



**THE
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GROUP**

EMPOWERING PLANS

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**What to Expect in 2019:
Part 2**

December 12, 2018

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Today's Speakers



Adam V. Russo, Esq.
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Senior Vice President & General Counsel



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Phia Certification Has Arrived!

LEVEL 1
PHIA
CERTIFICATION

LEVEL 2
PHIA
CERTIFICATION

LEVEL 3
PHIA
CERTIFICATION

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A Special Shout-Out!

Special Shout-Out to **Elaine Holzhauer**

of


Berkley

Accident and Health
| a Berkley Company

Elaine is an avid fan of our webinars and podcasts!

Thanks for listening!

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Faces of Phia

Joanna Wilmot, PACE Manager – Joanna manages The Phia Group’s PACE service. PACE takes the burden of reviewing final, internal appeals off of the shoulders of self-funded health plans. Joanna leverages her expertise in medical claims processing and her regulatory knowledge when overseeing PACE’s handling of these important appeals. Joanna’s work assures that employers save time and see accurate health claim results.



Katie Delaney, Senior Training & Development Specialist – Katie utilizes instructional design techniques and tools to build learning and development materials for The Phia Group. These materials help train employees to ensure maximum cost-containment efforts and client satisfaction.

Judy McNeil, Customer Service – Judy is responsible for collecting accident-related information to learn if a case has recovery potential. This reduces health plan costs by determining if a third party may be responsible for the payment of specific health claims and allowing for potential recovery.



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Overview

- Last Month's PGC FAQs
- Masters Degree?!
- Appeals
- PPO, RBP, and DPC
- Specialty Drugs
- Fiduciary Concerns
- Stop-Loss & Employee Handbooks

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Last Month's PGC FAQs

- Our ASA specifically says we're not a fiduciary. Is there anything else we need to do to avoid being *considered* a fiduciary?
- What exactly *is* Direct Primary Care?
- What are the ACA's requirements related to coverage of non-network emergency services?
- Are "illegal acts" exclusions always enforceable? When does the "source of injury" rule come into play?

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Masters In Health Benefit Design

First of its kind, offered by the University of Lynchburg

- History & Future of Healthcare, HC Systems, and Insurance
- Fundamentals of the Healthcare Value Chain
- Expensive/Frequent Procedures & Chronic Health Issues
- Managing Primary Care, Pharmaceutical Costs, and Care Coordination
- Health Benefit Design I & II (taught by Phia!)
- Financial Management and Healthcare
- Legal, Ethical and Social Issues in Health Informatics and Health Benefit Design
- Marketing & Promotion: Positioning Yourself in the Market

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Appeals

How do you handle...

- Pre-service appeals?
- Urgent care appeals?
- Post-service appeals?
- Second, final post-service appeals?
- IROs & External Appeals?
- Lawsuits against the Plan Administrator?

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PPO Networks: The Status Quo

Are you looking to maintain the status quo, or...?

- Network access fees going up?
- Is the juice worth the squeeze?
- Does stop-loss “agree” with your network discounts?
- What about claims being retroactively adjusted by providers, past the stop-loss payment deadline?

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PPO Networks: The Status Quo

Is it time for a change in how the plan treats...

- Out-of-network and traditional U&C?
- Wrap networks?
- Carve-outs?
 - Dialysis
 - Specialty Rx
 - Air ambulance
 - Large claims

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OON Claims Processes

A New Approach to OON Claims

- OON Options:
 - Pay U&C or deny (EPO)
 - Noise (a.k.a. balance-billing)
 - Wrap or supplemental network
 - Little noise, most waste
- A New Definition of U&C
 - Reference-based pricing (RBP) for OON only
 - Legal and conceptual differences from “full” RBP
 - DOL’s “adequate network” provisions don’t apply
 - Members keep the network they know and love

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What *is* Reference-Based Pricing?

- It’s easy to think too much about it and make it seem more complex, but...
- RBP is a method of determining an allowable amount
- RBP has no impact on claims or appeals procedures
- No “extra” fiduciary duties involved except for the ones plans have always had with respect to determining U&C

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Different Types of RBP

Payment models

- **“Full” RBP** – no networks, no contracted providers; *all* providers paid at percentage of Medicare, *all* members susceptible to BB
- **Hybrid** – narrow network, physician only network; Fewer claims get balance-billed but generally larger claims are subject to RBP which can lead to more BB overall
- **Direct contracts** – finding local providers that accept reasonable payments; severely cuts down on BB

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Different Types of RBP

Vendor models

- Repricing...and that's it (being left high and dry)
- Repricing, some letters, but no meaningful support
- Repricing, some advocacy, with BB size thresholds
- Repricing, patient advocacy, legal support

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Manipulation of Statistics

- Statistics of the instances of balance-billing are directly related to what initial payment is made
 - For instance, more providers will accept 175% of Medicare than will accept 125%
 - Who chooses that payment – the vendor or the plan?
- Are there thresholds under which an RBP vendor won't touch a balance-bill?
- Question *everything!*

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RBP Litigation

Cases challenging repricers and their processes

California, Colorado, Florida, Nebraska, Oregon, Texas, Utah

Various cases involving:

- Breach of contract (between patient and provider)
- Contractual interference
- Breach of fiduciary duty
- Unlawful trade practices
- Fraud
- Misrepresentation

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RBP Litigation

IHC Health Services Inc. v. ELAP Services (UT) – Survived motion to dismiss.

Salinas Valley v. Monterey Peninsula Horticulture, Inc. (CA) – Awaiting a ruling on a motion to dismiss.

Homestead Hospital, Inc. v. Group & Pension Administrators, Inc. (FL) – Motion to dismiss filed, hearing pending.

Central Valley Ag Cooperative v. Leonard (NE) – Discovery phase.

Lodi Memorial v. Tiger Lines, LLC (CA) – Amended complaint filed.

San Antonio Regional v. DT Carson Enterprises, Inc. Welfare Benefit Plan (CA) – Set for trial July 2019.

Providence v. Mancuso (OR) – Set for trial earlier this week.

Centura Health Corporation v. Agnew (CO) – Remanded to state court; awaiting hearing.

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Direct Primary Care

New Era for Primary Care: *Direct Primary Care*

- Price-transparent and budgeted
- Familiarity with terms of the plan's coverage
- Focuses on cost-effective care
- Steerage to best options with patient needs and plan details in mind
- Telemedicine included?
- The Phia Group's maiden voyage into DPC



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Specialty Drugs: Exclusion?

HIPAA prohibits discrimination on basis of health factors, so excluding drugs for a specific condition may be discriminatory.

“Health factor” includes:

- Health status (Medical condition, including both physical and mental illnesses)
- Claims experience / Receipt of health care
- Medical history / Genetic information / Disability
- Evidence of insurability

A specialty drug carve out which carves out all specialty drugs and doesn't target a specific medical condition or disability may be another option.

Review coverage as distinction between drugs as treatment vs. disease - difference between excluding all drugs for Hep C vs. just the highest cost drug to treat Hep C.

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Fiduciary Duties

Fiduciary Duty – The Issue to Watch

- Fiduciary concerns – focuses on:
 - Botched appeals determinations
 - Prudent management of assets
 - Claims pricing issues
- Can You Outsource Some (Not All) Duties?
- Are fiduciary duties more relevant in the RBP context?



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Fiduciary Duties

Shifting Select Fiduciary Duties

- Claims vs. all appeals vs. final-level appeals
- Which appeals actually matter?
- How do appeals determinations impact employees?
 - HR, PR, water cooler gossip...



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Stop-Loss Policies

Has your plan changed? Is your carrier still a good fit?

- Read the policy.
- **Read the policy!**
- **READ! THE! POLICY!**
- Does the carrier's cost-containment clash with the plan's?
- How do you navigate disclosure forms for new or non-preferred carriers?

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Stop-Loss Policies

Are your stop-loss claims being (and going to be) paid?

- Interesting denial reasons:
 - “Mailbox Rule”
 - Inadequate disclosure
 - Rebates (who receives them?)
 - Unexpectedly applying Medicare coding rules
 - Ignoring PPO contracts to which the plan is subject
 - Applying unwritten U&C definitions

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