MyHealthGuide Newsletter

News for the Self-Funded Community

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Clicking a job listing below will open a webpage with job summary, details and links to additional information (when available). Initial publish date is shown right of listing. Listings are generally published for 1 month. This format helps reduce this Newsletter under the size limits of most email applications.

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General & Company News

Bardon Insurance Group Announces Partnership with Gradient A.I. with the Launch of FIT-Solutions

SCOTTSDALE, AZ – Bardon Insurance Group, Inc. is excited to announce the next innovative step to advance its underwriting capabilities as it launches the Fully Insured Takeover Solutions (FIT-Solutions) product in partnership with Gradient A.I., an Artificial Intelligence company providing the opportunity to write fully insured business without the typical underwriting roadblocks.

"We are excited to see an innovator like the Bardon Insurance Group leverage our SAIL™ solution and technology to streamline their quotation process and provide a better customer experience.", stated **Stan Smith**, Chief Executive Officer of Gradient A.I.

“One of the ongoing challenges in the market is creating a product to attract fully insured groups that are unable to get claims experience. Throughout the vendor selection process and the proof-of-concept study, Gradient AI established itself as the clear choices. We are thrilled to have them as a partner”, said **Byrd Preston**, Chief Underwriting Officer of the Bardon Insurance Group.

The FIT-Solutions product allows Bardon to recognize good risk for a more complete, complex, and in-depth picture when there is limited data. This will boost our TPA and producer relationships by increasing our ability to close previously elusive cases. With this new partnership, Bardon will be able to evaluate fully insured groups up to 200 employee lives with:

- With No claims experience
- With No individual health questionnaires
- With pricing and terms designed to get the sale

“The self-funded market is only so big. Carriers and MGUs have two choices when it comes to writing new business, either continue to cannibalize each other’s blocks of business, or; look for new and innovative ways to move groups over from fully insured. Over the past few years we have listened carefully to the concerns of our TPA and broker partners describing the challenges they face in the market. The number one challenge is getting competitive quotes on fully insured prospects with limited data. This new partnership with Gradient AI is designed to remove obstacles and help our partners write more business,” states **Adam Thaler**, President and Chief Operating Officer of Bardon Insurance Group.

For more information about the FIT-Solution product, contact Bardon’s National Director of Sales, **Andrew Milesky** at 480-682-1414.

About Gradient AI

Gradient A.I. provides artificial intelligence-driven SaaS solutions exclusively for the insurance industry. We can improve your company's underwriting by helping you more accurately identify the risks inherent in new and renewal applications, and we can improve your claims management by helping you more accurately identify the claims that pose the most risk. Gradient A.I. was founded in 2012 within one of the world's largest actuarial consulting firms. Its initial mission was to use cutting edge artificial intelligence solutions to identify "creeping catastrophic" workers compensation claims early enough to improve patient outcomes and reduce costs. From that singular beginning, the company built a suite of products to address host of claims and underwriting issues. Visit gradientai.com

In 2018, Gradient A.I. was spun out as an independent company to replicate that product suite across all the other insurance lines, including commercial, personal, group health, and life insurance. Based in the Boston, Massachusetts Seaport District, the company is backed by blue chip insurance industry investors.

About Bardon Insurance Group, Inc.

Bardon Insurance Group is a Managing General Underwriter of medical excess loss coverage for single employer groups with 25 to 5,000+ employee lives. Founded on the principles of honesty, integrity, and excellence, our business goal to form partnerships with medical Third-Party Administrators, which share these same values. This business model produces stability for Bardon and many of our clients in an often-unstable environment.

Bardon represents American National Insurance Company rated A (Excellent) by the A. M. Best company. Bardon is a member of the Self-Insurance Institute of America (SIIA) and is a Stop Loss Service Partner of Texas Association of Benefit Administrators (TABA). Visit bardon.net

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Crum & Forster Accident & Health Division Launches of New Life Insurance Business Unit to Market through MGUs, TPAs, Brokers, Others

MyHealthGuide Source: Crum & Forster, 9/15/2022

New Business Unit Builds on Acquisition of Monitor Life, Catalyzes Continued Expansion of Accident & Health Product Offerings

NEW YORK -- Crum & Forster announced the launch of its new Life Insurance business unit, building on the organization’s 2021 acquisition of Monitor Life Insurance Company of New York.

AM Best has also reaffirmed Crum & Forster’s “A” financial strength rating, which includes Monitor Life

and the wholly owned captive facility, Crum & Forster Segregated Portfolio Company (SPC) located in the Cayman Islands. S&P has also recently upgraded the financial strength rating for Fairfax Financial Holdings, the parent company of C&F, to "A."

Crum & Forster's acquisition of Monitor Life and launch of a new life insurance business unit will allow the organization to continue expanding its Accident and Health (A&H) offerings in an evolving marketplace. With Certificates of Authority in 48 states (pending approval in MN, OR), filings for the initial suite of products are underway and sales will begin in Q4 this year. The acquisition and new unit will give Crum & Forster A&H the ability to write a full suite of life products, and also give the company the flexibility to add additional A&H products moving forward.

"This is an exciting development for Crum & Forster, and we look forward to expanding our offerings to enhance our capabilities to meet and exceed clients' expectations," said **Gary McGeddy**, A&H President. "As a business, we are committed to designing a diversified portfolio that delivers superior customer service to our partners. Our new life business is another step along that journey."

The company will continue marketing through MGUs, TPAs, brokers, agents and program managers. Crum & Forster's nationwide licensure also allows other insurance companies to round out their geographic footprint through strategic partnerships and flexible risk share arrangements.

"We look forward to working with our partners to expand our value proposition and continue providing new, high-quality products and services," said **Gary Nidds**, head of Crum & Forster's new Life business unit and its A&H Medical business unit. "As we continue to diversify and put forth innovative product offerings, we're excited to be a catalyst of opportunity within the life insurance ecosystem."

About Crum & Forster Accident & Health

Crum & Forster,* rated A (Excellent) by AM Best (2022), is a national commercial property and casualty group of insurance companies wholly owned by Fairfax Financial Holdings Limited. Since 2000, Crum & Forster's Accident & Health Division has offered a diverse portfolio of specialty insurance and reinsurance products nationwide. We place a strong focus on product development and creative distribution methods, along with excellent client service and support. In addition, our ability to provide international Accident & Health solutions through our Cayman Island captive facility as well as through various partnerships within the Fairfax family demonstrates our dedication to providing alternative strategies in an ever-changing insurance market. Visit cfins.com

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The Phia Group Announces *Book of Russo* Podcast: *Direct Primary Care and Dr. Jeffery Gold*

MyHealthGuide Source: The Phia Group, 9/22/2022

Podcast: *Book of Russo: Chapter 4*

Description: In the latest episode of *The Book of Russo*, tune in to find out what The Phia Group's CEO, **Adam Russo**, and guest host, **Dr. Jeffery Gold**, have to say about Direct Primary Care and why Dr. Gold decided to open his own practice in Massachusetts. **Recording Link**.

About The Phia Group

The Phia Group, LLC, headquartered in Canton, Massachusetts, is an experienced provider of health care cost containment techniques offering comprehensive claims recovery, plan document and consulting services designed to control health care costs and protect plan assets. By providing industry leading consultation, plan drafting, subrogation and other cost containment solutions, Contact **Garrick Hunt** at ghunt@phiagroup.com, 781-535-5644 and visit www.PhiaGroup.com.

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MedWatch Named a Top Place to Work in Central Florida

MyHealthGuide Source: MedWatch, 9/23/2022

Lake Mary, FL – MedWatch, a full-spectrum population health management company, received recognition last week as one of the Top 10 Top Workplaces in Central Florida by *The Orlando Sentinel* Top Workplaces program, an employee-driven award recognizing organizations that prioritize a people-centered work culture. MedWatch was one of more than 2,000 organizations nominated for consideration, achieving unprecedented high scores based on the responses from its employees.

“I am so proud of MedWatch’s leadership and staff for all working diligently to keep our team spirit up during an especially challenging time in the workplace,” said **Sally-Ann Polson**, President and CEO of MedWatch. “Our people are our most valuable asset, and this recognition is a great honor and testament to the entire MedWatch family! It is our team, our family of employees who help to make MedWatch the special company it is. We are not just a Top Workplace – we are in the Top 10 and that is an exceptional accomplishment!”

The goal of the Top Workplaces program is to identify the top companies based on what employees say make them great. Surveying began in February, and thousands of questionnaires were returned. From those, 108 employers earned recognition as Top Workplaces. MedWatch was proud to receive high scores in all areas of the survey, with two people from the leadership staff scoring in 99th percentile, and six in the top 97% of all leaders in country!

Receiving the top honor for outstanding leadership in the mid-sized business category was **Sally-Ann Polson**. Sally-Ann was recognized as a result of the overwhelming number of survey submissions that confirmed her unwavering commitment to all MedWatch employees describing her caring, compassionate, and positive leadership style and her focus of continuous improvement to achieve personal and professional success.

To learn more about joining the MedWatch workplace, visit their Job Opportunities webpage at https://www.urmedwatch.com/home/Content/news-jobpostings.aspx and email your resume to HR@urmedwatch.com to get started.

About MedWatch

Since being founded in 1988, MedWatch has evolved into one of the most trusted and respected Population Health Management/Medical Cost Containment companies in the industry by partnering with clients and staying ahead of industry trends. MedWatch solutions help manage medical needs across the healthcare continuum for over 1.5 million lives nationwide, mitigating risk and maximizing clinical and financial outcomes. An extensive suite of comprehensive services provides an integrated and simplified pathway that minimizes potential disconnect and member disruption that can often be caused when multiple provider relationships are involved. Visit www.urmedwatch.com

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zakipoint Health Announces Webinar: Achieve compliance with the price transparency tool requirements on time, accurately, and with minimal lift

MyHealthGuide Source: zakipoint Health, 9/20/2022

While there are many cost estimator tools available, it is challenging to get the aggregated data out of the machine-readable files (MRF), have accurate benchmarks, integrate accumulator, plan design, and network design data to launch a cost estimator tool in time for 1/1/2023.

One approach that delivers accuracy and speed to market with a minimal lift is to leverage your core claims system and integrations.

Join **Sean Garrett**, COO of PLEXIS Healthcare Systems, serving the healthcare payer space for over 24 years, as he speaks with **Ramesh Kumar**, host of the *"Voices of Self-Funding"* podcast and CEO of zakipoint Health. Ramesh will share practical tips from his experience launching his cost estimator tool with multiple PAs, integrating various data elements.

Some of your questions that will be answered

1. What is expected for 1/1/2023
2. What are the challenges tied to launching the Cost Estimator tool that TPAs are experiencing
3. What type of integration with data is required by the core claims system?
4. What are the steps to launching a cost estimator tool
5. Case Studies: Value Health Benefits Administrators & Enterprise Group Resources and many more

Speakers

Sean Garrett
COO PLEXIS Healthcare Systems

Ramesh Kumar
Co-founder of zakipoint Health, and host of "Voices of Self-Funding" podcast

Webinar Date: October 6, 2022
Time: 2 pm - 3 pm ET, 11 am - 12 pm PT
Information and Registration

About zakipoint Health

We developed a best-in-class platform, reporting, and engagement tools to empower employers, benefits consultants, and third-party administrators to bend the cost curve. Using our advanced technology, companies have reduced their healthcare risks by 20% and achieved a 3% cost savings on their healthcare spend. Visit zakipointhealth.com

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SIIA Announces TALON Upgrades to Diamond Status

MyHealthGuide Source: Self-Insurance Institute of America, Inc. (SIIA), 9/21/2022

The Self-Insurance Institute of America, Inc. (SIIA) announced that TALON has upgraded to Diamond member status. This top membership level signifies the highest level of support for SIIA and demonstrates a company's leadership position within the self-insurance/captive insurance marketplace.

"TALON is proud to be a leader and innovator in the healthcare technology space, empowering healthcare consumers and protecting all self-funded stakeholders from overpaying for care," said TALON Co-Founder, President, and CEO **Mark Galvin**. "We're thrilled to support the good work of SIIA as a Diamond Member and look forward to working together to create and promote the scalable technology solutions required to succeed in a consumer-driven healthcare marketplace."

TALON's mission is to educate, empower, and incentivize the American healthcare consumer to meaningfully reduce costs and create a healthier ecosystem. TALON was the only platform demonstrated to the federal government's Health Policy Team who had been tasked with developing the Transparency in Coverage Rule. TALON's platform was then used as the model upon which the new federal mandates are based. As a result, TALON has emerged as the leading compliance solution for the Transparency in Coverage Rule and the No Surprises Act.

Learn more about TALON at talonhealthtech.com

About SIIA

The Self-Insurance Institute of America, Inc. (SIIA) is a dynamic, member-based association dedicated to protecting and promoting the business interests of companies involved in the self-insurance and captive insurance marketplace. It is a single association that meets all the information, educational, networking and legislative/regulatory representation that a company needs. Contact SIIA Membership Director **Jennifer Ivy** at (800) 851-7789, or via e-mail at jivy@siia.org an visit siia.org

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McKesson Signs Agreement to Acquire Rx Savings Solutions Rx Savings Solutions

MyHealthGuide Source: Rx Savings Solutions, 9/19/2022

OVERLAND PARK, KS -- McKesson Corporation (NYSE: MCK) announced that it has signed a definitive agreement to acquire Rx Savings Solutions (RxSS), a prescription price transparency and benefit insight company that offers affordability and adherence solutions to health plans and employers, reaching more than 17 million current patients.

The transaction is valued up to $875 million, which includes a $600 million upfront payment and a maximum of $275 million of consideration contingent upon RxSS' financial performance through calendar year 2025. The transaction is subject to customary closing conditions, including regulatory review, and is expected to close in the second half of Fiscal 2023.

"Rx Savings Solutions' offerings for employers and patients will strengthen McKesson's ability to help solve the most common medication challenges related to access, affordability and adherence," said **Brian Tyler**, chief executive officer, McKesson. "We expect the acquisition of Rx Savings Solutions to accelerate McKesson's growth priority in biopharma services by extending our ecosystem of differentiated medication access solutions to patients. Together with Rx Savings Solutions, McKesson will amplify our efforts to advance health outcomes for all."

"This combination brings together two highly complementary organizations with closely aligned goals and values. By joining McKesson, we will be able to offer an exceptionally broad set of services to our clients and strengthen our leadership in prescription price transparency," said **Michael Rea**, a clinical

and strengthen our leadership in prescription price transparency," said **Michael Rea**, a clinical pharmacist who founded and currently leads Rx Savings Solutions. "This is a critical part of our growth journey, and we are excited about what the future holds for Rx Savings Solutions as part of McKesson."

RxSS contracts directly with health plans and large self-funded employers to maximize the effectiveness of benefit design to drive prescription cost savings for members. The company uses an evidence-based, proprietary machine-learning algorithm to help members understand available options for therapy and identify cost-effective prescription alternatives under their insurance. If a prescription change would benefit the member, RxSS provides assistance to update the prescription. The company also provides ongoing medication reminders to help improve adherence.

About McKesson Corporation

McKesson Corporation is a diversified healthcare services leader dedicated to advancing health outcomes for patients everywhere. Our teams partner with biopharma companies, care providers, pharmacies, manufacturers, governments, and others to deliver insights, products, and services to help make quality care more accessible and affordable. Visit mckesson.com

About Rx Savings Solutions

Founded by pharmacist Michael Rea, Rx Savings Solutions helps members and payers reduce prescription drug costs through a combination of clinical technology, transparency, member engagement and concierge support. Currently 17 million members have access to personalized recommendations for lowering prescription costs and dedicated pharmacy experts to help navigate benefits, providers and pharmacies. Visit rxss.com.

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Market Trends Studies, Books & Opinions

Workers' Compensation and Pre-Existing Illness

MyHealthGuide Source: **Joseph Dore**, President, USBenefits Insurance Services, LLC, 9/23/2022

Many employers and employees are not aware that having a pre-existing condition, such as diabetes or a bad back, does not disqualify the employee from Workers' Compensation benefits so long as condition is aggravated by an injury at work. In such cases, the employer cannot deny the claim or extent of the injury because of an employee's pre-existing illness even if the claim is reported far beyond the date of injury.

Under no circumstance should an employee be discouraged from filing a Workers' Compensation claim or influenced in any way. Workers' Compensation has a formal vetting process to determine the compensability for work related claims.

Further, an employer cannot discriminate via their hiring practices from those without pre-existing conditions and those with. A rule of thumb – if a healthy employee would have received Workers' Compensation benefits for a similar injury, then an employee with a pre-existing condition would be entitled as well even if the employee wasn't aware of their condition at the time of injury.

For example, employee #1, who does not have any pre-existing illnesses twists his ankle at work. He seeks medical attention, which deems his injury as a sprained ankle requiring a few days of rest. Employee #2, has diabetes, has the same injury, which worsens over time and ultimately requires surgical attention. Both employees are entitled to benefits of Workers' Compensation.

While the statutory law may have some variance between jurisdictions, it's wise to treat your employees fairly to avoid litigation and any regulatory penalties.

In the event, the Workers' Compensation carrier denies the employee's claim, a possible strategy for

health claims administrators is to pay up to the employer's obligation (specific deductible) and notify the Workers' Compensation carrier of the employer's subrogation rights. This will offer the employee "peace of mind" knowing they will not be billed, while gaining goodwill with the employer.

It is important to note that intentionally not filing a workers' compensation claim if the injury is work related or is suspected to be work related may be deemed fraudulent, which is a crime and punishable under the law.

Please contact USBenefits at info@usbstoploss.com or 877-877-4872 if you have additional questions on this topic.

About USBenefits

USBenefits Insurance Services, LLC dba Employer Stop Loss Insurance Services, LLC (USB) is a full service Managing General Underwriter. We officially launched in July of 2007. Our founding members believed that to be successful, understanding our clients' current and future needs comes first. That simple principle has shaped all subsequent development of the company and is the foundation on which we have grown.

Since then, USB continues to be a viable stop loss market to Third Party Administrators, brokers, consultants, and other forms of stop loss / employee benefits producers, as well as a product line resource to our customers and stop loss community. USBenefits has complete responsibility for all administration, claims, and underwriting decisions. Staffing includes Claims, Underwriting, Administrative and Marketing professionals who work in concert to deliver not only financially stable stop loss products, but unparalleled stop loss services. Your goal is our goal – to provide the best possible outcome for the employer. Visit usbstoploss.com

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Legal News

TPAs Increasing Focus of MHPAEA Lawsuits

MyHealthGuide Source: **Jon Breyfogle, Lisa Campbell, Mark Nielsen, Paul Rinefierd, Ryan Temme, Kara Petteway Wheatley**, Groom Law Group via JDSupra (full text article)

The Paul Wellstone and Peter Domenici Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA") has increasingly been the focus of government enforcement activity and private plaintiff litigation.

In its 2022 Report to Congress, the Departments of Labor ("DOL"), Health and Human Services ("HHS") and the Treasury (collectively, the "Departments") announced that MHPAEA enforcement is a "top priority." That announcement came on the heels of the DOL's first complaint alleging a MHPAEA violation and a wave of suits filed by private plaintiffs. In 2021 alone, private plaintiffs filed more than 100 lawsuits asserting a MHPAEA claim. MHPAEA litigation brought by private plaintiffs has been similarly active in 2022.

Defendants Increasingly are TPAs

Most MHPAEA lawsuits have been filed against plan sponsors of self-funded plans and issuers of fully-insured plans.

A recent trend, however, has been the filing of MHPAEA suits solely against third-party administrators (TPAs) of self-funded plans based on the TPA's application of plan terms that violate MHPAEA. TPAs, accordingly, may be the target of MHPAEA lawsuits, even where the TPAs do not design the plan's terms or coverage criteria and only are administering the self-funded plan's terms.

Example

A court recently held that plaintiff could assert a MHPAEA claim against a self-funded plan's TPA, even though the TPA lacked the authority to re-write the plan's terms. The court found that ERISA fiduciaries, including TPAs of self-funded plans, must "apply a plan's terms only if those terms do not violate ERISA." This approach is commonly taken by the DOL in the context of its own investigations.

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Medical News

Unsettled Liability Issues for "Prediagnostic" Wearables and Health-Related Products

MyHealthGuide Source: **David A. Simon, JD, LLM, PhD; Carmel Shachar, JD, MPH; I. Glenn Cohen, JD**; 9/22/2022, JAMA Network

Many people currently use various wearable or other health-related technologies known as general wellness products—sometimes without (adequate) regulation or enforcement by Congress and the Food and Drug Administration (FDA)—that disclaim diagnostic functions but may nevertheless be used by patients and physicians for diagnostic purposes.

These products (referred to in this Viewpoint as "prediagnostics") include well-known wearables such as the Fitbit, but also less-familiar technologies. Hyfe is a smartphone application that ambiently tracks user coughing patterns over time and analyzes cough frequency and intensity. The SeizAlarm smartphone application tracks movements and heart rate to detect seizurelike activity and alert emergency contacts. Lumen is a stand-alone product that uses breath to measure and track metabolism.

Patients may use these products and applications for the initial stages of assessing their health; sometimes they might rely on them to identify a disease or condition. Patients may also provide their data to a physician to incorporate into an evaluation or a treatment. As these products proliferate, physicians could even recommend some of these prediagnostics and health-related technologies to their patients.

Although these products may help many patients and physicians improve care, they occupy a legal gray area. Who is responsible if a product fails to detect a seizure? Who is liable if a user or physician relies on a product to detect asthmatic events but it fails to do so?

Physicians may be concerned that advising some patients to use these products and not advising others to do so could subject them to malpractice claims. Because product liability for these devices is somewhat unsettled, patients and their lawyers may turn to medical malpractice theories of litigation in hopes of recovering damages. Although some of these issues have not yet been litigated, liability claims for wearable and other health-related consumer products are likely to arise more often as technology improves and proliferates. This Viewpoint examines the murky legal treatment of these products for patients, physicians, and manufacturers and recommends solutions.

Ability to Sue

Unbeknownst to many patients (or even physicians), most of the prediagnostic products available to consumers are not regulated by the FDA. The FDA has authority to regulate "devices," but by statutory definition (21 USC §321[h][1][B]) these are products "intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease…." This means that manufacturers can advertise prediagnostics without FDA regulation as long as their "intended use" falls outside that definition's scope. It also means that prediagnostic products will generally fall outside the device regulatory pathways unless the manufacturer objectively intends the product to be used "in the diagnosis of disease or other conditions"—something that can be inferred from the functionality of the

device as well as the manufacturer's marketing of it.

This also has an important implication for liability. When the FDA evaluates a device through the most stringent premarket approval or even a less stringent 510(k) clearance, lawsuits claiming the product is defective under state law may be preempted (ie, barred by federal law). But because the same federal law does not apply to prediagnostic technologies that have not undergone FDA review, individuals harmed by these products can attempt to sue manufacturers under state law. But it also means that if the FDA exercises jurisdiction over a manufacturer of a product that has not undergone FDA review but could be classified as a device, the manufacturer could face liability under both state tort and federal law. To date, the FDA has determined that some products marked as prediagnostics are actually devices that must undergo FDA review, such as the Owlet Dream Sock, designed to monitor blood oxygen saturation and pulse rate in infants, but there has been little tort-based litigation thus far.

Liability Under Tort and Contract Law

Under US tort law, manufacturers are liable for injuries caused by defective products. Products can be defective because of defects in their manufacture, design, or marketing (ie, failure to provide adequate instructions on how to safely use the device and any reasonable warnings of the risk of doing so). To win a case, an injured party must show that they used the defective product that injured them in a manner that is reasonably foreseeable or, in some jurisdictions, in a manner that a reasonable consumer would expect. Under contract law, a manufacturer is liable if the product caused the injury during an intended use, one to which the product is ordinarily put or one to which the producer knows it will be put.

Courts have not resolved these issues for prediagnostics and health-related technologies. SeizAlarm, for example, claims to be the "#1 rated seizure detection mobile app" but also notes on its website that "SeizAlarm does not convert your iPhone or Apple Watch into a medical device and is not intended to be used in the diagnosis, monitoring, prevention, or treatment of disease." If a person uses this product thinking it will provide diagnostic-type information about when a user is likely to experience a seizure and is injured when it fails to detect one, use may be foreseeable, the person's expectations may be reasonable, or the use was an intended use. Although relevant, these kinds of disclaimers do not by themselves insulate companies from liability or FDA enforcement. For example, state tort law may look to how consumers actually use the product to determine liability.

Physicians also may encounter unresolved (liability) questions when a patient brings them information from a prediagnostic product, particularly when the device or application uses artificial intelligence or other opaque technology. It will be difficult for most physicians to interpret the meaning of a particular cough pattern, biodata, or a (seizurelike) movement pattern recorded by a prediagnostic product without knowing more about the methods and reliability of how the product collects data or transforms those data into outputs. This concern is most pronounced for physicians in the acute care setting but also exists for any physician using the information.

Concerns about data quality also will be raised in litigation by manufacturers and physicians as a defense to tort and contract claims, often focusing on the role of the user in generating data. For example, Hyfe requires users to initiate a session and then ambiently collects data whenever the application is running, which may include environments ill suited for accurate data collection. Manufacturers may argue that the user was at fault because they incorrectly collected or inputted data. When physicians are involved in interpreting information from prediagnostic products, manufacturers may claim that it was the physician who made a mistake. The physician, however, may argue that the prediagnostic product was not reliable enough to be used in treatment determinations, creating a liability morass from which the plaintiff may emerge without compensation.

Potential Solutions

There are several ways to address these issues, each with limitations. For instance, states could make a series of legislative changes. Legislatures could carve out safe harbors for physicians whose patients provide them with data from prediagnostic products, just as some states have limited liability for emergency medical technicians, or even risks presented by certain activities operated by important state industries (such as skiing in Utah). However, it may be difficult to crisply define "prediagnostics" as a statutory category.

A related but perhaps more feasible solution would be for states to adopt language specifying that, for liability purposes, physicians who receive data from a prediagnostic product should treat that information like any other patient self-reported symptom in the scope of their diagnostic work. State legislatures could also adopt a presumption against physician liability when relying on a prediagnostic wearable or other health-related product or a presumption against allowing the data from the prediagnostic product into evidence in cases alleging that physicians inappropriately relied on that data. Such a presumption could be overcome by providing evidence showing the product is reliable when used consistently with the way the injured consumer used it. However, it may be difficult for plaintiffs to overcome that presumption if the information needed is tightly controlled by the product manufacturer. More generally, it may be difficult to get state legislatures to act in this area.

Beyond legislative intervention, because courts often look to custom as evidence of the standard of care—and sometimes as determinative of it for physicians—best practices developed by physicians could help shape liability determinations when they inevitably arise in the courts. For example, courts could incorporate statements of best practices on the use of prediagnostic information developed by physician organizations to help establish the appropriate legal standard governing physician conduct.

Additionally, public regulators such as the Federal Trade Commission and states' attorneys general could vigorously enforce existing laws against manufacturers of prediagnostic products that advertise in a misleading manner or otherwise violate state unfair and deceptive trade practices laws. Although potentially useful, this approach may be limited by the First Amendment's protection of advertising as "commercial speech."9,10 Also, a market-based approach, such as Consumer Reports, is also possible. However, prediagnostic manufacturers may not want such third-party evaluation and might also be concerned it would invite closer scrutiny from regulators.

Prediagnostic products and other health-related applications are bringing exciting technologies directly to consumers and mesh well with the goal of meeting patients "where they live," sometimes literally. But these products also present a context that is rife with legal uncertainty. For these products to achieve their full potential, the legal system and physician leaders must start filling some of these gaps related to the use of these products, especially when it comes to liability.

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Recurring Resources

Medical Stop-Loss Providers Ranked by 2021 Annual Premium - Over $26.8 Billion

Source: MyHealthGuide, 6/30/2022

The *Medical Stop-Loss Provider Ranking* has been updated based on 2021 Annual Premium. In addition, Rankings from prior years are incorporated into a single table. Click below to view full listing with premium: *The Medical Stop-Loss Provider Ranking*.

View full listing of stop loss carriers

- The top 87 stop loss providers are ranked.
- The *Medical Stop-Loss Provider Ranking* table data reflect Direct Earned Premium from the "Accident and Health Policy Experience Exhibit" ("Supplemental Pages, Insurance Expense Exhibit" section) of publicly available Statutory Reports filed annually by each insurance carrier.

Stop Loss Premium Growth

Stop Loss premium based on 2021 annual premium is **$26.883.898** (thousands), a 79.2% over 2016

annual premium of $15,004,224 (thousands) for a compounded annual rate of 12.4%.

Top 10 and 20 Percent of Total 2020 Market

There is further consolidation of stop loss premium among the top 10 and 20 stop loss carriers when compared to prior year.

- Top 10 stop loss providers ($19.1 Billion) compose 71.2 % of the total market ($26.9 Billion)
- Top 20 stop loss providers ($23.3 Billion) compose 86.7 % of the total market ($26.9 Billion)

Changes for 2021

In the new 2021 ranking compared to 2020, there were

- 23 providers that did not change their ranking position,
- 49 providers moved up in the ranking,
- 15 providers moved down in the ranking,
- 0 providers are new to the ranking, and
- 5 providers dropped out of the listing.

Top 20 and Ranking Changes

The top 20 stop loss providers based on 2021 annual stop loss premium:

1. Cigna
2. UnitedHealth Group
3. Sun Life Financial Inc.
4. CVS Health Corp.
5. Anthem
6. Tokio Marine HCC
7. HCSC
8. Voya Financial Inc.
9. HM Insurance
10. Symetra
11. Humana
12. Blue Cross Blue Shield of SC
13. QBE
14. W. R. Berkley Corp
15. Fairfax Financial (C&F Ins)
16. Swiss Re
17. Western & Southern Financial
18. Blue Cross Blue Shield of MI
19. Nationwide
20. Wellmark

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Upcoming Conferences

October 6, 2022 *- 2 pm - 3 pm ET, 11 am - 12 pm PT*
Achieve compliance with the price transparency tool requirements on time, accurately, and with minimal lift presented by zakipoint Health. Join **Sean Garrett**, COO of PLEXIS Healthcare Systems, serving the healthcare payer space for over 24 years, as he speaks with **Ramesh Kumar**, host of the *"Voices of Self-Funding"* podcast and CEO of zakipoint Health. Ramesh will share practical tips from his experience launching his cost estimator tool with multiple PAs, integrating various data elements.
Information and Registration

October 9-11, 2022
SIIA National Conference & Expo presented by The Self-Insurance Institute of America (SIIA). The world's largest self-insurance/captive insurance industry event will be back with its traditional, fully in-person format. JW Marriott Desert Ridge Resort & Spa, Phoenix, AZ. **Registration**.

October 25-28, 2022
WLT Software Announces 2022 Annual Client Conference: *Havana Nights.* WLT looks forward to hosting Clients, Partners, and Sponsors during four days of education, networking, and Havana Fun! Our conference is the perfect opportunity to gather together to share all the new capabilities and functionalities of our systems, attend system training, one-on-one sessions, meet with WLT Software staff and partners, and provide feedback during the Client Roundtable. Sponsorship opportunities are available. For more information or to register, contact **Joe Torina** at jtorina@wltsoftware.com or 727-282-1325.

November 7-9, 2022
22nd Population Health Colloquium, a hybrid onsite conference and Internet event presented by Media Partners: Harvard Health Policy Review, Health Affairs, Inside Health Policy, Accountable Care News, Medical Home News, Population Health News and Population Health Journal . Keynote by **Andrew M. Slavitt, MBA**, General Partner, Town Hall Ventures & Chair, United States of Care. Loews Philadelphia Hotel, Philadelphia, PA. **Information and Registration**

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January 23-24, 2023
2023 Onsite Employee Health Clinics Summit. The Leading Forum on Building & Expanding On-Site Health Clinics – Incorporating Strategies that Reduce Costs, Ensure Employee Satisfaction and Positively Impact Patient Behavior. Hilton Scottsdale Resort & Villas, Scottsdale, AZ. **Information and registration**.

July 17-18, 2023 - In person
HCAA's *TPA Summit 2023 presented by Health Care Administrators Association*.. Hyatt Regency, Dallas, TX. **Information**

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