ERISA Advisory Council

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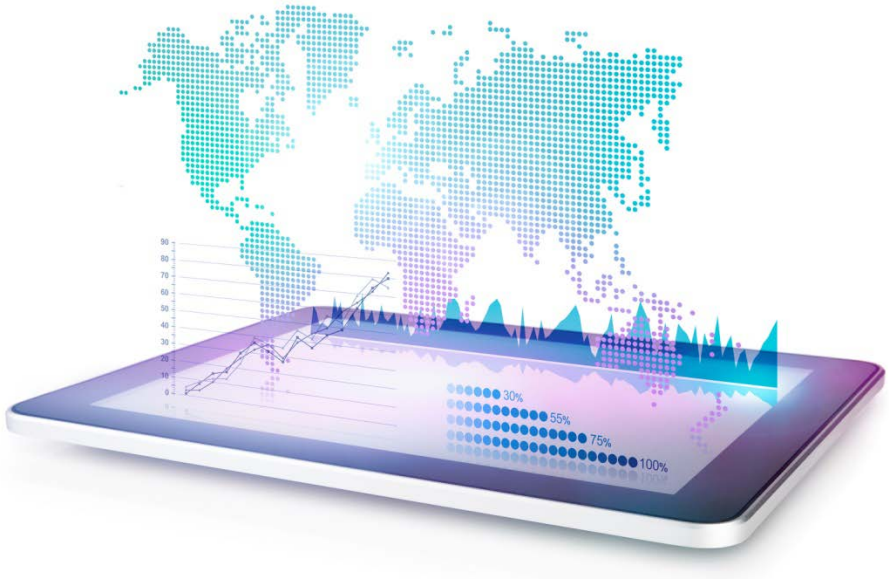
Segal Select Insurance

Cyber Liability—What Is It?

- Preparing for the likelihood that “sensitive information” or “proprietary information” will be improperly handled or disclosed
  - “Sensitive Information” or “proprietary information” generally consists of either
    - Personally Identifiable Information (PII), or
    - Protected Health Information (PHI)
    - Specific national or state laws broadly define these terms
- Specific national or state laws establish breach event responsibilities and liabilities
- For some ERISA benefit plans, foreign laws, such as Canada, may also be applicable



Why Is It Important?

Cyber threats:

- Are not going away
- May capture major media attention
- Cyber threats will increase and become more sophisticated

Cyber breaches can be disastrous at many levels

- For the individual, whose information has been breached
- For the entity
  - As it investigates, corrects, and complies with applicable laws
  - In fines, penalties, and corrective actions that may result
  - In the form of Reputational Risk

What Can You, a Plan, Do?

Apply the Risk Management Model:

- Identify risks
- Manage and mitigate risks
- Transfer any remaining know and unknown risks

Other Steps

- Establish support and need at the Board of Trustees level
- Establish a Cyber “team” and “plan”
  - For the “team” consider a trustee sub-committee consisting of the Plan Administrator, IT, and legal counsel
  - For the “plan,” consider
    - Best practices
      - » These will continuously evolve
    - Identify who does what and when
    - Employee education and accountability
    - Testing
    - Periodic review and updates

Anticipate rather than React

How Do I Identify the Risks

- Ask questions
- Research and education
  - Many vendors and websites are now available as resources
- Talk with legal counsel, IT, your insurance broker
- Identify all applicable laws
  - Federal and State
- Perform a risk analysis on a regular basis
  - This is also a HIPAA security rule administrative safeguard requirement

How Do I Mitigate Risks

Understand your data

- What PII and PHI do you have?
  - Is there any other data that might qualify as information needed to be protected? For example, do you have any Canadian data? Other proprietary information (trade secrets)
- Where is it stored?
- Who has access?
  - Goal should be “minimum necessary access.”
  - If vendors, what contractual provisions have been negotiated? Have you assessed vendors security program and controls?
    - Remember—you are responsible for your vendors.
- How is it protected?
- How long to you keep data?

In mitigating risks, IT “solutions” such as software, firewalls, etc. may/do exist

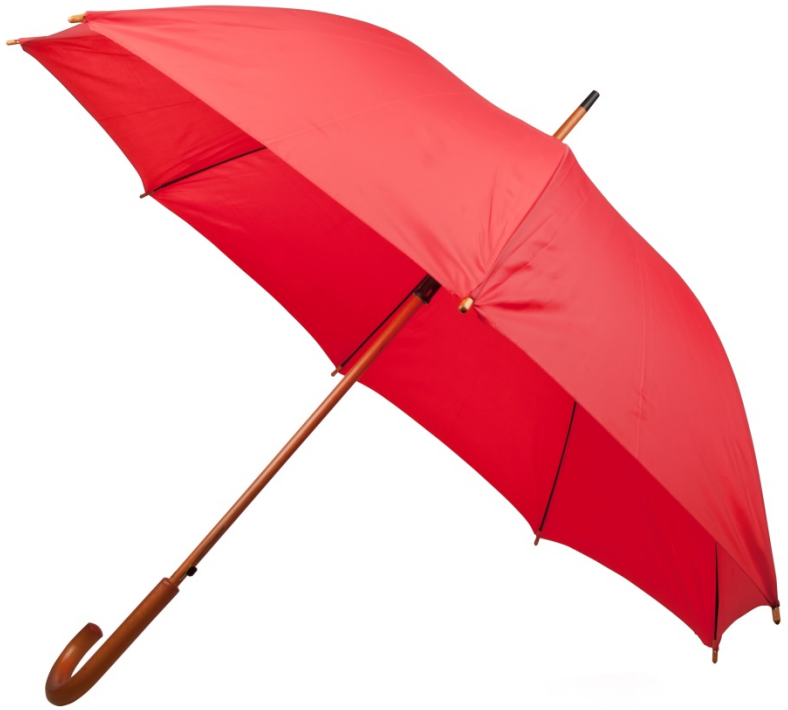
- IT staff and/or vendors are critical in this process

What is the Value of Transferring Risks?

- It is a critical step in the Risk Management Module.
- It can help balance costs
  - Elimination and/or mitigating involves scalable costs
  - At some point, transference may be more economical
- Vendor contracts are both a type of mitigating and transferring risks
- Insurance is the ultimate transfer and safety net
  - It is designed to cover both known and unknown risk issues

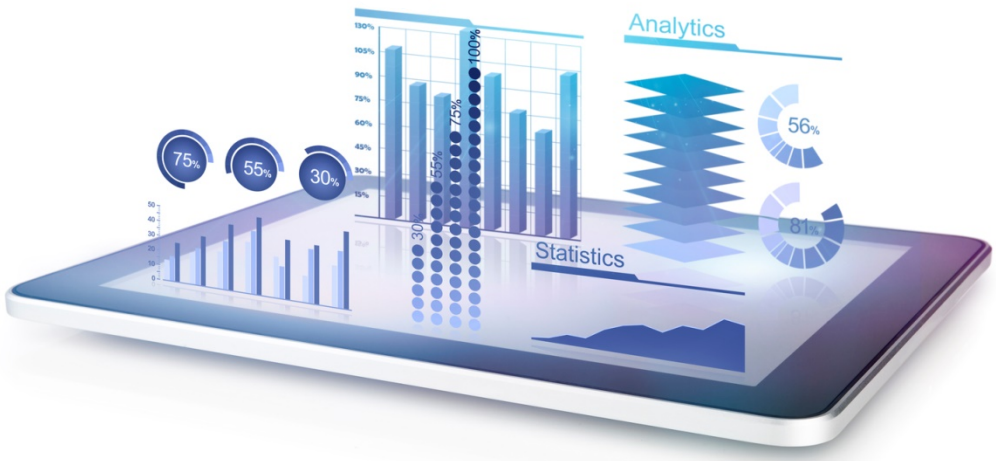
Insurance

- Policy language and scope of coverage vary between and among insurance carriers
  - Policy language evolves over time
  - Currently, carriers are interested in writing this coverage
- Insurance carriers may come in and exit this insurance coverage, cyber liability insurance, based upon its experience with an individual client or the overall “book of business”
- Their “underwriting information” focus varies



Insurance—Points to Consider

- What limit of liability should be purchased?
  - Is it one aggregate limit or do separate limits of liability exist?
- What is the scope of coverage?
- How are claims handled?
- When and how should a claim be notified?
  - Don’t wait until you need it
  - Learn how to maximize and leverage the policy before you need it



Recommendations/Items for Consideration

Can the DOL clarify whether ERISA pre-emption applies?

Can the DOL provide either:

- Regulations that will create a single, national breach reporting standard for all employee benefit plans
- Guidance that will provide trustees and administrators better clarity regarding:
  - Whether cyber risk security is a trustee priority or not?
  - If yes:
    - Just how much of a priority is it?
    - Are there certain minimum steps that should be taken?
    - Consider a framework mandate or guidance
    - Finally, as ERISA mandates trustees try to minimize administrative expenses,
      - Should cyber liability insurance be considered?
      - Will the cost of cyber liability insurance be a reasonable plan expense?
      - Given the given the growth, prevalence, and potential disastrous consequences of a significant cyber breach event, could the lack of cyber liability insurance ever be considered a breach of fiduciary duty?

Cyber Liability Insurance—Points to Consider

- Many plans are reluctant to buy it
  - Need for this insurance is not properly understood
- Other insurance policies do not fully respond
- Scope of cyber liability insurance, especially the first party services and coverages, is not properly understood
- Cost of a broad $1 - $2-million “safety net” policy is reasonable and competitive

Reasons Given for Not Buying Cyber Liability Insurance

- It is not required
- It is too new
  - We have no evidence it will work and pay claims
- We have never had a claim
- We are not subject to HIPAA/HITECH
- We use a TPA
- We have strong security systems in place
- We have strengthened our vendor contracts
- It is too expensive