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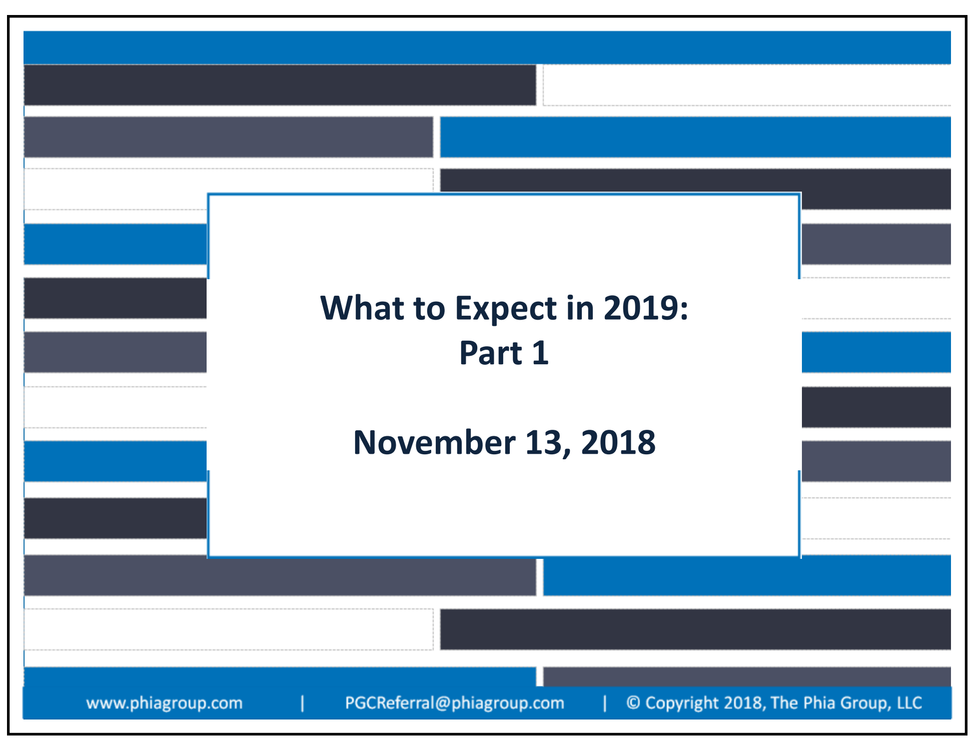
What to Expect in 2019:
Part 1
November 13, 2018
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Today's Speakers
Adam V. Russo, Esq.
Chief Executive Officer & Principal
Ron E. Peck, Esq.
Senior Vice President & General Counsel
Jon A. Jablon, Esq.
Director, Provider Relations
Brady Bizarro, Esq.
Director, Healthcare Attorney
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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 Camille Vaska
of
HMA
HEALTHCARE MANAGEMENT ADMINISTRATORS
Camille is an avid fan of our webinars and podcasts!
Thanks for listening!
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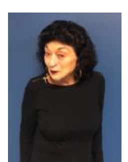
Thanks for listening!

Faces of Phia

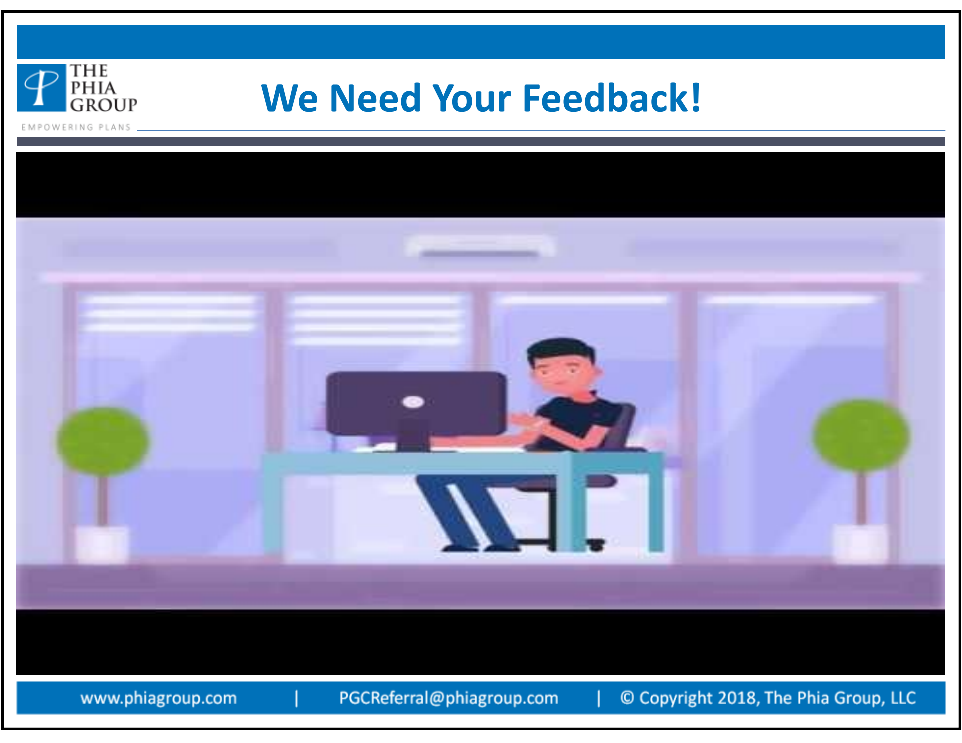
Amanda Lima, Team Lead, Provider Relations

Amanda helps self-funded plans contain costs and manage reference-based pricing by handling balance-billing files. Amanda works diligently to ensure that bills are reduced, keeping costs low for the plan and its members.



Norma Phillips, Accounting Assistant

Norma has been the backbone of the accounting department, ensuring that our financial information is kept secure and confidential. Norma ensures that all checks are accurately prepared, streamlining processes within the accounting department.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Reminder! SIIA's Future Leaders Forum
SIIA Future Leaders Forum
December 12-13, 2018
International Plaza Hotel - Tampa, FL
FUTURE LEADERS
Younger SIIA Members Invited to Unique Educational And Networking Event
To encourage maximum participation, the registration fees are low and SIIA selected a hotel with affordable rooms rates and easy airport access.
Event details can be accessed on-line at www.siia.org, or by calling (800) 851-7789.
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Overview

- Problem, Purpose, People
- Last Month's PGC FAQs
- Midterm Elections
- Future of The ACA
- Association Health Plans
- EEOC Wellness Program Incentive Rules
- Health Savings Accounts
- Employer Mandated Paid Family & Medical Leave
- TPA Service Offerings & ASAs
- Plan Design: Incentives, Masters' Degree

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Last Month's PGC FAQs

- Are "Executive Benefit Plans" permissible?
- Do the Mental Health Parity rules require employers to cover mental health and substance abuse claims?
- What are the implications of prohibiting assignment of benefits?

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Post-Election Analysis
2018
MIDTERM
ELECTIONS
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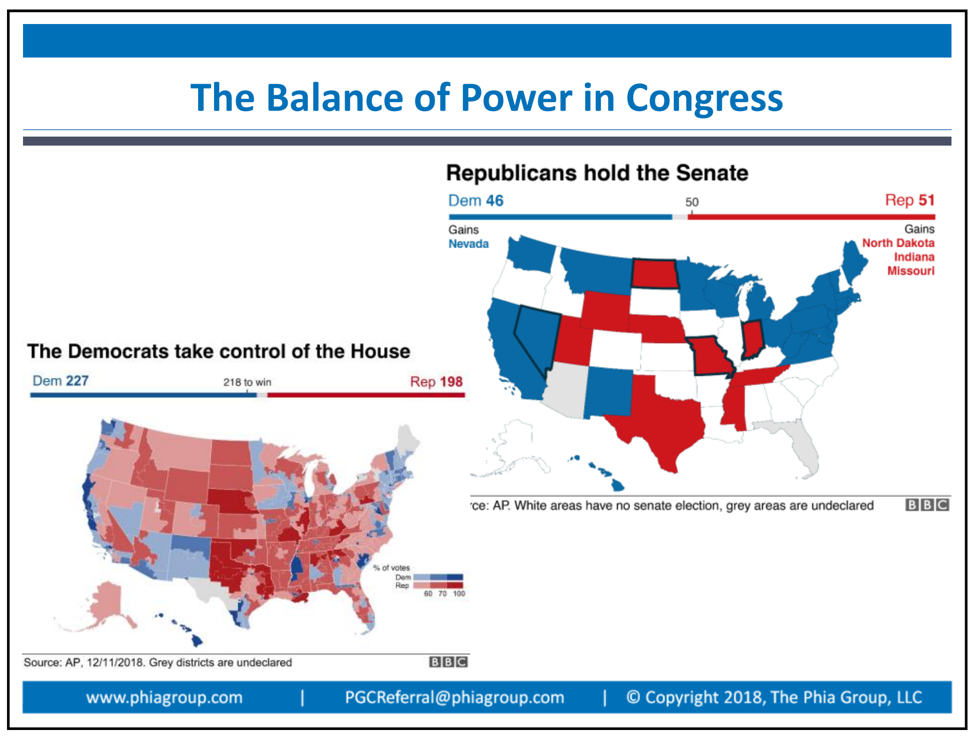
The Balance of Power in Congress
Republicans hold the Senate
Dem 46
50
Rep 51
Gains
Nevada
Gains
North Dakota
Indiana
Missouri
'ce: AP. White areas have no senate election, grey areas are undeclared
BBC
The Democrats take control of the House
Dem 227
218 to win
Rep 198
Source: AP, 12/11/2018. Grey districts are undeclared
BBC
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Key Takeaways for Healthcare

- Healthcare Was the Single Biggest Issue for Voters
- Voters Cared A Lot About Protecting Pre-Existing Conditions
- "Repeal & Replace" Is Likely Dead
- Short-Term Health Insurance Plans & AHPs Put On Ice?
- Drug Pricing Reform Is A Likely Area for Bipartisan Reform
- Medicaid Will Be Expanded
  - Idaho, Nebraska, and Utah endorsed ballot initiatives

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California's Proposition 8: On Dialysis

- Proposition 8, the Limits on Dialysis Clinics' Revenue and Required Refunds Initiative
- This Initiative Would Have Capped Revenues Reaped by Dialysis Centers (DaVita & Fresenius)
- Some Patient Advocates, Medical Associations & DaVita and Fresenius Successfully Squashed Proposition 8

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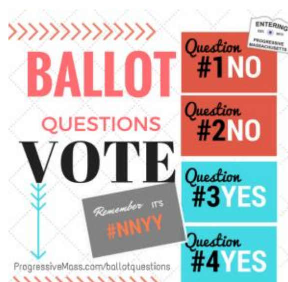
Other Notable Results

- Republicans Still Control Majority of State Legislatures
- Massachusetts Voters Strongly Quashed Question 1, Which Would Have Limited Nurse-to-Patient Ratios
- Maine Rejected A Universal Home Care Referendum
- Abortion Was on the Ballot in 3 States
  - Oregon, Alabama & West Virginia
- Medicare for All Debate Continues…



Future of the ACA

- Kavanaugh's Judicial Record on the ACA
  - 2011 – Careful dissent. One cannot attack a tax before it is collected
  - 2015 – Dissent on a technicality. Mandate is a tax
  - 2015 – Contraceptive mandate case. Judges should not question sincerity of beliefs or grounds for feeling complicit in the birth control they find immoral

  Kavanaugh is expected to chip away at ACA protections (pre-existing conditions, employer mandate)

- Kavanaugh's Public Record on the ACA
  - Wouldn't commit to upholding pre-existing condition protections
  - Privately, told Democrats that the whole ACA doesn't necessarily have to come down if a piece of the law is struck down

5 Key Areas at Stake for Healthcare

1) Should courts strike down entire laws if Congress renders one part of a statute unenforceable?

2) Can the "take care" clause of the Constitution be enforced against a sitting president?

3) Can the president decline to enforce a law he finds unconstitutional?

4) Should individuals be able to sue to enforce their rights under federal programs when federal and state governments refuse to do so?

5) Should courts allow federal agencies to let states undertake "demonstration projects" that alter fundamental aspects of federal programs?

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Association Health Plans

What Are AHPs?

Association Health Plans ("AHPs") are group health plans that allow small employers access through associations to the regulatory and economic advantages available to large employers.

Types

- Professional or trade association offering health insurance as a secondary benefit of membership
- Captive association of an insurance company
- Association established by a Professional Employer Organization ("PEO")
- Multiple Employer Welfare Arrangement ("MEWA")

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Three Categories

- **Category #1 – AHPs Satisfying the DOL's Existing Rules**
  - Existing and newly-formed ER groups may establish a fully-insured "large group" or self-insured AHP by qualifying as a bona fide group or association of employers, but:
  - 1.) Must be in the same industry, trade, or profession, **and**
  - 2.) Be located in the same geographic location
  - *Cannot include "working owners"
- **Category #2 – AHPs Satisfying the DOL's New Final Regulations**
  - May establish a fully-insured "large group" or self-insured AHP, but:
  - 1.) Must be in the same industry or profession (but not limited by geography), **or**
  - 2.) Are "unrelated" but confined to the same state or metro area.
  - *Can include "working owners"
- **Category #3 – Non-"Bona Fide" AHPs**
  - Don't fit into 1 or 2?
  - Subject to CMS's "look through" rule, where carriers are required to impose ACA's small group and individual market rules based on the underlying size of the AHP member.
  - If Self-insured AHP, states can regulate you and state's benefit mandates apply

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The Evolution: From EO to Final Rule

October 12, 2017

Executive Order Promoting Healthcare Choice and Competition Across the United States

- President Trump had asked federal agencies to look for ways to expand the use of association health plans
- Would allow individuals and business to join or create associations that could purchase insurance as a group across state lines, like large corporations do now
  - Theory: permitting groups to buy insurance plans across state lines allows more options and better competition
  - Economy of scale is an advantage, too!

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The Evolution: From EO to Final Rule

January 4, 2018
DOL issues a Notice of Proposed Rulemaking relating to AHPs

- An association health plan would be considered a single large group for insurance-rating purposes, as long as members are in:
  - The same trade, industry, line of business or profession, **OR** ← **The "or" is important!**
  - The same state or same geographic/metro area within a state
- The association *can* form or exist solely for the purpose of providing health insurance
- This is not a free-for-all, though!
  - The association observe some formalities. The association must have a formal organizational structure, bylaws and similar indications of formality. Also, the association plan can only offer coverage to employees (and dependents) and former employees (and dependents) of the employer members.

Impact on Self-Funding

- Final rule confirms that self-insured AHPs are MEWAs
- Self-insured AHPs remain subject to the individual MEWA laws in each state in which coverage may be offered
- As a result, we do not expect self-insured AHPs to thrive at this time
- No "class exemption" for self-insured AHPs
  - But note the favorable treatment of the issue on page 96, *"a potential future mechanism for preempting state insurance laws that go too far in regulating [self]-insured* AHPs…"

What Do We Expect Next?

- A continued push for a class exemption for self-insured AHPs
- Pushback from democrats who believe AHPs will crush the ACA
- Market impact: 4 million Americans will join an AHP by 2023 – mostly healthier, younger, and wealthier – switching from ACA-backed plans to cheaper AHP plans
  - Could increase premiums in individual market by 3.5% and small group ACA premiums by 0.5% → *Avalere health*
- States will face pressure to moderate their MEWA laws
- As always, legal challenges abound

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Wellness Program Incentive Rules

- Equal Employment Opportunity Commission (EEOC) ordered to re-write workplace wellness rules related to incentives with effective date of 1/1/19 pursuant to *AARP v. EEOC* case.
- Creates compliance concerns for self-funded plans with wellness programs that rely on current EEOC wellness program incentive rules, since those current rules will be vacated in 2019.
- The EEOC's rules detail that wellness incentive must not exceed 30% of total cost of EE-only coverage under plan if wellness program implicates the Genetic Information Nondiscrimination Act (GINA) or Americans with Disabilities (ADA) rules.
- Voluntariness is crux of the *AARP v. EEOC* case - court found that EEOC "failed to adequately explain" the 30% maximum and how plan can still be considered voluntary with that incentive.
- EEOC will not re-write their wellness programs by 1/1/19 because EEOC needs to fill spots on commission, including Chair of EEOC.

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House Passes Bills Enhancing HSAs

- Annual contribution caps would be almost double if bills were to become law
- HR 6199 - **Restoring Access to Medication and Modernizing Health Savings Accounts Act** passed by a margin of 277-142
- Treat sports and fitness expenses–including gym memberships and cost to participate in exercise programs–as qualified medical expenses -limit of $500/year for individual and $1,000/year for family
- Permit individuals with HSA-qualifying family coverage to contribute to an HSA if their spouse is enrolled in a medical flexible spending account (FSA), currently a disqualifying scenario
- Allow employer onsite medical clinics and other employment-related health services without risking HSA eligibility
- Protect HSA-eligible individuals who participate in DPC arrangement from losing their HSA eligibility and allow DPC provider fees to be covered with HSAs - capped monthly at $150 per individual and $300 per family

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Paid Family/Medical Leave

- Many states provide paid job-protected leave with maximum periods that far exceed the 12 weeks required by FMLA.
  - New MA law will provide 26 or more weeks per year!
- The question is: Does ERISA preempt this state-mandated leave?
- Some consider these state leave laws to govern *insurance*; others consider them to govern *employers*
  - No “official” answers yet…

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Administrative Services Agreements

Does your ASA protect you with respect to….

- Handling claims and appeals?
- Placing stop-loss?
- Network and provider disputes?
- Recovering overpayments?
- Percent-of-savings fees?

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Plan Design

Is the SPD fully compliant by…

- Being amended or restated correctly?
- Treating classes of employees equally?
- Being, or not being, a MEWA?
- Implementing changes in a nondiscriminatory way?
- Applying exclusions equitably and similarly?

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Plan Design

What's the state of your SPD?

- How long ago was it updated? How many amendments are there? Is it time to restate?
- Does it match the employee handbook?
- Does it have adequate cost-containment?
- When was the last compliance review?
- Does it incentivize your employees?

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Incentivizing Employees

Driving Patient Engagement

Change in member culture: from *Patients* to *Consumers*

How?

Online Tools, Education and Incentives

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Incentivizing Employees

Incentivize Employees - Plan Incentives (Where Allowed)

- **Emergency Medical Outpatient Services** – No co-pay for urgent care
- **Hospital Alternative Facilities** – No co-pay for non-hospital facility **Generic**
- **Prescription Drugs and Supplies** – No co-pays
- **Claim Audit Review Program** – Plan Participants who identify erroneous charges on medical bills receive 20% of the savings
- **Skin in the Game** – Find alternative means to purchase supplies or care; get a percent of savings (Ex. Nebulizer: $300 w/ 30% discount…or $118 on Amazon)

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Incentivizing Employees

Incentivize Employees - Employer Incentives

Maternity: We start with a list of the safest facilities. Next, identify the ones that deliver the most bang for the buck (pun definitely intended). A pregnant participant that uses one of these facilities gets a $300 Buy Buy Baby gift card every month for a year.

Communication: Members that consult with HR regarding planned medical procedures will receive $100, *just for the consultation*!

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Masters Degree In Health Benefit Design

- 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
- Health Benefit Design II
- 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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Thank You!

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