



## Vulnerability of employee data

Kimberly N. Mashburn, Senior Consultant, Clarity Benefit Consulting on sharing data among vendors.

## Privacy issues loom for disability benefits

Sharing employee data among vendors can get messy if information isn't protected properly

By [ROBERTO GENICEROS](#)

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While many employers understand the federal Health Insurance Portability and Accountability Act's implications for health plans, far fewer realize that state privacy laws apply to disability benefits, several observers say.

Disability plans or workers compensation claims are not regulated by HIPAA rules regulating disclosure of individuals' health information, observers say. Yet each state can have numerous privacy laws, regulated by various agencies, that do apply to employers' disability and workers compensation claims information.

And as employers continue integrating their disability benefits, they increasingly risk running afoul of those state laws if they don't take precautions to comply with the maze of state regulations that apply to the sharing of employee health information, observers add.

The risk is increasing as more employers with employees in several states seek integrated disability services, observers say. That is because the practice usually requires sharing large blocks of employee data among various vendors that are not all up to speed on state privacy laws.

The list of vendors participating in an employer's integrated disability strategy and sharing employee data can include disease management companies, absence management consultants, employee assistance programs, disability insurers, third-party administrators, health insurers and workers comp insurers.

One concern is for the vulnerability of employee data when a vendor with strong practices for protecting the information needs to share it with other vendors, said Kimberly N. Mashburn, senior consultant for Clarity Benefit Consulting, an Atlanta-based absence management company serving large employers.

"You may feel confident that you are working with XYZ Co. and you know they are protecting your data, but then if that entity shares their data with another company and that company

then shares it with another, your level of confidence in how privacy record management is going to be kept" decreases, Ms. Mashburn said. "It could get really messy."

But data used for disease management, for example, is usually "de-identified" and used only for predictive modeling for an entire employee population group, said a disability manager for a large, multi-state employer who asked not to be identified.

In such cases, individuals' identities are not linked to information being shared, the disability manager said, so employers are shielded from potential liability because the data is anonymous.

But some vendors conduct outreach to specific employees with certain health conditions, Ms. Mashburn said. Such contacts could aggravate an employee if they think a vendor obtained their personal information without their consent, she said.

As employers and their vendors implement more cutting-edge strategies, such as helping individuals with specific disability drivers, the risk increases for employers, Ms. Mashburn and others said.

Although plaintiffs have yet to file notable court cases, the potential for employer liability is also increasing because the practice of integrating large amounts of absence and disability data is increasing, several sources said.

For example, three years ago it was highly unusual for employers or their vendors to request that Unum Group share information for disability benefit integration purposes, said Nell Walker, the disability insurer's assistant vp, senior counsel, and assistant privacy officer in Portland, Maine.

But today, more employers want a "holistic picture" of where they are spending their benefit dollars and how they can minimize disability drivers, Ms. Walker said.

That can involve analyzing data across disability and health plans to determine if employers can do more to educate their workforce about health care improvements.

"Over the past year and a half, we have seen an increasing number of requests from employers to share information with third-party data aggregators primarily for disease management purposes, but also for overall patterns of utilization and coordination of benefits," Ms. Walker said.

Vendors within the disability industry, meanwhile, have focused more on pitching integration services than on educating employers about potential privacy pitfalls, several sources said.

"When they are out there selling the product, they want to make it seem as though it is a very smooth, a very seamless process," Ms. Walker said. "Once they get an employer to bite, then they walk them through the requirements."

Because disease management practices were applied to health plan benefits before the practice migrated to disability management, more vendors are also more aware of HIPAA privacy regulations than are familiar with state privacy laws, observers said.

Even today, employers and some vendors in the integrated disability management chain may not be as well-versed in state laws as they are in HIPAA regulations, observers say.

"We have had to (implement) a real education process with vendors as well as the customers they have been working with to get them to understand we are outside the HIPAA bubble," Ms. Walker said.

Many employers seeking integrated disability benefit services ask about compliance with HIPAA regulations, said Paul J. Posey, executive vp and group general council for Memphis, Tenn.-based Sedgwick Claims Management Services Inc.

Yet those employers often do not realize that state privacy laws are a bigger concern for disability-related plans, Mr. Posey said.

"When we negotiate with employers, they are very keen to make sure (their disability plans are) HIPAA compliant," Mr. Posey said. "But that is not where the issue is."

State privacy laws clearly present the vast majority of risk when putting together an integrated program, Mr. Posey said.

Applicable state laws focus on specific health problems such as AIDS, substance abuse and mental illness, and other state laws may address use of data such as Social Security numbers or overall health information.

"For every state, there is a multiplier of layers of potential source for regulatory pitfalls," Mr. Posey said.

Obtaining authorization forms for the release of medical information from employees filing disability claims is necessary to protect employers from state laws when an employer's vendors are sharing data that identifies specific individuals and their health issues, observers say.

And some vendors—Sedgwick for example—maintain a database of state regulations pertaining to employee privacy.

There is disagreement within the disability industry, however, over whether authorization forms that are adequate to meet HIPAA requirements will meet all state law requirements, Clarity's Ms. Mashburn said.

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