




**THE  
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**The Impact of State, Federal Laws, and Current Market Trends on  
Self-Funding**



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## Today's Speakers



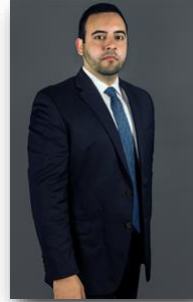
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A Special Shout-Out!

**Special Shout-Out to Sarah-Beth Janssen**

of



***Sarah-Beth is an avid fan of our webinars and podcasts!***

***Thanks for listening!***



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## Faces of Phia

**Mattie Sesin, Director, Recovery Services** – As Director of Recovery Services, Mattie oversees the team that is focused on maximizing recoveries for The Phia Group's clientele. With an emphasis on efficiency, Mattie helps our clients continue to offer robust benefits while effectively containing costs.



**Andrew Silverio, Esq.** – Whether in a memorandum, letter, email, or phone call, Andrew provides valuable assistance to The Phia Group's clientele when they are in need of support. Andrew also assists and mentors other employees of The Phia Group as they also provide assistance to our clients; one of Andrew's primary goals is to ensure that our clients receive consistent and high quality work from all of our attorneys and consultants.



**Naviana Duterlien, Compliance Analyst** – As a compliance analyst, Naviana ensures that The Phia Group maintains compliance with federal and state regulations as well as executive orders and statutes. She solidifies company policies while making certain that procedures are being followed by all Phia employees. In addition, Naviana trains the entire Phia Group staff on annual updates and performs internal audits.



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## Overview

- Problem, Purpose, Process
- Last Month's PGC FAQs
- The Assault on Obamacare & What It Means for You
  - Update on [Texas v. United States](#)
  - Contraceptive Mandate Blocked
  - Reassigning Section 1557
- Final Rule on HRAs
  - A Disruption to Our Industry?
- Surprise Billing Legislation
  - Federal Proposals
  - State Proposals (TX, NY)
- What's the Matter with Washington State?
- Healthcare 2020 – The Three Camps



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## Problem, Purpose, Process

**The Problem – Health Care Costs Too Much** and The Price is Increasing; Employers are Forced to Offset Costs Through Higher Co-Pays and Deductibles

**Our Purpose – To Make Health Benefits Affordable** for Employers and Employees

**Why? – Because Hard Working Americans Deserve Access** to High Quality, Affordable Healthcare



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## Last Month's PGC FAQs

- **What should plans consider when implementing a telemedicine benefit?**
  - Incorporation into the general health plan
    - A “standalone” benefit?
  - Complications arise when the plan is a HDHP with an HSA
    - Tax implications
- **Can I extend coverage to “1099 employees”?**
  - What is a 1099 employee?
  - Accidental MEWA creation
  - COBRA complications
  - Employment relationship may be established



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## Last Month's PGC FAQs

- **Do I have to count patient assistance amounts toward a patient's annual out-of-pocket maximum?**
  - Copay coupon programs, explained
  - Recent CMS guidance (2020 Benefit and Payment Parameters) created a new "exception" to the rule
  - Examine these guidelines and how patient cost sharing is being tracked to ensure compliance



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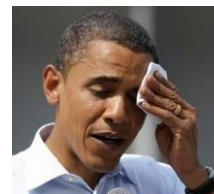
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## The Assault on Obamacare, Explained

### Remaking Health Insurance Without Repealing the ACA

#### Three-Pronged Assault

- Executive Orders
- Administrative Actions
- Court Battles



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## An Update on Texas v. United States

### Recall → Texas Federal Judge Declared ACA Unconstitutional (Dec. 2018)

- Texas v. United States
  - Case Brought by 20 States in February 2018 (after Trump tax bill)
  - ACA Faced Constitutional Challenges Before
    - NFIB v. Sebelius (2012)
      - Legal Exercise of Congressional Tax Power
      - Everyone Pays a Tax (Unless They Buy Insurance)
- Plaintiff's Argument
  - No Mandate, No Payment...No Payment, No Tax!
  - Most Serious Legal Threat to ACA Since NFIB
- Court's Decision → No Longer a Tax, So Invalid
  - Mandate Isn't "Severable" from the ACA
  - If One Part is Illegal – It's All Illegal

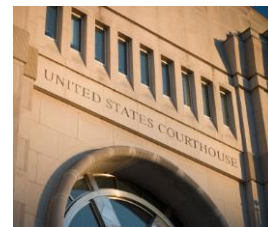


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## An Update on Texas v. United States

- No Injunction Issued, Judge Stayed His Ruling
- Defendants Appealed to 5<sup>th</sup> Circuit Court of Appeals
- March 2019 – DOJ No Longer Defends ACA in Court
  - DOJ fully agrees that district court's decision—declaring entire ACA invalid - should be affirmed and upheld
  - Democratic states & House of Reps. steps in
- Oral Arguments Set for the Week of July 8<sup>th</sup>
- Appeal to SCOTUS Likely If 5<sup>th</sup> Circuit Upholds
- SCOTUS Decision in 2020, Before Election!



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## ACA's Contraceptive Mandate Blocked

- Background – What Is the Contraceptive Mandate?
  - ACA requires birth control services be covered at no additional cost
- The Original Exemptions
- Trump administration expanded exemptions and added “moral convictions” as basis to opt out
- Interim rules were previously blocked by a **nationwide** injunction



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## ACA's Contraceptive Mandate Blocked

### The Latest Case → DeOtte v. Azar (decided 6/5/2019)

- Class action filed to challenge the original mandate
- Government did not defend the mandate
- Court found the mandate violates RFRA as applied against members of the individual and employer classes
- Judge permanently enjoined the federal government from enforcing the contraceptive mandate against members of those classes

### What Do Self-Funded Plans Do Now?

- Wait...
- No clear party to appeal (yet)
- SCOTUS declined review of block on interim rules (6/17/2019)



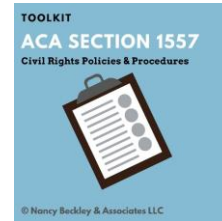
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## Reassigning Section 1557

### Wait...What Is Section 1557 Again?

- The Proposed Regulations (Issued 5/24/2019)
- What Self-Funded Plans Need to Know
  - Proposed Regulations are not yet final
  - If finalized, employers not required to roll-back any such benefits
  - Employers should keep in mind Title VII when considering how to react to the Proposed Regulations
    - Previous EEOC guidance indicated that it views discrimination against transgender individuals as a form of sex discrimination barred by Title VII
    - SCOTUS is reviewing 3 cases involving such discrimination claims



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## Final Rule on HRAs

- When Was It Released? 6/13/2019 by HHS, Treasury & DOL
- When Does It Go into Effect? 1/1/2020
- What Does the Final Rule Do?
  - Individual Coverage HRA
    - **Can pay premiums for individual coverage!**
    - “Excepted Benefit HRAs” (EB-HRA)
- The Rule Includes Guardrails
  - Must offer individual HRA on same terms to all individuals within a class of employees, such as their salaried or wage workers or their full-time or part-time workers, etc.
  - Contributions would have to be equal for everyone in the class, but can be varied by age and number of dependents
  - Employers can contribute as little or as much to an individual coverage HRA



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## Digging Deeper on the HRA Final Rule

### Impact on Self-Funding

- This could be disruptive to the employer-sponsored coverage
- Expected to give an estimated 800,000 businesses another option (meaning, not employer-sponsored coverage) to offer coverage to 11 million workers and their dependents
- Employers will be able to offer their workers HRAs to buy individual market coverage for themselves and their families. Unlike Flexible Spending Accounts (FSAs), any unspent HRA money can be rolled over from year to year (i.e., no use-it-or-lose it requirement)
- Concern about discrimination & employee dumping



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## Federal Proposals on Surprise Billing

- Congress Wants to Ban Surprise Medical Bills, But Can't Decide How
- Senate HELP Committee Unveiled A "Discussion Draft"



### Three Options

- **Option #1** → Require hospitals to guarantee patients that, for practical purposes, all its physicians are in-network
  - Physicians could either contract with the hospital's insurers or stay out of network but submit their charges through the hospital so the insurer gets only one bill and the hospital has to incorporate the doctor's fee. Specialists and those that employ them have opposed this idea



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## Federal Proposals on Surprise Billing

- **Option #2** → Insurers, hospitals or physicians could choose arbitration to resolve disputed charges higher than \$750, and the arbiter would have to look at median insurer-negotiated rates from the same geographical area as a guideline
- **Option #3** → An insurer would pay the surprise bill at the median contracted rate for that region to the hospital or doctor in question
- Other Consumer Protection Measures
  - Including a mandate for the industry that patients receive their full bill within 30 business days. If the bill comes later, the patients wouldn't be obligated to pay
- Some Relief on Air Ambulance Bills?
  - Force providers to separate out medical charges from the transport costs in bills



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## Federal Proposals on Surprise Billing

### UPDATE (6/19/2019)

#### Senate HELP Committee Decides on Option #3 (Benchmark Payment)

- Option #3 is a cap on the pay physicians, hospitals and air ambulances can collect for out-of-network care

#### What is the Benchmark?!

The regional insurer's typical negotiated rate...

#### Who Decides That? ...




US SENATE  
COMMITTEE ON  
HEALTH  
EDUCATION  
LABOR &  
PENSIONS



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## State Proposals on Surprise Billing

- **Reminder** → Surprise Bills vs. Balance Billing
- 
- Texas Proposal
  - **Only applies to patients with state-regulated insurance plans (40% of Texas plans are ERISA plans) → but TX acted to protect consumer credit rating!**
  - Governor Greg Abbot Signed on 6/14/2019
- When Effective? 9/1/2020
- What Does It Do?
  - Prohibits surprise bills from being sent to patients. Force providers and insurers to enter into arbitration with one another to negotiate payment. Creates state regulatory authority over that arbitration process.
- What Is A Surprise Bill?
  - Any bill exceeding \$500 for services rendered in the ER or for services provided in a facility that is a preferred provider.



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## State Proposals on Surprise Billing

- New York Surprise Billing Law
  - **Only applies to patients with state-regulated insurance plans**
  - Most Comprehensive Surprise Bill Legislation in the Country
- When Effective? 4/1/2019
- What Does It Do?
  - Protects patients from owing more than their in-network copay, coinsurance or deductible on bills they receive for OON emergency services or on **surprise bills**
- What Is A Surprise Bill?
  - If consumers receive services without their knowledge from an out-of-network doctor at an in-network hospital or ambulatory surgical center
  - if consumers are referred to out-of-network providers but don't sign a written consent form saying they understand the services will be out of network and may result in higher out-of-pocket costs, it's considered a surprise bill



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## What's Happening in Washington State?

### A First-in-the-Nation Public Option

- May 2019 → Governor Jay Inslee signs bill to give all consumers (starting 2021) a new, “public option” health insurance plan
  - Would compete with the private marketplace
- State will contract with private health insurers to administer plans, but will control terms to manage costs
- Plans will cap total provider and facility reimbursement rates at **160% of Medicare, originally 100%...**



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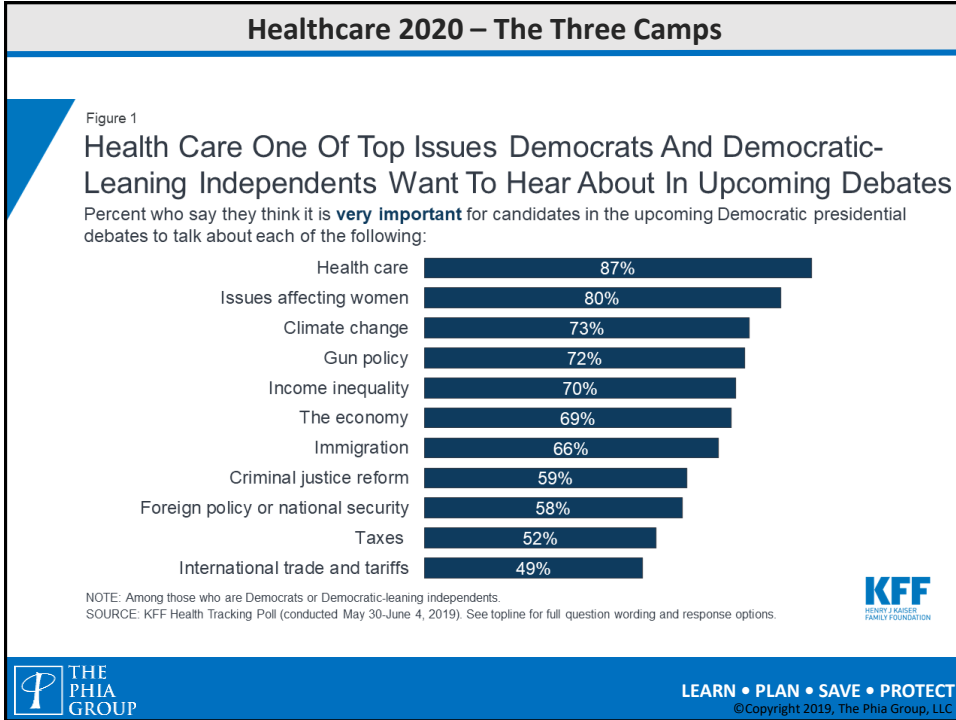
## Paid Family Leave: An Update

- Connecticut Set to Offer Generous Paid Family Leave Program
  - Modeled After Massachusetts PFL
  - 7 States Now Offer Paid Family Leave
  - Continuation of Coverage Required
  - Eligibility & Benefits
  - Notice & Documentation
  - Penalties & Complaints
- **How Should Self-Funded Plans & Employers Prepare?**
  - Update Employer Handbook / SPD
  - Understand the Requirements
  - Train Human Resources / Management



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## Public Option

**The Talking Point** → The government should provide healthcare to those who are unable to pay for private insurance; but, those who want to keep private insurance would be able to do so.



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## Improve Obamacare

**The Talking Point** → The Affordable Care Act provides a mix of both government assistance and private health insurance. This is the right idea and should be built upon.



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