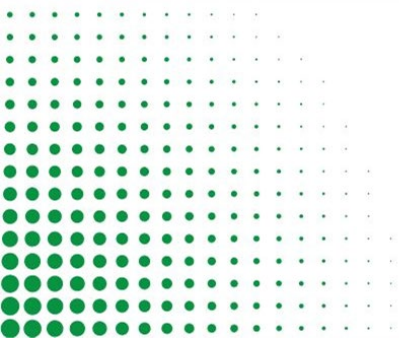


GAG CLAUSE, DATA, AND FIDUCIARY RESPONSIBILITY

March 14th, 2024



TODAY'S PRESENTER

KYLE MCLEMORE:

SVP, Operations

kmcmore@bsicorporate.com



BSI

CORPORATE BENEFITS

Meeting all your employee benefit needs

AGENDA

- CAA OVERVIEW
- GAG CLAUSE PROVISION
- EMPLOYER RESPONSIBILITY
- CARRIER RESPONSIBILITY
- UNDERSTAND YOUR DATA

HOW THE CAA WILL WORK

The Consolidated Appropriations Act

The Goal of the CAA legislation is to improve transparency in four key areas:

Obstacles removed to
be a good Fiduciary



1

Removal of Gag
Clauses From Service Provider
Contracts

2

Disclosure of Direct &
Indirect Compensation from All
Service Providers

Expectations of the
Fiduciary



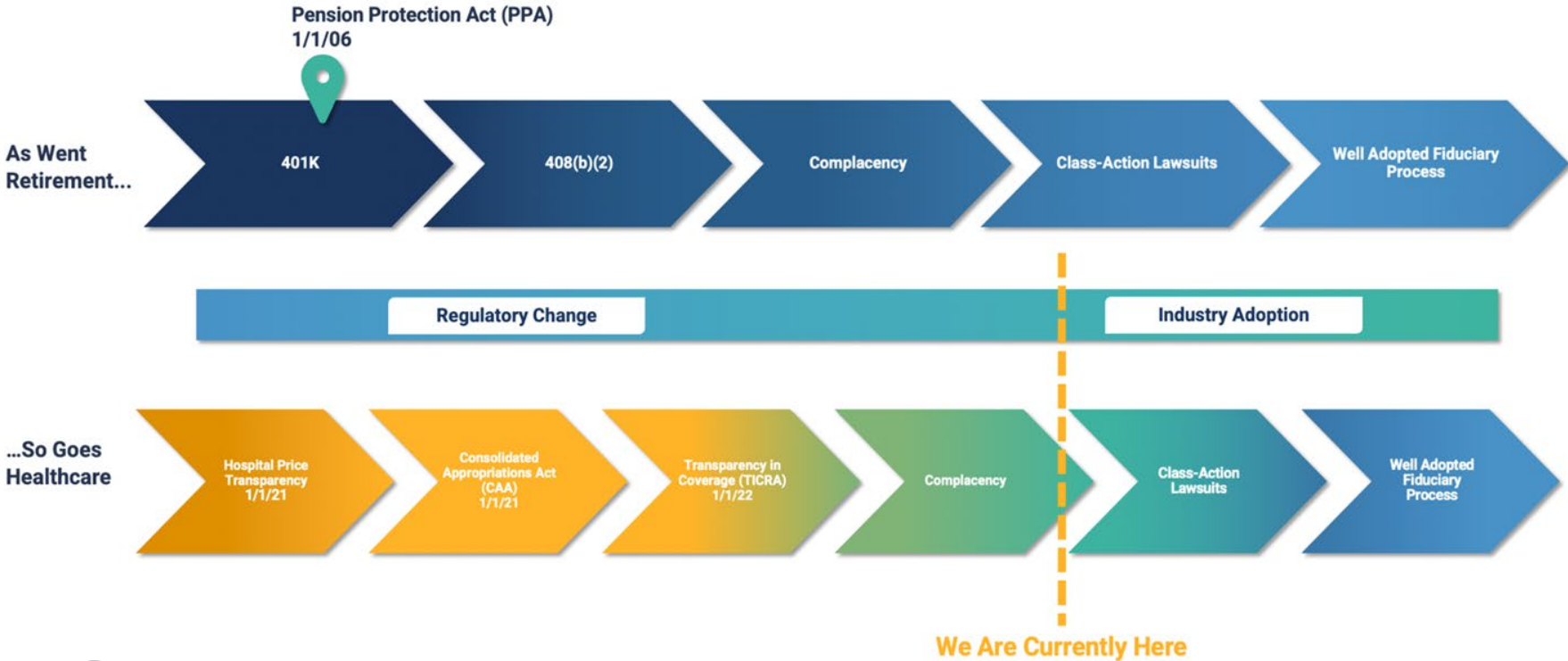
3

Establish Reporting
Requirements for Pharmacy &
Prescription Drug Disclosures

4

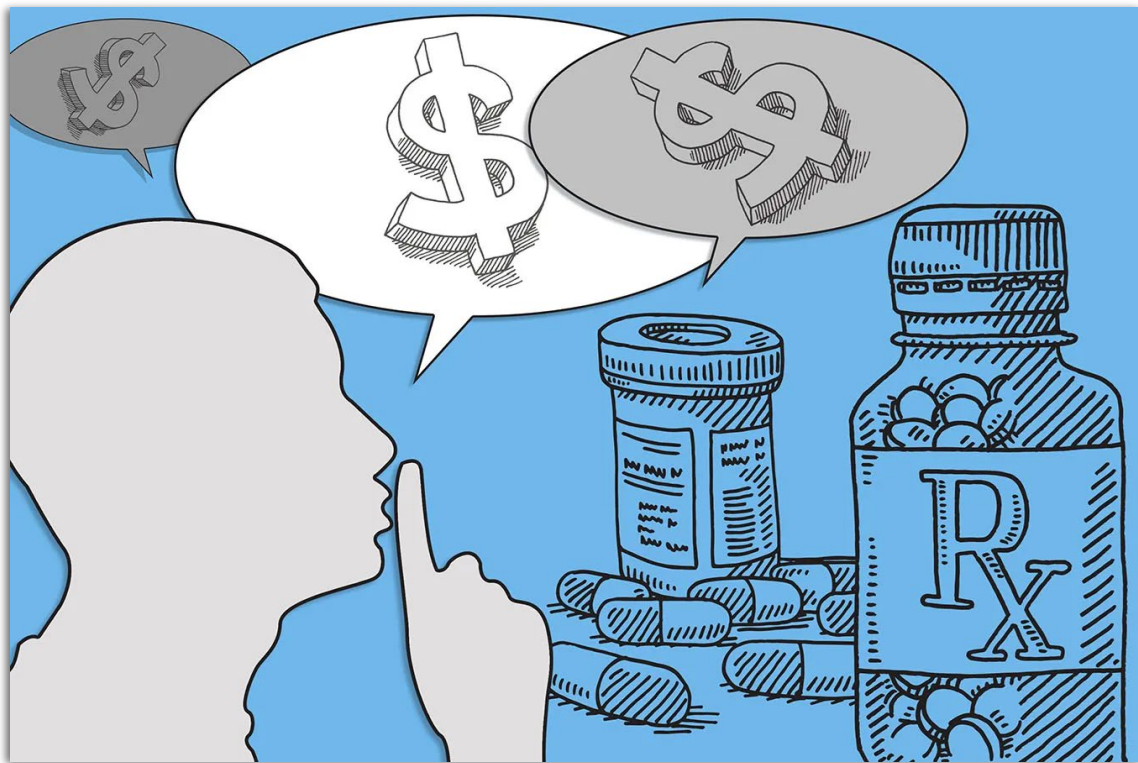
Required Parity in Substance
Abuse & Mental Health
Benefits

HOW LEGISLATION IS DRIVING TRANSPARENCY



GAG CLAUSE

Overview



WHAT ARE GAG CLAUSES?

DIRECT GAG CLAUSE

- Carrier/TPA prohibitions on using data to “steer” members to lower cost facilities
- Prohibitions or limitations on specific data elements such as financials, claim data, allowed and paid amounts, and any other data element that is de-identified
- Masking or limiting sharing of mental health or substance abuse data

INDIRECT GAG CLAUSE

- Prohibiting ability to benchmark or comingle claims data with other companies
- Prohibiting using data to develop or use any type of pricing transparency tool
- Prohibiting claims data from being used in health care comparison databases
- Prohibiting using claims to do cross-carrier comparisons

CAA GAG CLAUSE ATTESTATION

- First attestation was due for group health plans by 12/31/2023

GAG CLAUSE PROVISION

ATTESTATIONS FILED 12/31/23 EACH YEAR

Applies to ALL group health plans.

Penalty up to \$100 per day, per affected individual

- ✓ Own your data with **no restrictions** on legal use
- ✓ Receive ALL claim and encounter data **including allowed amounts, service codes, and provider information**
- ✓ **Freely benchmark**, compare providers and analyze data for plan design, plan administration, financial, legal, and quality improvement activities
- ✓ Share or direct the **share of data** with your business associates

Action: Attest that **no direct or INDIRECT restrictions** exist with you or your business associates

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/faqs/aca-part-57.pdf>

FAQS ABOUT AFFORDABLE CARE ACT AND CONSOLIDATED APPROPRIATIONS ACT, 2021 IMPLEMENTATION PART 57

February 23, 2023

Set out below are Frequently Asked Questions (FAQs) regarding implementation of title II (Transparency) of division BB of the Consolidated Appropriations Act, 2021 (the CAA). These FAQs have been prepared jointly by the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments). Like previously issued FAQs (available at <https://www.dol.gov/agencies/ebsa/about-ebbsa/our-activities/resource-center/faqs> and <http://www.cms.gov/ocio/resources/fact-sheets-and-faqs/index.html>), these FAQs answer questions from stakeholders to help people understand the law and promote compliance.

Prohibition on Gag Clauses on Price and Quality Information in Provider Agreements

Internal Revenue Code (Code) section 9824, Employee Retirement Income Security Act (ERISA) section 724, and Public Health Service (PHS) Act section 2799A-9(a)(1), as added by section 201 of title II (Transparency) of division BB of the CAA, prohibit group health plans and health insurance issuers offering group health insurance coverage from entering into an agreement with a health care provider, network or association of providers, third-party administrator (TPA), or other service provider offering access to a network of providers that would directly or indirectly restrict a plan or issuer from—

(1) providing provider-specific cost or quality of care information or data, through a consumer engagement tool or any other means, to referring providers, the plan sponsor, participants, beneficiaries, or enrollees, or individuals eligible to become participants, beneficiaries, or enrollees of the plan or coverage;

(2) electronically accessing de-identified claims and encounter information or data for each participant, beneficiary, or enrollee in the plan or coverage upon request and consistent with the privacy regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Genetic Information Nondiscrimination Act of 2008 (GINA), and the Americans with Disabilities Act of 1990 (ADA), including, on a per claim basis—

(i) financial information, such as the allowed amount, or any other claim-related financial obligations included in the provider contract;

(ii) provider information, including name and clinical designation;

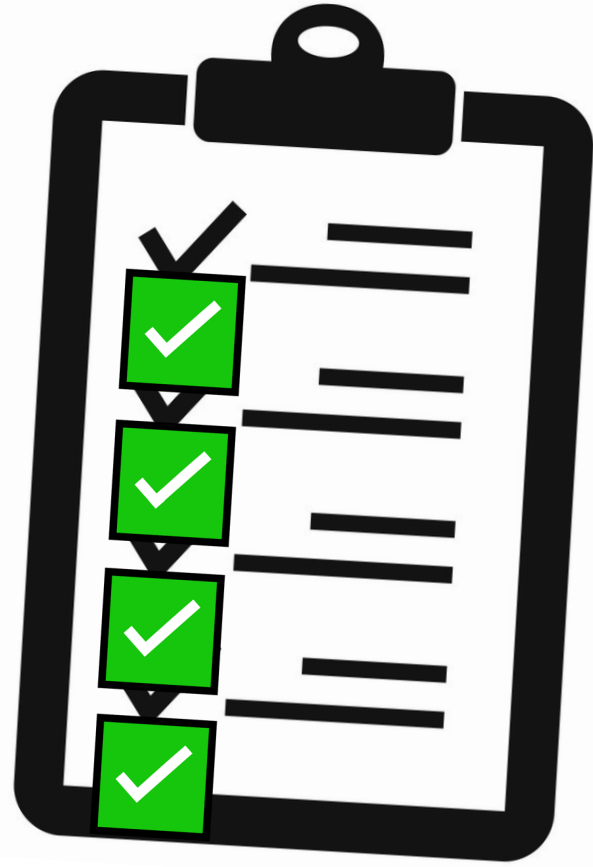
(iii) service codes; or

(iv) any other data element included in claim or encounter transactions; or

(3) sharing information or data described in (1) and (2), or directing such information be shared, with a business associate, as defined in 45 CFR 160.103, consistent with applicable privacy regulations promulgated pursuant to section 264(c) of HIPAA, GINA, and the ADA.

EMPLOYER

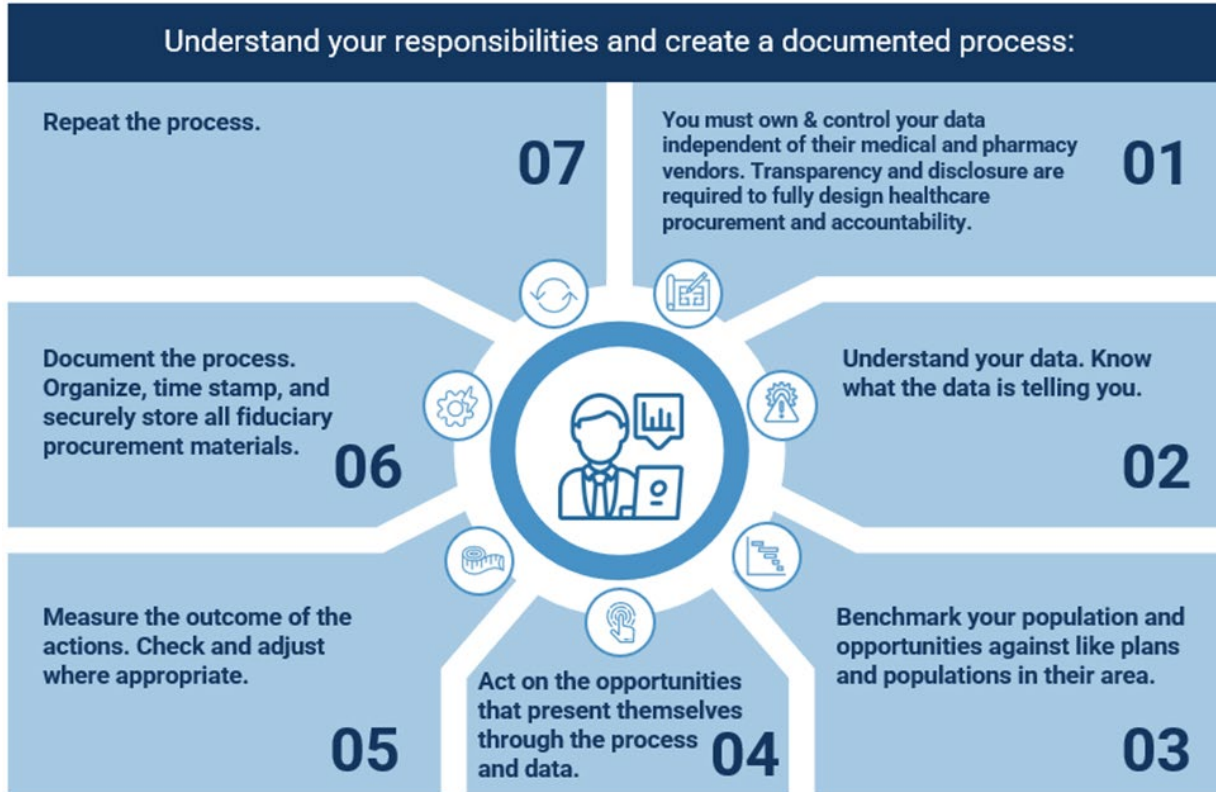
Responsibility



YOU'RE THE FIDUCIARY



EMPLOYER RESPONSIBILITY

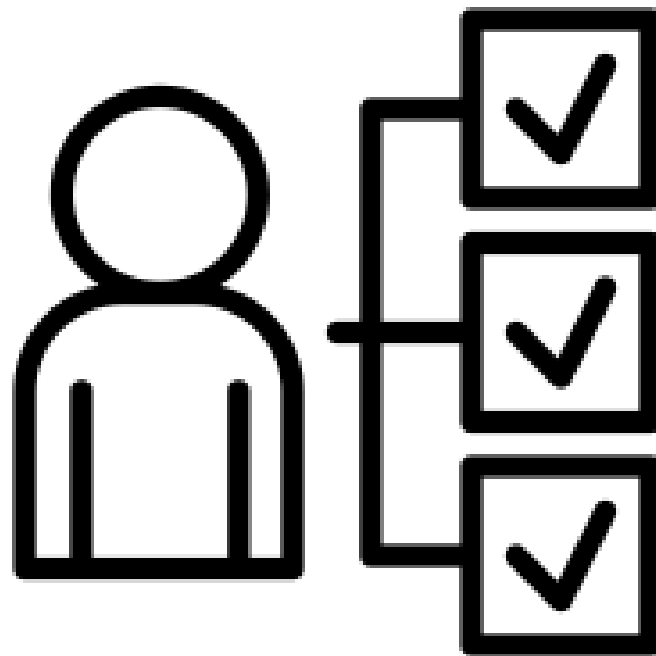


The Path To Fulfilling The Fiduciary's Responsibility:

- ☑ DOL, Health and Human Services, and Treasury are committed to transparency and disclosure.
- ☑ CAA, TICRA, and Hospital Payor federal regulations make the plan sponsor the fiduciary and give them what they need to be accountable.
- ☑ Work with a reputable vendor that can make this process easy for you.

CARRIER

Responsibility



CARRIER RESPONSIBILITY

- Provide any requested data to you as the fiduciary
- Facilitate data to any third party vendors employers choose to work with to understand their data
- Provide any necessary data elements to successfully run RFP or carrier performance provisions such as:
 - Allowed and paid amounts
 - RX claims, data and financial elements
 - Site of care data
 - De-identified data on individual claims

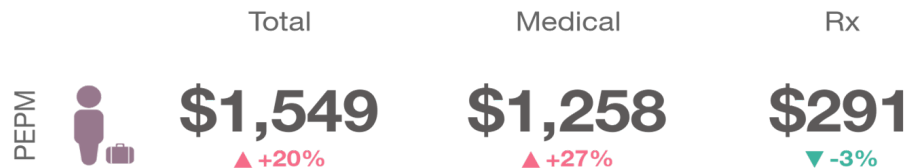
UNDERSTAND YOUR DATA



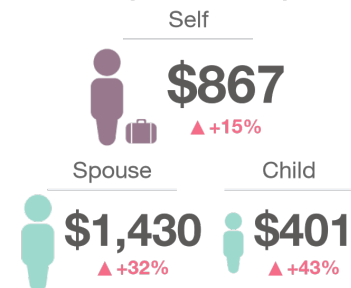
HOW DO YOU COMPARE?

2023

Cost Per Month



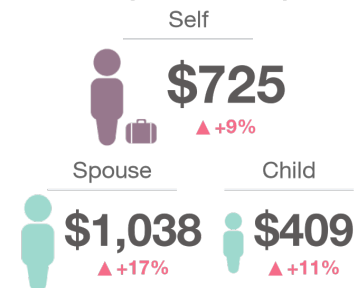
PMPM by Relationship



2023 Benchmark



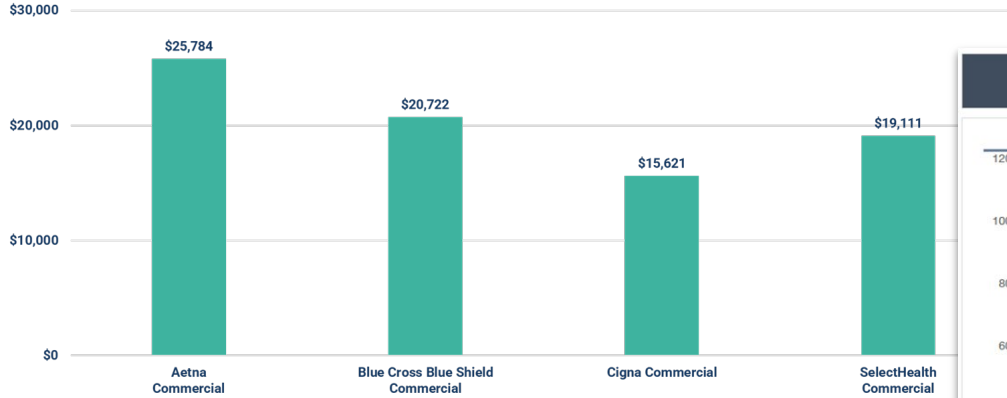
PMPM by Relationship



NETWORK CHOICE

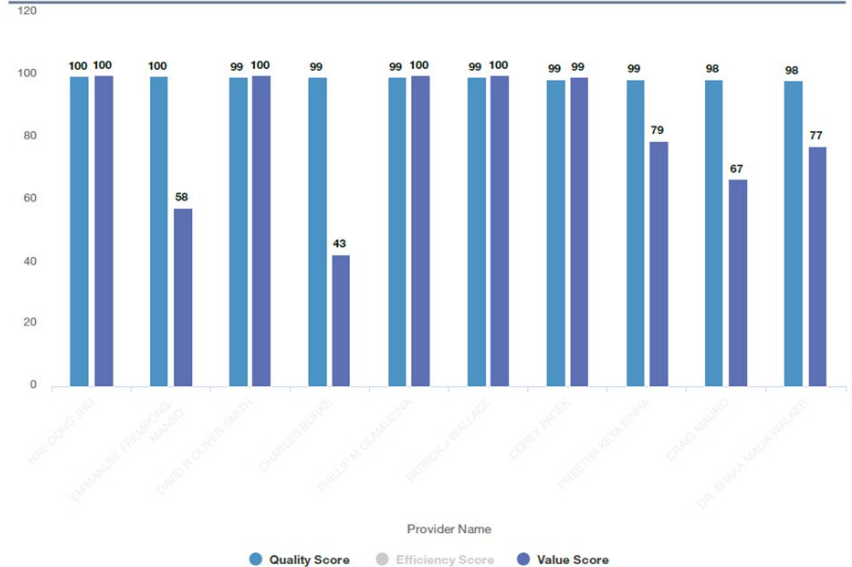
Isolate the most common claims and choose the network with the best performance

Knee Replacement



Quantros Quality Data - Surgical Orthopedics

Top 10 Providers



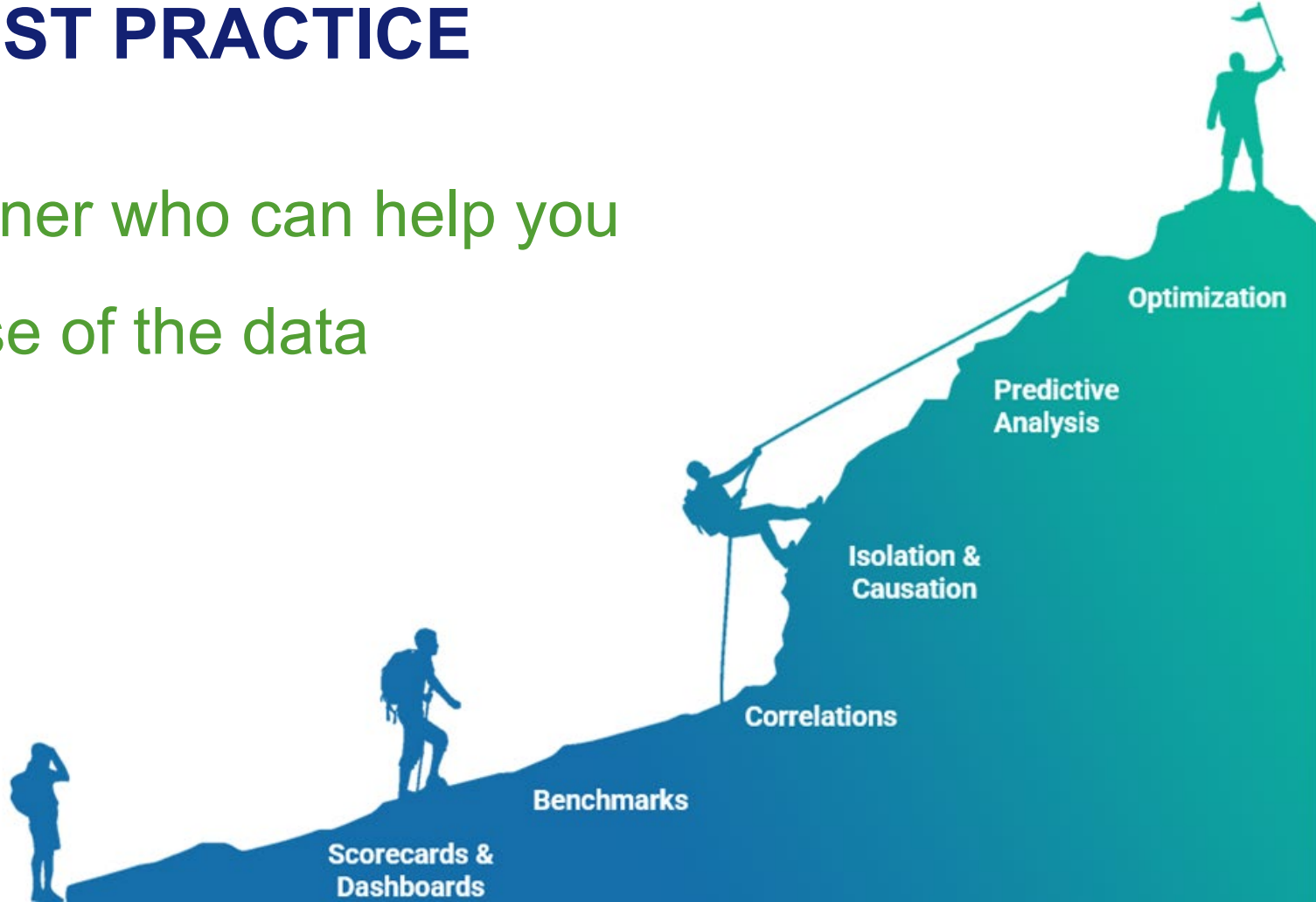
IDENTIFY

Understand where your plan may need improvement

Potential Savings Opportunities			
Improve Rx Discounts \$401,000		Increase GDR \$172,000	
<i>Improve RX contract</i>			
Unenrolled Claims \$113,000		Site of Care \$27,000	
Out of Network \$13,000		ER Avoidance \$9,000	
Inappropriate Med. Svcs. \$8,000	Duplicate Claims \$100	Overage Dep. /w Claims \$100	ESRD \$0

DATA BEST PRACTICE

Pick a partner who can help you
make sense of the data



GUIDANCE

- This is new and everyone is pushing to comply
- Don't get lost in the weeds - data big picture
- Don't bury your head in the sand
- Data is power

ACTION ITEM:

Understand how your carrier, PBM, and other health plan partners are complying with the Gag Clause regulations.