



**THE
PHIA
GROUP**

EMPOWERING PLANS

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**The Case for Collusion:
How the Power Players May
Have Defrauded Us All**

May 15, 2018

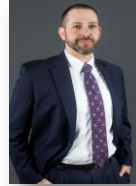
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Today's Speakers



Adam V. Russo, Esq.
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An Empowered Plan



The Phia Group, LLC Receives Prestigious World Congress "Health Value Award"

- Of More Than 350 Nominees, The Phia Group Received Award for **Employer Health Plan Under 250 Lives**
- The Industry's Best and Brightest as it Relates to:
 - ✓ Improvement Of Health Outcomes
 - ✓ Reduction Of Costs
 - ✓ Implementation Of Innovative Practices
 - ✓ Value Proposition
 - ✓ Support Better Health Outcomes At Lower Cost
 - ✓ Scalability & Durability
 - ✓ Disruptive Approach

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Phia Certification Has Arrived!



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A Special Shout-Out!

Special Shout-Out to **Carolyn Grant**
of

PROVinsure
AMERICA'S BEST INSURANCE VALUE®

Carolyn is our self-proclaimed **#1 fan!**

Thanks for listening!

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Last Month's PGC FAQs

- What are the pre-certification requirements for specialty drugs?
- Are there any potential pitfalls involved in excluding certain specialty drugs?
- If patients use a copay coupon system, does the coupon have to count toward the OOP max?

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Overview


- **Problem, Purpose, People**
- **Political Update**
- **Setting the Stage for Rx Spending**
- **CVS Class Action**
- **The Takeaways**
- **Potential Solutions**


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Problem • Purpose • People

 **THE PROBLEM**
Health Care Costs Too Much and the Price Is Increasing; Employers Are Forced to Offset Costs onto Employees Through Higher Co-Pays and Deductibles.

 **THE PHIA GROUP'S PURPOSE**
To Make Health Benefits Affordable for Employers and Employees.

 **WHY IS THIS THE PHIA GROUP'S PURPOSE?**
Hard Working Americans Deserve Access to High Quality, Affordable Health Care.

 **WHAT DOES IT MEAN TO "EMPOWER PLANS?"**
To Help Employers Maximize Benefits, Minimize Costs, and Take Control of Their Own Plans.

 **HOW DO WE "EMPOWER PLANS?"**
We Start by Promoting and Educating Employers About Self-Funding. Then, We Invent and Implement Cost Containment Services While Delivering Custom Solutions to Meet Specific Client Needs.

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President Trump Unveils Plan to Lower Drug Prices



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A Plan to Tackle Drug Prices

- **Trump Focused Mostly on PBMs, Not Rx Mfgs.**
 - *"The middlemen...they're rich. They won't be so rich anymore."*
- **Notable Mentions**
 - Reforming the secretive rebate system so that consumers and patients benefit more
 - Ban pharmacist "gag rule"
 - Potential requirement for Rx mfgs. to disclose list prices in TV ads
- **Notable Omissions**
 - No mention of campaign pledge to permit Medicare to directly negotiate with Rx mfgs.

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American Patients First (May 2018)

- 4 Challenges in the American Drug Market
 - High list prices
 - Seniors and gov't overpaying for drugs due to lack of negotiation tools
 - High and rising OOP costs
 - Foreign gov'ts free-riding off American innovation
- Considering **fiduciary status** for PBMs (rebates, formularies)
- Considering crackdown on drug co-pay discount cards
- Updating Medicare's drug-pricing dashboard
- Takeaways
 - Candidate Trump railed against the drug industry. President Trump has staffed his administration with former industry insiders and has not made major changes



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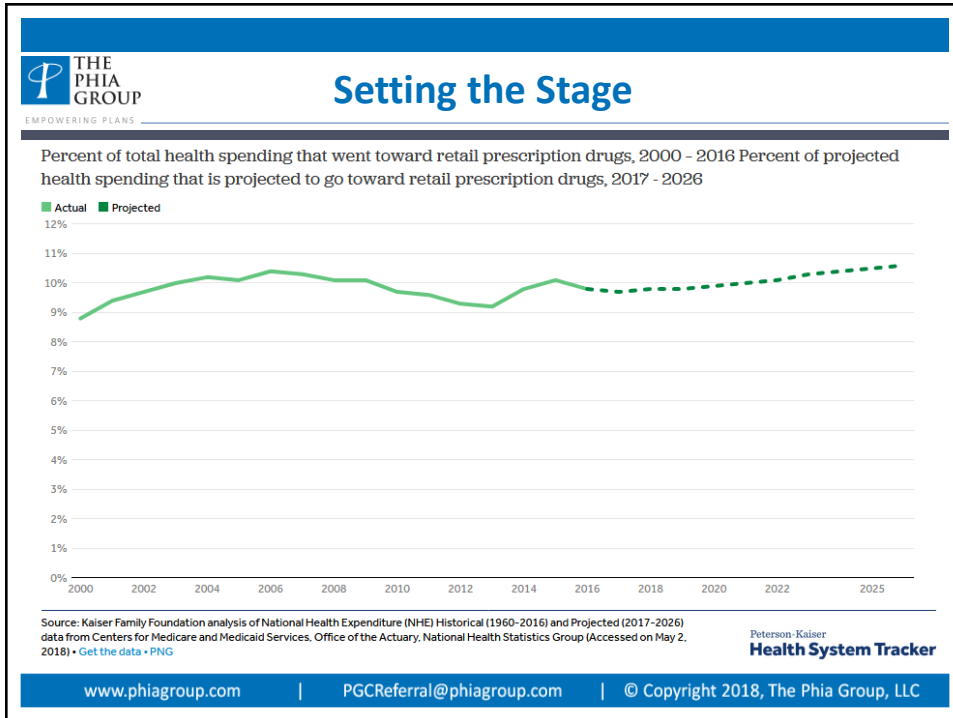
Setting the Stage

- Drug spend expected to increase between 4% and 7% by 2021; spend between \$580 billion and \$610 billion
- Drug spend up by over 33% since 2013
- Egregious profiteering examples: “Epi Pen” costing three times as much in a pharmacy as an online retailer; Martin Shkreli and the Daraprim debacle
- PBMs tend to be the least-customizable and most mysterious aspect of self-funding

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CVS Class Action Fraud Case

- Allegation: CVS inflated drug prices for insurance payors
 - CVS' relationships with OptumRX, CVS Caremark, Express Scripts, and MedImpact under fire
- Main allegation: "Although the customers are told, for example, that they are required to pay \$15 in a 'co-pay' for the drug, in reality this is not a 'copay' at all because CVS is sending a significant portion of the \$15 back to the PBMs."

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CVS Class Action Fraud Case

From the complaint:

- “CVS makes money and gets more business by agreeing with PBMs to defraud its customers”
- “CVS falsely represented that it would offer customers the lowest prices”
- RICO: “CVS engaged in a pattern of racketeering by continually defrauding customers”

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CVS Class Action Fraud Case

Diagram within the complaint:

Clawbacks Work Like This:

1. Customer is prescribed 40 milligrams of the stomach medicine pantoprazole.



2. The pharmacy benefit manager has helped negotiate a \$15 co-payment for generic pantoprazole. The medicine costs the pharmacist \$2.05.



\$15

3. The pharmacist is reimbursed \$7.22, giving him a profit of \$5.17.



\$7.22
-\$2.05
\$5.17

4. The benefit manager “claws back” \$7.78 from the pharmacy.



\$7.78

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The Sheet Metal Class Action Case

- 2/1/16 - Two union health plans brought class action against CVS in Rhode Island federal court
- 3/31/18 – Complaint amended to add federal racketeering (RICO) claims. CVS conspired with PBMs to hide lowest prices offered for generics
- **The Alleged Scheme**
 - CVS launches “discount club” loyalty program for cash customers in 2008 to compete with Wal-Mart and Target on generics
 - Under National Council for Rx Drug Program requirements, pharmacies must accurately state their U&C prices (includes cash price!)
 - CVS reported inflated U&C prices for generics by hiding the amount paid by “discount club” members
- Case is pending before R.I. District Court

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The Takeaways

- Just because it’s popular doesn’t mean it’s OK!
- Incentives for PBMs and health plans – who is on whose side?
- Secretive agreements – apparently for a reason...
- Read your contracts! Ask questions!

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The Takeaways

- Similarities to the *Sutter* class action?
 - Complaint: “Sutter utilizes punitively high Out-Of-Network Hospital pricing in combination with the anticompetitive provisions in its agreements”
- Increased need for diligence in the marketplace
- Fiduciary implications for health plans and others facilitating PBM arrangements
- Maybe it’s time for an alternative to the traditional PBM model...?

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Potential Solutions

- Carve-outs for specialty or other high-cost drugs
 - Generic only?
- Vendor programs to help reduce costs or avoid needless spend
 - Manufacturer assistance
 - International drug sourcing
- Promoting use of lower-cost drugs

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Potential Solutions

- Specialty “tiers” and member incentives (or disincentives)
- Pharmacogenomics:
 - Pharmaco(logy) + genom(e): effect of genes on drug responses
- General health and wellness programs

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Potential Solutions

Getting to the root: How can The Phia Group help?

- Reviewing PBM contracts for secretive, unexplained, or unfavorable provisions
- Evaluating programs for compliance and viability
- Assisting with drafting carve-outs or otherwise amending plan documents

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June 12, 2018 at 1:00pm EST
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