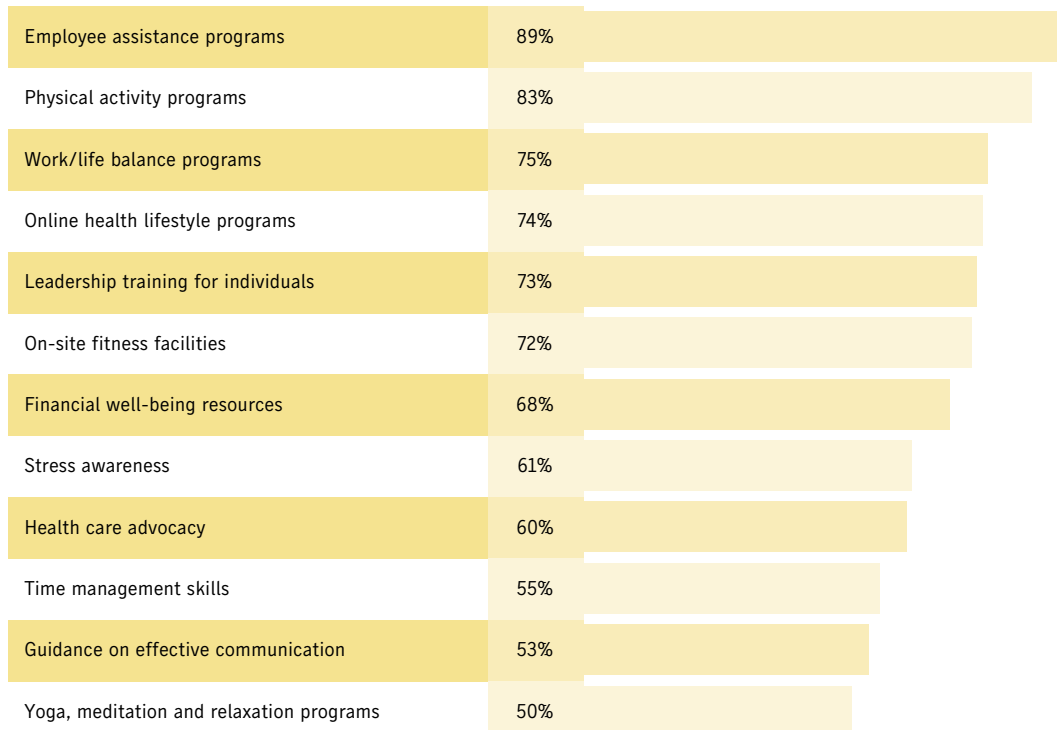
Source: Society for Human Resource Management

TOP FOUR SOURCES OF STRESS



Source: American Psychological Association

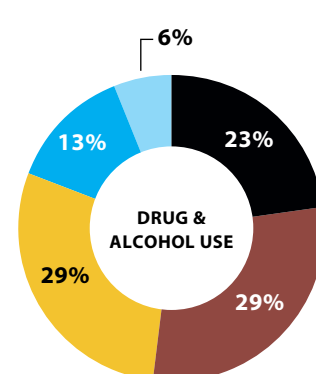
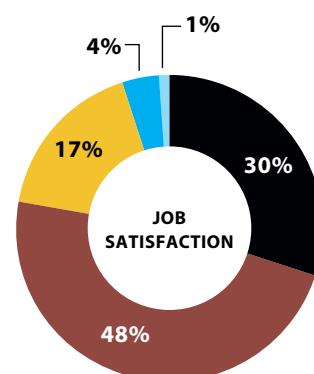
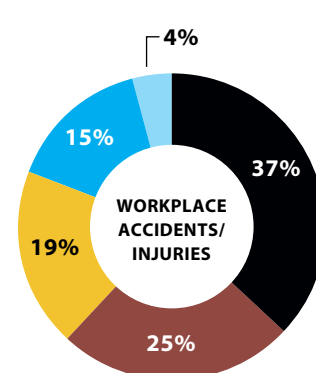
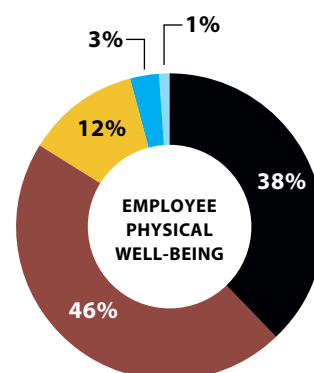
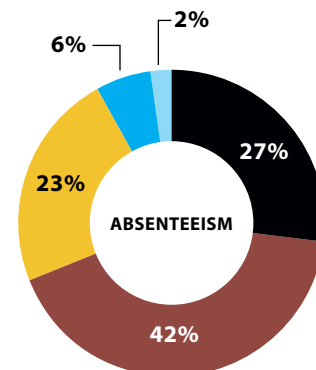
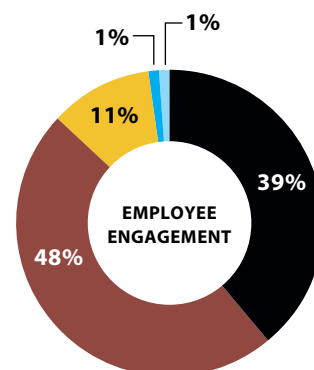
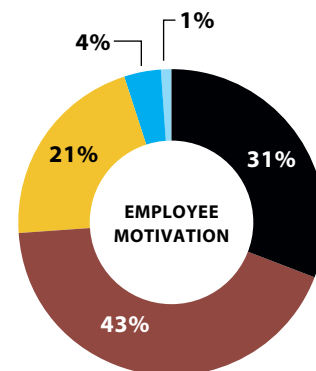
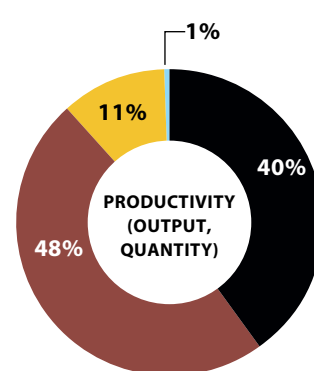
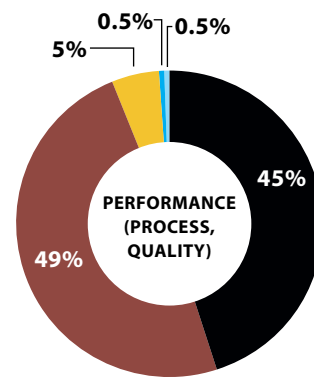
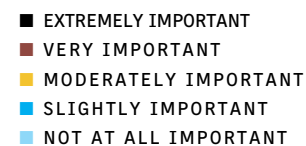
STRATEGIES U.S. EMPLOYERS USE TO DEAL WITH WORK-RELATED STRESS



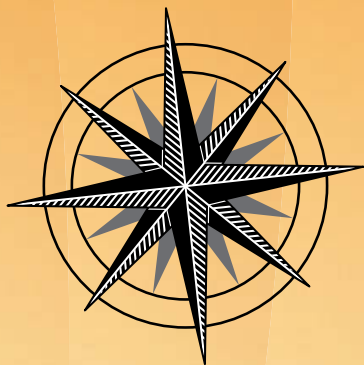
Source: Buck Consultants at Xerox: "2015 Promoting Mental Well-being: Addressing Worker Stress and Psychosocial Risks"

Employer motivation

In your organization, how important are each of the following as a reason to address work-related stress and/or poor mental well-being?



Source: Buck Consultants at Xerox: "2015 Promoting Mental Well-being: Addressing Worker Stress and Psychosocial Risks"



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Vice President,
Investments and Cash Management
St. Joseph Health



Marvin Tong (Conference Chair)
Project Manager - Investments Division
Southern California Edison



Rebecca Brown
Senior Director,
Retirement & System Investments,
Providence Health & Services



Sarah Mysiewicz Gill
Senior Legislative Representative
AARP's Government Affairs



Jodi Glandon
Benefits Compliance
and Retirement Plans Manager
Weyerhaeuser Company



Stuart Odell
Assistant Treasurer
of Retirement Investments
Intel



Dan Holupchinski
Retirement Plans Manager
Deluxe Corporation



Michelle A. Ryan
Benefits and Investments
Program Manager
Los Alamos National Laboratory



Michelle Kelley
Retirement Plan Manager
Nevada System of Higher Education



Tony Tomich
Head of Pension Investments
Farmers Insurance Group

KEYNOTE SPEAKERS



Paul Irving
Chairman
Milken Institute Center for the Future of Aging
Distinguished Scholar in Residence
University of Southern California's
Davis School of Gerontology



Moshe A. Milevsky, Ph.D.,
Executive Director, The IFID Center
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