



Employer's Use of Health Data: The Two-Headed Hydra.

Sheryl Tatar Dacso, J.D., Dr.P.H.
Partner, Seyfarth Shaw, LLP

Presentation Agenda

- 01** Overview and Background
- 02** Legal and Ethical Issues Raised By Use of Big Data
- 03** Legal and Regulatory Issues

Overview of Presentation

- Employee health data comes from many sources
 - biometric screening information
 - wearables
 - claims
 - on-site clinics
- The ability to use population health metrics and engage employees regarding their health behavior is greatly enhanced through the “internet of things (IoT)”
- There is a difference between Data and Analytics
- There can be unintended consequences of not understanding how to use analytics which have legal consequences
(Quality of data is critical; One size does not fit all)

Legal and Ethical Issues Raised By Use of Big Data

- Data Acquisition requires consideration of consent, privacy and fairness. Safeguards must be established before using such data.
- Building and Validation of the Analytic Model requires advance evaluation of standards for obtaining data, the use of data and how the data will be stored and accessed. The model should be evaluated for effectiveness and adverse consequences, with consideration of any risk or exposure to the employee or employer.
- How One Uses Results should take into consideration the underlying purpose of the data analysis and its application by the employer taking into consideration the impact on the employee.

Legal and Ethical Issues Raised By Use of Big Data

- Questions raised by data gathering and analysis include
 - How will the information be stored? Who will store it? How secure is it?
 - Who will control the information? The data? The results?
 - Who will have access to the above? Will it be shared? If so, with whom?
 - How will disclosure and consent be handled? How will employee consent be secured? When is a new consent or authorization required?

Legal and Regulatory Issues

- Employment Law Issues
 - Discrimination (ADA/EEOC)
 - Violation of medical privacy
 - Violation of benefit reporting requirements
 - Tax issues
 - Collective bargaining agreements
- Regulatory Legal Issues
 - HIPAA and State privacy laws
 - Security/Cybersecurity regulations
- Liability issues

Resources

- Improve Employee Wellness Through Predictive Analytics, Intel Reference Architecture, Health and Life Sciences, Health Analytics, Intel.com/healthcare
- Truven Health Analytics, Successful Claims Audits Empowered by Data and Analytics, TruvenHealth.com/Employer
- ACO Journey Map Scoring Guide, National Business Group on Health, www.businessgrouphealth.org
- Program Measurement and Evaluation Guide: Core Metrics for Employee Health Management, Health Enhanced Research Organization (HERO) and Population Health Alliance, www.hero-health.com 2015.
- The Complete Beginner's Guide To Big Data In 2017, Bernard Marr, Forbes, Mar 14, 2017 @ 03:34 AM.



Thank You

Sheryl Tatar Dacso, J.D., Dr.P.H.