

THE SCIENCE OF SUBROGATION



Presented By:

Ron E. Peck, Esq.

Sr. Vice President & General Counsel

OVERVIEW

Subrogation & Reimbursement

Spotting & Handling Cases

Plan Documents

The Phia Group



SUBROGATION & REIMBURSEMENT



SUBROGATION & REIMBURSEMENT

Justifying it...



SUBROGATION & REIMBURSEMENT

Subrogation:

- “Stepping into the Shoes” of the Insured
- Recovering Directly from the Responsible Party
- File Claims With Parties on the Plan’s Behalf

Subrogation Language:

- Assign RIGHT to subrogate / pursue claim
- DO NOT CLAIM AUTOMATIC SUBROGATION!
- An automatic lien attaches in favor of Plan
- Plan **MAY** commence proceeding against any party for recovery
- If possible, let the plan member pay the fees and costs...



SUBROGATION & REIMBURSEMENT

Reimbursement:

- Recovering Funds From the Insured Once Claims are Settled

Right of Reimbursement Language:

- Plan entitled to recover 100% benefits paid:
- Without deduction for attorneys' fees, common fund or made whole
- Plan's equitable lien supersedes statutory rules & state law
- Obligation to reimburse regardless of how the settlement is classified
- Plan's rights not reduced by covered person fault



SUBROGATION & REIMBURSEMENT

State vs. Federal Law

- Private Insurance (“Fully Funded”)
 - Insured Pays a Premium
 - Risk Shifts to the Carrier
- Houses of Worship
 - Apply for Exemption from the Employee Retirement Income Security Act of 1974 (“ERISA”)
- Municipal Entities



SUBROGATION & REIMBURSEMENT

State Law Issues:

- Common Law Doctrines
- Common Fund
- Made Whole
- Collateral Source
- Anti-Subrogation Laws



SPOTTING & HANDLING CASES

What to Look For...

- Motor Vehicle Accidents
- Work Related Accidents
- Medical Malpractice
- Product Liability
- Landlord Liability
- Slip and Fall
- Pedestrian Accidents
- Bicycle Accidents
- Assaults
- Negligent Acts



SPOTTING & HANDLING CASES

How we look for it...

- Data Scrubbing and Case Referrals
- Client Systems Notes Reviewed
- Contacting the Member / Accident Letters
- Other Investigation Procedures (Internet, Case Dockets, Water-cooler Talk)



SPOTTING & HANDLING CASES

The Keys to Success

- Member Awareness
- Employer Involvement
- Prompt Replies from Members

Significance of Placing All Parties on Notice in a Timely Manner



PLAN DOCUMENTS

Importance of Plan Language

Phia Group Slogan:

“Your rights are only as good as your plan language.”

The Employee Retirement Income Security Act of 1974 (ERISA)

You are an ERISA plan... So what?

- Enforce the terms of the benefit plan document
- In most circuits we avoid State law only where it is disclaimed in writing... Why should you care?



PLAN DOCUMENTS

Introduction

- Self-funded within purview of ERISA?
- Applicable Law
- Discretionary Authority

Definitions

- Experimental and/or Investigational
- Medically Necessary
- U&C
- Reasonable
- Clean Claim
- Maximum Charge Allowable
- Excess Charge(s)

Coordination of Benefits (COB)

- Excess
- Vehicle Limitation

Third Party Responsibility

- Conditional Payment
- Constructive Trust
- Equitable Lien
- Liable for Expenses of Enforcement
- Offset
- Minors
- Bankruptcy
- Death



PLAN DOCUMENTS

Plan Intent:

- Felonious Acts vs. Illegal / Criminal Act
 - DUI

“Exceptions” to the Exclusions:

- Result of Domestic Abuse
- Suffers from a Medical Condition



Sounds good...

...but who are you guys?



THE PHIA GROUP

- Privately owned market leading innovator
- Representing millions of covered lives nationwide
- Saving plans tens of thousands in legal fees through “out of court” negotiations
- Alliance with the Law Offices of Russo & Minchoff as well as a network of attorneys nationwide if litigation is requested (or necessary)
- The attorney advantage – no increase in fee for intervention
 - Fees remain the same
 - Client is only responsible for actual costs
- Focused on the self insured industry



THE PHIA GROUP

- Coordination of benefits
- Overpayment recovery
 - Providers
 - Patients
 - Primary payers
- Workers' compensation – self-funded and exclusion issues too
- Never events – unreasonable charge refunds
- Subrogation and right of recovery
- Class action lawsuits



THE PHIA GROUP

	Recoveries/Employee Life/Year	Net Actives/Employee Life/Year	Average Lien Recovery
Phia	\$25	1 active for every 80 EEs	65%-85%
Industry	\$5-\$7	1 active for every 300 EEs	40-50%



THE PHIA GROUP

- AM Best's Recommended Insurance Firm & Attorneys
- Dedicated to preservation of plan rights
- Data integration & system extracts for most systems
- Only vendor that reviews all claims (paid, pending, and denied)



THE PHIA GROUP

- Data analysis to identify State & Federal lawsuits (compare member names to filed suits)
- Webinars and in-person seminars
- Expanded office hours – 9am-8pm EST
- Industry leading CSRP certification & incentivized employees



THE PHIA GROUP

- Administrative Services Agreement Review
- Third Party Agreement Review
- PPO Agreement Review
- Stop Loss Agreement Review
- Gap Free™ Review
- Balance Billing and Medical Bill Review Consultation
- Plan Administration Review and Defense
- Stop Loss Claim Analysis
- Claim Processing Evaluation
- General Healthcare Consulting
- IRO / External Review Consultation
- Dispute Resolution



CONTACT INFO

The Phia Group, LLC

rpeck@phiagroup.com

781-535-5600 (Ph)

781-535-5656 (Fax)

163 Bay State Dr.

Braintree, MA 02184



THE LAW OFFICES OF
RUSSO & MINCHOFF

www.russominchofflaw.com



www.passionforsubro.com