

Risk and Actuarial Services to Self-Funded Health Care Plans – User Perspective



By Carlton Harker, FSA, MAAA

Introduction

This Article discusses the developing changes in the ways by which risk and actuarial services are being acquired and provided to self-funded health care plans. Such services exclude workers' compensation and retiree life reserves. The topic is presented in three parts: (a) the changes, (b) their reasons and (c) user interest.

The reader is urged to think of risk and actuarial as *two-sides of the same coin*; also, that a work-product may (a) consist of computations with attestation or (b) a document (in any format) without attestation. As used herein, *Professional* means a risk expert or actuary.

Changes

The changes are in these areas: (a) the work-product, (b) scope of services, (c) technology, (d) modified division of labor, (e) new sights and sounds.

Work-Product

A *Work-Product* is a document, opinion or certification (with or without an attestation) that is (a) computer-prepared, (b) structured/formatted as to input, output and pricing (i.e., no billable time) and (c) significantly broader and deeper in scope than is traditional.

Several features of the model work-product of interest are these: (a) a statement that the attesting *Professional* is a fiduciary with respect to such work-product and will act and expects to be treated accordingly, (b) a PDF link to the declarations page of the *Professional's* E&O policy, (c) an Addendum A setting forth the relevant entered data/documentation, (d) an Addendum B displaying the essence or details of the computations and (e) a clear statement identifying both the engager and the data-enterer. Also, the work-product should be (a) practically

instantaneous, (b) highly accessible, (c) secure and confidential, (d) user-friendly (e) in total conformity with both the letter and spirit of all of the rules and standards of the American Academy of Actuaries (Academy).

Scope of Services

Acquired services are of two types: (a) risk-related (not requiring attestation) and (b) actuarial-related (requiring attestation). Examples of risk-related services include (a) underwriting analyses, (b) feasibility studies of all types, (c) provider-network studies and (d) documents of all types. Examples of actuarial-related services include (a) claim reserves, (b) Monte Carlo simulations (e.g., assessment of the economic value of stop-loss, risk-fluctuation studies and benefit-content measurements), (c) funding and COBRA factors, (d) feasibility studies of the Medicare Part D subsidy, etc.

Technology

The great advances in cybernetics and information technology are generally known. Less known (but also significant) are the developing advances in mathematics (stochastic modeling, Monte Carlo simulating, predictive modeling, data-mining, and robotics, e.g.).

Several years ago, the Summary paper of a meeting on the *Interplay between Mathematics and Robotics* sponsored by the National Science Foundation set forth the following paragraph: "In the future, robotic technology will serve as an interface between the emerging distributed computing and information networks (i.e., the World Wide Web) and the physical world, particularly households and *Business Environments*".

Expected in the near future will be the *Professional* with a dedicated Website, managing all types of documents, work-products, databases, computer programs, etc., all con-

trolled by a Web-embedded robot (in effect) thereby servicing multiple users simultaneously and proactively and overcoming time and distance at dramatically reduced costs.

Modified Division of Labor

It was not too many years ago that the *Professional* was dominant in all of the three functions that comprised the preparation and delivery of the service – namely, the (a) consulting, (b) the data-handling and (c) the computations. Increasingly, it can be expected that the three functions will be handled somewhat differently: (a) the consulting will primarily be done by a vendor or practitioner, (b) the *Professional* will remain dominant in the computations and (c) the data-handling will be shared as facts/circumstances suggest. This modified division of labor is necessary if the reasons referred to in the Introduction are to be realized. Note: the obligation of the attesting actuary to assume the final responsibility for the reviewing of the inputted data or documentation is not transferable.

New Sights and Sounds

Examples include the following: (a) expanded employer databases that might permit more incisive group underwriting thereby opening up new doors to supplemental self-funded benefits with modest employer contributions, (b) practical administration of self-funded death and LTD benefits, (c) expanded availability of risk and actuarial work-products to a wider market at a reduced cost.

Reasons for the Changes

The reasons for the forthcoming changes, above-discussed, are these: (a) our Trade and Commerce Laws, (b) *MetLife v. Glenn*, (c) Enterprise Risk Management (ERM), (d) national mandate to reduce health plan costs, (e) E&O liability issues, (f) *going green* and (g) portents of the future.

Trade and Commerce Laws

The meaning of the Commerce Clause in our Constitution was defined by our Trade and Commerce Laws, and further clarified by many Supreme Court decisions. Briefly, competition must not be impeded (directly or otherwise) and trade must be carried out fairly. Some court decisions imply that "every business and profession is *obligated* to seek and offer the better and cheaper product or service and to do so fairly". This obligation applies to the Professional who should respond accordingly.

MetLife v. Glenn

In this decision, the Supreme Court held that where an ERISA fiduciary issue was involved, a litigant with even a *potential* for conflicted interest, should be *handicapped*, so to speak, by the court in its review. The thoughtful *Professional* might well ponder this potential problem. It appears reasonable for the prudent Professional to be on the safe side and declare in the work-product that such person is, in fact and in action, a fiduciary with respect to such work-product. This declaration implies the absence of any conflicted interest. The desired result in so doing is (a) to avoid a conflicted interest in the first place but (b) in the event of a litigation, to always qualify for the highest standard of review.

Enterprise Risk Management

Enron, Global Crossing, et al. gave us *Sarbanes-Oxley* which gave us ERM which mandates (among a great many *do's and don'ts*) that, to the extent practicable, an estimate by the *Professional* should be made by a *probabilistic* and not by a *deterministic* method. The *Professional* should not opine that "the claim reserve is \$X" but rather that one "may be Y% confident that the correct claim reserve will prove out to be in the range of \$X-A to \$X+A". Such *Professionals* are obligated to honor this higher standard at least where it is appropriate and practical.

It would be the consensus of vendors and practitioners to self-funded health care plans that the ERM requirements are impacting their practices noticeably. In fact, being able to comply with the letter and spirit of ERM has become a competitive advantage and vice versa.

National Mandate to Reduce Health Plan Costs

Nearly 30 years ago, I authored the text *Cost Containment of Health Care Benefits* that dealt with the *first generation* of such activities. I am as concerned now as I was then with the needless high cost of health care plans. It is commendable that our government leaders are speaking out with respect to this problem. We should all help, to the extent possible, to lower health plan costs. The changes suggested in this Article will do so not only directly but indirectly in two ways: (a) increase the work-product role of the independent contractor and (b) permit employees to work at home with minimal supervision.

Professional Liability Issues

Granted, we live in a litigious society, but is it not incumbent upon all of us to act so as keep such conflicts to a minimum? This was one of the reasons that some of the changes discussed herein will be forthcoming: (a) having a work-product that is complete, easily audited and transparent, (b) declaring oneself to be a fiduciary and acting accordingly, (c) relying on, or cooperating with, others who are better able to consult or assist with the handling of the data or documentation and (d) linking the actuary's E&O Declarations Page to the work-product.

Going Green

By this we mean that a conscious effort should be made to achieve the maximum results with the least amount of energy.

Portents of the Future

Current wisdom is that regardless of the final outcome of our ongoing health reform adventures, the demands for

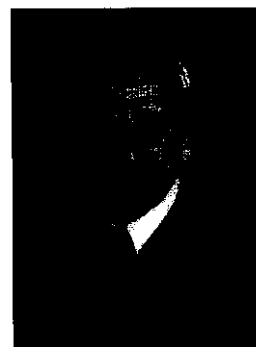
Professionals will be increased, perhaps beyond the supply. This said, the changes discussed herein will be forthcoming of economic necessity.

User Interest

Each of the users in the following five categories have one or more reasons for seeking the services of the *Professional*: (a) plan fiduciaries (plan sponsor, MEWA, e.g.), (b) insurers (HMO, stop-loss carrier, MGU, e.g.), (c) vendors (TPA, software developer, provider network, e.g.), (d) practitioners (consultant, broker, e.g. and (e) accountants and attorneys.

Such user may acquire the work-product (a) for its direct use or (b) as an independent check/balance to a work-product previously-acquired from another *Professional*. Such user may opt to be (a) its own consultant and/or (b) its own data-enterer subject to any professional standards set by the *Professional*.

Carlton Harker, FSA, MAAA is a well known and respected member of the self-funding community and has been an active participant in the Self-Insurance Institute of America's educational programs for many years. In addition to authoring numerous books on a diversity of subjects related to self-funded health care, Carlton has appeared as a speaker and panel member at various industry educational functions. Harker has appeared as an expert wit-



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