

A CHANGING INDUSTRY: NAVIGATING THE CURRENT (EVENTS)



THE PHIA GROUP

EMPOWERING PLANS

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Specialties:

- Plan drafting, review, analysis, custom amendments
- ACA compliance questions
- Network, provider, stop-loss, client dispute resolution
- ...and so much more

Features:

- Simple submission process
- Same-day quotes in most cases
- Average turnaround of 8 business days
- Flat, transparent fees
- No surprises


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OVERVIEW

- The Rising Costs of Healthcare
- *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*
- *SIIA v. Rick Snyder et al.*
- New Mexico SB 108
- *Bos v. Board of Trustees*

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OVERVIEW

- *Santana-Diaz v. Metlife*
- *Kentucky Employer's Safety Ass'n v. Injured Workers' Pharmacy*
- *Stephanie C. vs. Blue Cross Blue Shield Massachusetts*
- California: Sanctions Sought for Failure to Provide Records
- How to Protect the Plan

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RISING COSTS OF HEALTHCARE

- 5 Million New Employee Lives Coming to Self Funding in 2016
- **“Obamacare patients sicker and pricier than expected”**
Source: CNN Money article by Tami Luhby (3/30/16)
<http://money.cnn.com/2016/03/30/news/economy/obamacare-patients-blue-cross-blue-shield/index.html>
- Study shows that “Obamacare members have higher rates of costly illnesses such as diabetes, depression, hypertension, heart disease, HIV and Hepatitis C”
 - Cost of care: 22% higher than self-funded health plan members
- Adverse Selection
 - Those who have coverage under the ACA are those who *needed* coverage but didn’t have it
- United Healthcare: expects to lose \$1 billion in 2015 and 2016
- BCBS of NC: \$282 million in losses in 2015; raised rates by 32.5% in response
- Both are considering leaving the ACA marketplace in 2017



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RISING COSTS OF HEALTHCARE

Why are Hospital Bills So High?

- \$57 for a FRED (Fog Reduction Elimination Device: a 2 in. square gauze strip used to wipe moisture from lenses in the operating room)
- \$200 for a bag of IV solution that costs the hospital about 25 cents
- \$985 pair of scissors (not a billable item)
- \$1,028 for a 1oz. container of contrast solution (which is unbundled)
- \$11 for a mucous recovery system (a box of tissues)
- \$350 for an IV kit (unbundled, and costs the hospital less than \$2)



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RISING COSTS OF HEALTHCARE

Some of the worst offenders:

- Air Ambulance
 - Charges are typically 400%-500% of Medicare allowable rates
- Implantable Devices
 - Devices typically marked up between 500% and 1,000% of cost
 - Some providers get gouged on the procurement side as well
- Dialysis
 - Hospitals typically charge over 800% of Medicare allowable rates
 - Freestanding dialysis facilities: can be *double* that



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MONTANILE

- It has never been more important to be vigilant in pursuing subrogation and reimbursement
- Participants may be able to defeat plans' rights by spending settlement funds as quickly as possible
- To guard against this, plans need to be more proactive in asserting and protecting their rights, and more cases will end up in litigation
- Litigation means costs, and recovery services fees will need to reflect this new landscape



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SIIA v. RICK SNYDER, ET AL.

- Michigan imposed a tax on employers' paid health care claims
- In 2014, SIIA argued that the tax imposes an undue burden on ERISA plans; Appeals court axed that argument
- March 2016: Supreme Court told 6th Circuit Court of Appeals to reconsider in light of the recent Vermont ERISA preemption case (*Gobeille v. Liberty Mutual*)
- How does it affect you?



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NEW MEXICO: SB 108

- Senate Bill 108/a:
 - Removed provision of NM law defining stop-loss as health insurance
 - Allows stop-loss to be issued by P&C and A&H carriers
 - Loss ratios – applicable to P&C?
 - Not a single “NO” vote in the entire state legislature
 - How does it affect you?



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BOS v. BOARD OF TRUSTEES

- ERISA cause of action allowed recovery of attorney fees, but state law cause of action did not
- Employer plead bankruptcy and avoided paying benefit contribution-related debt
- Court: "If an individual is a fiduciary for purposes of ERISA, the individual is also treated as a fiduciary for purposes of federal statutory provision barring debtor's discharge of debts in bankruptcy for fraud or defalcation."
- General rule: employer is not a fiduciary with respect to unpaid contributions
- How does it affect you?



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SANTANA-DIAZ v. METLIFE

- Member's claim denied; administrative remedies exhausted
- SPD provides 3 years to file suit, but EOB was issued without mention of the three-year limitation
- Member sued after four and a half years; plan denied the appeal as untimely
- Court: even if it's in the SPD, ERISA requires that *all* relevant timeframes be written on the EOB; that includes the plan-imposed limitations period
- Result: Failure to include time limitation language on the EOB made it inapplicable
- How does it affect you?



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KENTUCKY EMPLOYER'S SAFETY ASS'N v. INJURED WORKERS' PHARMACY

- Workers' Comp insurer's general policy: members should contact PBM-like entity prior to filling prescriptions; when PBM not contacted, insurers pay pharmacies directly, and claims are then repriced by the PBM and price adjustments are requested
- One pharmacy refused to adjust its prices; insurer carved the pharmacy out of its plan by excluding it entirely
- Workers' Comp Board: Pharmacy's billed charges based on AWP; insurer must pay those charges
- "The fact that KESA is able to obtain a cheaper price by working with (M. Joseph Medical) and its PBMs does not necessitate the conclusion that (Injured Workers Pharmacy) prices, gathered from (average wholesale prices), are not representative of the average wholesale price..."
- How does it affect you?



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STEPHANIE C. v. BCBSMA

- ASA provided BCBSMA with discretionary authority, but that language wasn't in the SPD
- SPD had language providing that BCBSMA made coverage determinations
 - Court: not the same as discretionary authority
- Because the Plan Administrator had no discretion under the SPD language, the court reviewed benefit denial *de novo*
- How does it affect you?



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CALIFORNIA: SANCTIONS SOUGHT FOR FAILURE TO PROVIDE RECORDS

- Years ago, the ACA created the right of external review for certain appeals
- TPAs are not quite familiar with this procedure yet, though...
- Plans and TPAs fined millions for repeated failures to timely provide medical records when requested by IROs
- How does it affect you?



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HOW TO PROTECT THE PLAN?

History: How the PACE Came to Be

PACE: Targets “actual” exposure on final internal appeals (only ones that matter!)

Summary of the So-Called “Issue”

- New Client Demand (**RFPs**)
- New Court Determined **Liability** and **Exposure**

Benefits You are Passing Up by Sticking w/ the **Status Quo:**

- Opportunity to be an **Industry Leader**
- Opportunity to take on **New Lines of Business**
- Opportunity to Create a **New Profit Center** w/ New & Existing Clients

What is **Included?**

- **SPD Review** to Ensure Compliance
- Expert **Legal** and **Clinical** Analysis
- **Facilitation** and **Payment** of **IRO** Reviews
- **Stop-Loss Appeal** Facilitation



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