Should Obesity Be Considered a Disability?

by Patricia Bailer, VP, Head of Claims, Gen Re, Portland

Despite the focus it’s been given by world leaders in the medical community and government, obesity remains a global health issue. As of 2014, nearly 40% of adults worldwide (18-years-old and over) were overweight—of those, 13% were obese. Unfortunately the goals set at the 2011 UN Summit to get a handle on the rising obesity rate by 2025 do not seem feasible, with rates continuing to climb each year.

Obesity’s impact can be seen in chronic conditions that arise as a result of it—from heart disease and stroke, to type 2 diabetes and even certain cancers. With mortality and morbidity issues that may result from these conditions, how can insurers remain vigilant when it comes to risk management, and what potential implications result if obesity becomes classified a disability?

1 WHO, 2015

Since the landmark 2014 European Court of Justice (ECJ) ruling that classified obesity as a disability, several articles have been written about it and the potential response of U.S. courts. Even though the plaintiff in the European court case believed he could perform the duties required in his own occupation, the European Court of Justice ruled obesity can be classed as a disability.

Since the case was sent back to the Danish court for reconsideration, no decision has been rendered and one can only speculate its outcome at this time. And, although the background of the decision is labor law-related and the case reads more like the implementation of our ADA act, it begs the reader to ponder if fallout could occur. Gen Re continues to monitor this case.

There are, however, U.S. court cases already dealing with this very issue: for example, Melvin Morriss, III v. BNSF Railway. Mr. Morriss claimed his potential employer reneged on a job offer because of his weight. His build was 5’10”, 282 pounds when he applied for work at BNSF Railway. He asserted that he passed all required tests to become a machinist...
During my career, I have had the opportunity to work in a variety of countries (Canada, U.K. and the U.S.) and in a variety of industries (reinsurance, life insurance and pension consulting). My employment with Manulife, Towers Perrin and Gen Re has afforded me a breadth of roles and experiences. It has left me with an uncomplicated perspective on our industry and I believe Gen Re has it right—maintain underwriting discipline and get paid commensurately for assumed risks. In conjunction with this, we also want to help our clients think differently about the risks challenging our industry.

In this edition of The Bulletin we aim again to stir your thoughts on important subjects. Our cover story discusses obesity, a global health issue, and we discuss the problem from a claims angle. We also direct you to our blog where you can find information on what is trending from both a local and global perspective (see page 9).

The excitement around Decision Analytics is palpable as the industry strives to make use of the volume and velocity of big data. Behavioral Economics is a related field, and you can see examples of how this applies to our industry in Marcy Updike’s conversation with behavioral scientist Dr. Namika Sagara on page 7.

There will be a lot of interesting changes to our industry in the coming years and, although I will be retiring from Gen Re on March 31, I do expect to keep engaged through consulting or board work. And I know that Gen Re will continue to successfully meet the challenges of the industry under the new leadership of Vincent DeMarco and his team. I wish all of you the best of the holiday season and a prosperous new year.

“Every goodbye is the birth of a memory”  
– Dutch Proverb
and received a conditional job offer from the company. The offer hinged on his passing a physical exam. He agreed to the physical exam, which revealed he was morbidly obese. The company's medical officer determined Mr. Morriss was not qualified for the position due to health and safety risks associated with his obesity. Thus the company rescinded the conditional offer. Of note is the fact that Mr. Moriss claimed he had no impairment limiting his ability to perform the job and did not require accommodation, and he is now urging the Eighth Circuit to revive his case.

In another case, Pennington v. Wagner’s Pharmacy Inc., a management resource told the plaintiff's supervisor to fire the plaintiff because of her appearance; she was morbidly obese. The Kentucky Supreme Court ruled that simply because she was obese did not mean she was disabled.

Clearly divergent views exist on whether obesity is a disease or disability, and the results of the recent SERMO survey suggest a drastic difference of opinion between survey participants in the United States and Europe. The survey polled 2,238 doctors for their opinion on whether obesity should be considered a disability.

Although a difference of opinion is at hand regarding whether obesity is a disability, it can be acknowledged that obesity is a complex interaction of genetic predisposition, social, cultural and environmental influences. Generally, we liken obesity to smoking (tobacco) use. We know smoking or use of tobacco may contribute to poor health, such as COPD, cancer, emphysema and many other conditions, and may lead to individuals becoming impaired and often times disabled per policy terms. Obesity has a similar impact on health, such as cardiovascular disease (including stroke, heart attacks, etc.), diabetes, orthopedic (joint disease), respiratory difficulties and psychosocial problems, yet obesity rates continue to increase in an overwhelming fashion and unfortunately are not isolated to any one geographical location or age bracket. The implications are significant when you consider that a child with at least one obese parent has a 50% chance of becoming obese and the chance increases to 80% if both parents are obese.

**Prevalence of Self-Reported Obesity Among U.S. Adults**

by State and Territory, BRFSS, 2014

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1 Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

*Sample size <50 or the relative standard error (dividing the standard error by the prevalence) ≥ 30%

Source: CDC
Compelling statistics from the Gallup-Healthways Well-Being Index make the argument that the impact on the U.S. appears far greater than any other country since 62.8% of all American adults are overweight or obese.  

Consistently, we hear lifestyle intervention with behavioral changes is the first line of treatment. Diet and medical intervention have historically had varying degrees of effect on obesity. A recent article in The Times suggests more than “1/5 of obesity is genetic meaning millions of obese individuals may not be able to overcome their weight problems through diet and exercise alone.” The article references a study that analyzed DNA from people worldwide. It concludes, in part, that obesity may be caused by DNA rather than lifestyle. When obesity is genetic, personalized therapies and drugs may be more effective. While exercising and eating healthy are still the best protections against becoming excessively overweight, from a claims risk management perspective it’s key to understand the psychosocial impact of the disease and its corresponding impact on comorbidities. Treatment approaches—including cognitive behavioral therapy and not simply urging patients to exercise more, eat carefully or resort to gastric bands/surgeries—must be considered.

Todd Witthorne, Kevin Binham and James Guszcza’s article “Tipping the Scales” reminded us of the burdens obesity exerts on the workforce, “As workers get heavier so does their impact on healthcare and workers’ compensation.”

“Claims management requires an understanding of the psychosocial impact and corresponding co-morbidities of obesity.”

Impact on Claims Management
A diagnosis alone does not guarantee the existence of functional loss that limits or prevents work. The plaintiff in the 2014 ECJ case felt his weight had no impact on his ability to perform his occupation as a nanny. Not all individuals with a BMI in the obese or morbidly obese category file claims (e.g., Disability, Critical Illness, LTC, waiver of premium, health/medical reimbursement or even death claims). Gaining greater insight into their motivational levels is key to the effectiveness of claims management. We believe if one has the “disability mindset” or a mindset of entitlement, claim incidence may increase and claim durations may be prolonged. If the U.S. federal government adds obesity as an automatic or compassionate allowance within the Social Security Disability Insurance (SSDI) program, absent any other comorbidity, claims incidence may increase. Such a development would also add stress to the solvency of the already strained disability insurance trust fund. Furthermore, changes in the healthcare insurance law and shifting priorities of employee benefits may also trigger change.

Claims management requires an understanding of the psychosocial impact and corresponding co-morbidities of obesity. It’s important that carriers prepare themselves to deal with these troubling statistics from a Medicare Supplement, Disability, Critical Illness, Long Term Care and Life perspective. Claims risk managers may be challenged in how they evaluate these potential claims and need to be more aware of the new treatment regimens that continue to arise for those who are obese.
**Policy Language**

States may challenge the application of existing policy language. While the list below is not all inclusive, the following existing disability policy provisions and definitions could be tested:

- Sickness/Illness
- Appropriate care and treatment
- Reinstatement
- Total Disability
- Occupation (regular/Own Occ and Job versus Occ)
- Complications of pregnancy
- Cosmetic (elective) care
- Physician
- Pre-existing condition
- Presumptive
- Rehabilitation
- Mental/Nervous
- Contestability/Incontestability
- Recurrent/Concurrent Disability

If policy language is indeed tested, what does this mean to claims professionals? Claims risk managers may be asked to:

- **Heighten their awareness and understanding of conditions, social norms, medical advances and technological breakthroughs.** The manner in which occupations are performed is ever changing and if claims professionals don’t stay on top of the advances both from a technology and treatment perspective, claim decisions could be inaccurate and claim durations unnecessarily prolonged.

- **Engage risk resources in a heightened fashion.** Comorbid claims require multi-disciplinary approaches to manage them (e.g., psychological vs. physical, and if a claim involves psychological mental/nervous components; does this fall under an otherwise limited benefit period or is the condition claimed organic in nature?).

- **Evaluate medical evidence relied upon at the time of underwriting and time of claim, but also perhaps evolve to compare and contrast BMI classifications at appropriate intervention points and possibly at the time of reinstatement.** This will alert claims professionals to apply policy provisions with heightened consistency and draw their attention to the potential of pre-existing conditions, contestability concerns, etc. It will also help to reinforce milestones achieved in the disease’s progression. If the BMI decreases, how does this correlate to one’s symptomatology from both a frequency and severity perspective? Again the idea is to implore the claims organization to ensure their professionals understand how to manage risk versus simply processing claims in a transactional fashion.

**Notes on U.S. Definition of Obesity**

In June 2014 the American Medical Association (AMA) decided to classify obesity as a disease. The Centers for Medicare & Medicaid Services followed suit, as did a healthy debate about whether any one gene imparts obesity since over 250 genes have been identified, and gene expression of obesity is still in the infancy stages.

Obesity has been linked to damage of the mitochondria responsible for energy regulation and metabolism.

Linking obesity to one’s DNA supports the argument that obesity is an illness. It’s also a co-morbid condition and/or contributing factor that may cause disability, not the only factor.
> Shift the way appropriate care and treatment is evaluated, especially if policy language changes to better support statutory and regulatory requirements for obese individuals. Treatment notes should include addressing the causes of obesity (diet, inactivity, emotional issues, medical conditions, genetics, etc.) and exploration of varying treatment modalities (e.g., lifestyle change or medication) as a means for appropriate care and treatment to affect the direct results of obesity and the complications of the disease process. Treatment regimens of the future are multidisciplinary focused and include cognitive behavioral therapies.

> Rely more on rehabilitative provisions within policies as a means to aid claimant’s return-to-work efforts; otherwise, potential mandates under Employment Law may need revision (e.g., ADA).

> Better understand the overall mindset of an obese individual and the corresponding effect on one’s motivation to work or return to work.

> Better understand fall-out from increased scrutiny on this issue that may orient employers toward being more cautious about hiring decisions.

The list could go on and on, begging claims organizations to invest in their talent management to ensure they are readying themselves for this shift.

What’s Next?

How the U.S. federal government will define obesity is yet to be determined. It has been reclassified as a diagnosis. A diagnosis, in and of itself, does not speak to whether an individual is experiencing a functional loss that limits, restricts or prevents the performance of the occupation. A Danish government spokesman echoed this distinction when the EU decision was rendered, “[T]oday’s judgment does not change anything and does not mean someone can claim benefits simply for being obese.” It does, however, open the door—and potentially the flood gates—to those that interpret this differently. We need to get our arms around this topic globally, since the problem will not simply go away.

In Our View

We remain confident that claim professionals in the industry are evaluating each claim on its own unique set of circumstances. A diagnosis, in and of itself, does not speak to whether an individual is experiencing a functional loss limiting, restricting or preventing the performance of the occupation. As such, we will keep a keen eye on additional court decisions and their corresponding impact, if any, on our industry.

About the Author

Pat Bailer is Head of Claims and Vice President in Gen Re’s North America Life/Health division. She is responsible for claims management leadership for Gen Re’s Disability, Life, Critical Illness, Long Term Care and Medicare Supplement products.
Like Big Data, behavioral economics is getting a lot of buzz in the business world these days. For those looking to better understand how buying decisions are made—and therefore how to effectively influence them—this field offers valuable insights for those looking to improve business results. While behavioral economics has become even more popular through bestselling books such as *Predictably Irrational* and *Nudge*, it’s yet to become a mainstream concept in a world as logical and slow to change as insurance. However, for several reasons the insurance industry can no longer afford to ignore it.

**What Is Behavioral Economics?**

Type “Behavioral Economics” into any online search engine and you’ll find a number of references, enough to fill your day reading. Perhaps the simplest description is from Investopedia, which defines it as “the study of psychology as it relates to the economic decision making processes of individuals and institutions.”

The basic design is different from traditional economics in that it starts with the belief that individuals are irrational. Behavioral scientists conduct experiments to uncover the how and why of this irrational behavior. The ultimate goal of behavioral economics is to find ways of “nudging” consumers toward a specific behavior in order to achieve desired results.

**Why It Matters to Insurance**

To better understand how this field of research could be useful for insurers, I sat down with a behavioral scientist, Namika Sagara, PhD. Dr. Sagara specializes in research and application of academic insights from the field of behavioral economics, marketing and consumer psychology to real-world practices.

This topic has been around for a long time. It’s not new to you or to others in the field. But why do you think it’s getting so much attention now?

Before behavioral economics became popular to understand market behaviors, traditional economics was what people turned to. And although they did a great job in certain market segments, we started to realize that it comes with the limitation as well.

For example, take the financial crisis in 2008. This is a great example of how we overestimated how rational people are. Or think about the health crisis in the United States. Some experts would argue that about 40% to 50% of these issues or problems are due to behavioral challenges, such as not eating healthy foods or not exercising on a regular basis.

So if people are more the way traditional economists describe, which is they are rational; they are always rational, and they have unlimited resources, such as time, effort or willpower to do what’s best for them. But we start to realize, okay, that’s not the case. That’s when we turn to behavioral economists because we appreciate and understand that people are sometimes irrational and that people sometimes need a little bit of help to do what’s best for them.

Can you give a few examples of some industries that have embraced this study?

Sure. One is government. Recently the Social and Behavioral Science Team, which is a federal program under the National Science and Technology Council, conducted a study to see if they could use tactics from behavioral economics to increase the accuracy of the sales figures in the report that the vendor is reporting.

Under certain contracts, the vendor has to do two things. One is to report the sales figures to the government, and the other is to pay a small fee based on those self-reported sales figures. The higher the sales figures are, the more money the vendor has to pay. It’s important for the government to know exactly how much the sales were.
Originally what the vendor had to do is to go online, fill out the form and say how much sales they had, and then sign the form at the end saying, “The information I provided here is accurate to the best of my knowledge.” But what the Science and Behavioral Science Team did is to move that signature box up to the top of the form. So now when the vendor goes online, they have to first attest that the information that they will be providing is accurate. This simple tactic resulted in an additional $1.6 million in the first quarter they implemented it.

What would you say are some important concepts that the insurance industry really needs to focus on when it comes to behavioral economics?

I think one is information overload and choice overload. Well, traditional economists would say there’s no such thing as information overload or choice overload, because the assumption is that people can take in all the information, they can study all the information and reflect that into their decisions to make the best decision possible. However, I think you and I know that people can be overwhelmed quite easily.

We as behavioral economists understand that. And we know that when people are overwhelmed, people tend to do two things. One is to do nothing. For example, there are actually up to 169 Obamacare plans available in one county. Can you imagine going through their choices? When people are confronted with 169 plans that are pretty complicated and pretty consequential, what they do is just say, “Okay, this is a little too much. I can’t make a decision.” And maybe they say, “I’ll come back later,” but often later never comes around.

And another thing people tend to do when they’re overwhelmed: They tend to make decisions based on heuristics. Heuristics is a behavioral term for mental shortcut. So if you’re making a decision based on heuristics, you’re making decisions more or less randomly, or you’re making a decision based on what you think other people are also doing.

Are there any tactics or advice you can give an insurance company about how it may be able to overcome some of those challenges?

For the overload of information and choices, try to keep everything as simple as possible. And I know this is easier said than done, because you feel like consumers should be given all this detailed information and all these variety of choices, and you feel like—especially in the insurance industry—that consumers should be spending a lot of time researching and learning about each product before they make decisions.

However, the reality is that consumers are not doing that, because they don’t have unlimited resources, as traditional economists would argue, and because they don’t have all this time and effort or the willpower to actually go through those processes to make the best decision possible.

For those interested in hearing more about how behavioral economics can be used in the insurance industry, follow our “Life/Health General Industry” blogs—sign up at genre.com/follow.
Trends to Watch in the Life/Health Insurance Industry

Here are a few key market trends and issues that we’ve been discussing recently on our blog (genre.com/perspective). If you aren’t following us, be sure to sign up at genre.com/follow.

Recent Blog Series

Avoiding Fraud in Life Insurance
Keith Brown, Gen Re’s Chief Life Underwriter, wrote four blogs with tips and red flags to help you monitor life insurance fraud. Visit genre.com/avoidingfraud for some tidbits inside our client-only publication.

Critical Illness Producer Perspectives
Steve Rowley, Senior Account Executive, interviewed CI agents to get their perspective on various aspects of selling CI. This popular series has just wrapped up. See the questions the agents were asked at genre.com/ciproducerperspectives.

Baby Boomers
Jay Curran, Senior Account Executive, highlights information from the latest secondary research on the boomer customer segment, and shares thoughts on how the insurance industry may better meet their unique needs as they navigate their Golden Years. Also, our research presentation is available for download. Visit genre.com/babyboomers.

Millennials
You can find the blogs and presentations in this older series at online as well—Visit genre.com/millennials.

Gen Re Resource Available—Critical Illness

Our annual update of the Critical Illness Insurance Product Development Guide is now available to Gen Re clients. This publication addresses a variety of helpful topics for companies entering the Critical Illness market or updating an existing product.

The introduction includes a high level discussion of CI from a conceptual standpoint:

> What do we mean by “critical,” and how do we define that?

> Can conditions be reliably priced, underwritten, and administered at claim time?

> Is it important to include every trigger that is out there in the market to compete?

> What are the advantage and disadvantages of the various policy platforms?

The guide provides insights on topics such as:

> The public views all cancers as life threatening—How should minor cancers be handled?

> Should a distinction be made between procedures that require major surgery as opposed to a minimally invasive approach?

> What wording in the contestability clause is needed to prevent potential claim manipulation?

In addition to model wording for triggers most commonly used in today’s market, explanatory information and an updated discussion on the rationale for each is provided. The trigger language is developed in conjunction with our medical staff and includes review of various approaches used in the CI market, both in the U.S and internationally. Potential concerns with certain triggers that are becoming more common are also presented.

Other policy features and provisions highlight issues for carriers in the product design process. The continuing evolution of basic policy structure and the different approaches being used are discussed. Various statistics of interest from Gen Re’s Critical Illness Market Survey are included as well.

If you are a reinsurance client and would like to request a copy of the guide, contact Steve Rowley at srowley@genre.com.
Below is a summary of the industry and consortium surveys that the Gen Re Research Center has recently released.

If you would like to learn more about our Research Center, or about participating in any of these surveys, please contact Marcy Updike at mupdike@genre.com.

**2014 U.S. Critical Illness Insurance Market Survey**
This survey provides insight into the state of the U.S. Critical Illness insurance market for 2014, representing companies who are actively marketing a Critical Illness (CI) product, as well as those who are exploring it as a new product offering. This survey covers a variety of topics including plan design, administration, underwriting, claims, product performance and plans for the future. The full report is available only to participating companies.

*Report Release Date—October 2015*

**2015 U.S. Group Term Life Rate & Risk Management Survey**
This comprehensive survey focuses on rates for Employer- and Employee-Paid Group Term Life, as well as AD&D. Companies are provided a unique opportunity to benchmark themselves against their industry peers. The risk management section reviews underwriting and pricing practices, while also covering specifics about how companies handle their ported Life business. In addition to providing responses to address a variety of risk management features, companies are asked to rate 100 sold cases and to experience rate a large case in a “real life” scenario based on details provided. The full report and additional interactive data file are available only to participating companies.

*Report Release Date—November 2015*

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**We Are Traveling—Are You?**

**2016 SPRING MEETINGS**
Below are some upcoming industry events where we are sponsoring or presenting through Spring 2016. If you are attending one of them, we’d like the opportunity to meet with you, or just say hello. View the full list of industry events at genre.com/lhevents.

**2016 MUD (Metropolitan Underwriting Discussion) Group—46th Annual Conference**
1/24/2016–1/26/2016, New York, NY

*Sponsor*
*Gen Re Attendees:*
Joe Atamaniuk
David Chien
Stephane Julien
Gary Kranich
Mark Mahoney
Michele O’Neill
Leanne Russo

*Gen Re Speaker:*
Keith Brown

**ACLI Medical Section Annual Meeting 2016**
2/20/2016—2/23/2016, Houston, TX

*Sponsor*
*Gen Re Attendees:*
Thomas Ashley
Adela de Loizaga Carney

**2016 ReFocus**

*Sponsor*
*Gen Re Attendees:*
Joe Atamaniuk
Keith Brown
Cathy Bierschbach
Vincent DeMarco
Jim Greenwood
Stephane Julien
Mark Mahoney

*Gen Re Speaker:*
Thomas Ashley

**2016 Medicare Supplement Insurance Summit**

*Sponsor*
*Gen Re Attendees:*
Andy Baillargeon
Jay Curran
Vincent DeMarco
Mike Fullerton
Andy Jenkins
Michelle Rossi
Paul Tworog
Steve Woods

*Gen Re Speakers:*
Pat Bailer
Jena Breece
Rob Himmelstein
John Najarian (Committee Chair)
Marcy Updike
Stacy Varney (Committee Chair)

**2016 AHOU—Assoc. of Home Office Underwriters—15th Annual Meeting**

*Sponsor*
*Gen Re Attendees:*
Joe Atamaniuk
Keith Brown
Mike Clift
Joe Curtin
Shelly Duncan
Cynthia Figueroa
Stephane Julien
Mark Mahoney
Cecil Ramotar

*Gen Re Speaker:*
Thomas Ashley
**People News**

**Pat Bailer,** Head of Claims, assumed responsibility for leadership representation on the AHIP and ACLI Disability panels.

**Atreta Patel** and **Nathan Mecray** of the Individual Life department in Stamford have both received the ASA designation and were promoted to Actuarial Associate.

**Mary Margaret Cummings** joined Gen Re’s Claims Department in October as a Claims Executive in our Portland office. She has worked nearly 20 years in the disability insurance industry, most recently having been employed with Aetna as a Senior Disability Risk Manager. Prior experience includes managing IDI, Association, and LTD claims through Disability RMS, IDR and UNUM. Mary Margaret attended the University of South Florida and obtained TPA licenses and ICA and HIAA certificates.

**Richard Lanney** recently joined Gen Re’s Claims Department as a Senior Benefit Consultant in our Portland office. He worked for more than 30 years in the Individual Disability claims area for Lester L. Burdick, Inc (Claims Manager) in Andover, MA and most recently for Disability RMS (Westbrook, ME) as a Senior Claims Examiner. He resides in Peabody, MA and is a graduate of Boston College.

**Danny Marsili,** ACS, ALMI, joined Gen Re in November as a Senior Underwriter in the Individual Life department in Stamford. Danny comes to us from AXA-Equitable where he most recently was Assistant Director. He has over five years of underwriting experience and resides in Feeding Hills, MA. Danny is a graduate of Westfield State College.

**Aaron Nishimura,** FALU, FLMI, ACS, joined Gen Re in October as a Senior Underwriter in the Individual Life department in Stamford. Aaron earned his FLMI designation with distinction and comes to us from Symetra Life Insurance Company where he most recently was a Senior Underwriting Consultant. He has over 12 years of underwriting experience and resides in Seattle, WA. Aaron is a graduate of Western Washington University.

**Victor Roque,** FALU, FLMI, ARA, joined Gen Re in October as a Senior Underwriter in the Individual Life department in Stamford. Victor earned his FALU designation with distinction and comes to us from RGA where he most recently was Senior Underwriting Consultant. He also has direct side experience having worked with Banner Life, Metropolitan Life and Scottish Provident UK in Edinburgh, Scotland. Victor has over 15 years of underwriting experience and resides in Clearwater, FL. He is a graduate of the University of Aberdeen in Scotland.

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**Endnotes (Obesity Article)**


5. BMI refers to body mass index.


7. Ibid at Note 1.