

A CALL TO ACTION!  
PROPOSED STATE AND FEDERAL REGULATIONS, BULLETINS,  
LITIGATION, INDUSTRY DEVELOPMENTS & TROUBLING TRENDS



**THE  
PHIA  
GROUP**

EMPOWERING PLANS

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## OVERVIEW

- Costs: What Do You Care About?
- Legal and Regulatory Developments
- Troubling Trends in the Industry



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## COSTS: WHAT DO YOU CARE ABOUT?

What Do Members Care About?

*Co-Pays & Deductibles*

What Do Plans Care About?

*Dollar Exposure (Claims Paid up to Spec)*

What Does Stop-Loss Care About?

*The Entire Bill*

What Do Brokers Care About?

*Keeping the Plan Happy*

...But What Do Providers Care About?

*Not Having to Justify Their Charges*



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## COSTS: WHAT DO YOU CARE ABOUT?

Providers will continue to take advantage as long as the players don't agree that the **overall costs of medical care** are the real problem.

How do we change this dynamic?

### Transparency.

Transparent pricing: survival or altruism?

Networks'/Carriers' aversion to free market approach



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## SUBROGATION UNDER ATTACK!

US Supreme Court to hear *Montanile* (on certiorari from 11<sup>th</sup> Circuit)

- SIIA and NASP teamed up and submitted amicus brief (with assistance from The Phia Group)

Many Amicus Briefs filed by other entities (for and against each party)

Question: Does disbursement of funds equate to nullification of subrogation rights?



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## NATIONAL ASSOCIATION OF SUBROGATION PROFESSIONALS (NASP)

NASP is seeking assistance responding to legislation

- Briefs
- Letters and Visits to Lawmakers
- Attend Hearings

Cost-containment – especially subrogation – benefits plans; Significant lost savings in states that eliminate or limit subrogation

One estimate suggests that a health plan's costs would increase by up to 50% without the option of subrogation/reimbursement

One report determined that lawsuits were filed only 47.3% of the time

Of 193,000 personal injury accident claimants:

39,000 proceed without counsel  
116,000 cases closed without suit



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## SELF-INSURANCE INSTITUTE OF AMERICA (SIIA)

### What's Going On?

Maryland stop loss study (HB 552): bill increases the minimum attachment points for medical stop loss insurance; establishes requirements and prohibitions for medical stop loss insurance issued to a small employer

New York State (mandated by A-8134-A): regs for stop loss coverage issued to certain small groups

New Mexico stop loss being defined as "health insurance"

Cadillac Tax: who will pay it?



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## SELF-INSURANCE INSTITUTE OF AMERICA (SIIA)

### How You Can Help

You need to be involved, whether it is writing letters, making calls, or attending hearings. Personal outreach can make a difference – as it did in Maryland last year...

Lawmakers care about employers, their attitude, and feedback.

Get high-level representatives of the plan sponsor to inform senators and representatives of the concern over the state making self-funded healthcare more expensive.



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## PROTECTING AFFORDABLE COVERAGE FOR EMPLOYEES ACT (PACE)

Passed House and Senate; waiting for President to sign

Law gives states the option to define the small group market as 2-100 or 2-50, at their option

Many states limiting or eliminating stop-loss in the “small group market” – this law lets each state decide what that term means

Anti-self funding states may define “small group” more broadly (2-100) in order to complicate or eliminate stop-loss for the most groups possible



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## HILLARY CLINTON'S PROPOSED HEALTH CARE REFORM PARADIGM

“Mrs. Clinton...appears to be more willing to confront insurers and drug makers over high prices. She said she would seek ‘authority to block or modify unreasonable health insurance rate increases’ and stop ‘excessive profiteering’ by drug companies.”

Her health care plan from 1993 would have created “regional health alliances,” which would have been “responsible for collecting premiums and could have set fee schedules for doctors.”

Source: <http://www.nytimes.com/2015/10/07/us/politics/hillary-clintons-proposed-changes-to-health-law-zero-in-on-affordability.html> (Oct. 6, 2015)

- Lumping together insurers and drug manufacturers?
- More focus on cost of *insurance*, not cost of *care*
- “Regional health alliances” *would* collect premiums, but *could* set fee schedules.



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## CONNECTICUT STOP-LOSS

CT Bulletin HC-103: no more lasers or hard gaps?

DOI Rationale: employers are not prepared to navigate stop-loss

DOI: its job is to protect the consumer

HC-103 estimated to raise premiums by up to 20%

Special thanks to Diversified Administration Corporation



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## REFERENCE-BASED PRICING

### **Romano Woods Dialysis Center vs. Admiral Linen Service, Inc.**

- Plan paid 125% of Medicare for dialysis claim
- MSPA prohibited balance-billing; only option was to sue the Plan
- Plan language (by Phia) was clear and the Plan complied with it
- No conflicting network agreement in play
- All these factors led to a judgment for the Plan



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## AUDITING CRITERIA

### Auditors Applying Criteria that Don't Apply

A plan specified that it will pay all charges based on Usual and Customary and Reasonable criteria. The plan document defined that as simply the prevailing charges in the area.

Plan Sponsor contracted with a clinical auditor that reduced based on unbundling and other clinical findings.

Provider appealed and prevailed. Plan document simply didn't allow that audit.

(This applies to stop-loss as well!)



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## CLAIMS DATA

### Groups Moving from ASOs but Unable to Secure Claims Data

A group that was a self-funding veteran was looking to move from an ASO to a TPA for a whole new self-funding experience. The ASO treated the group's claims data as proprietary and refused to provide it to the group when the group left the ASO.

Without access to its own claims data, the group was unable to tailor its benefit plan to its employee's needs and unable to properly contain costs.

After a few years, the group had enough data to make informed decisions, but those first few years proved inefficient.



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## OVERPAYMENT RECOVERY

### TPAs Ignoring Overpayments or not Adequately Pursuing for Fear of Being Blamed

TPA hurried to push claim out due to network and stop-loss timeframe considerations. By the time adequate details were procured, the claim was long since paid – but it turned out to not be payable.

The TPA was hesitant to pursue the overpayment but the Plan insisted and held the TPA liable for its lost money. The Plan threatened to sue the TPA for the failure to safeguard plan assets.

Plan and TPA ultimately settled, but chances are, the court would have held in favor of the Plan.



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## FIDUCIARY DISCLAIMERS

### TPAs Disclaiming Fiduciary Status but Exercising Discretionary Authority

TPA wrote in its administrative services agreement that under no circumstances would the TPA be deemed a fiduciary. TPA expected that to shield itself from liability. The TPA then exercised authority under the Plan and made a benefit determination, expecting its ASA language to protect it.

Court relied on myriad existing case law to iterate that if it walks like a fiduciary, and smells like a fiduciary, then it's a fiduciary. Public policy prohibits the disclaimer of fiduciary duties.



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## RISK SHIFTING

### Employers Implementing Potentially Discriminatory Practices to Shift Risk

A vendor helped an employer implement a system where the employer could identify high-risk individuals and offer them cash in lieu of plan benefits, the intent being that the individuals would use that cash to purchase individual policies.

The employer implemented the program and the DOL contacted the employer to inquire regarding the program. By whom the DOL was informed is unknown.

DOL gave employer a slap on the wrist due to employer's good faith, but required employer to cease the practice or face further penalties and taxes.



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## DILIGENT VETTING

### Failure to Fully Investigate New Services & Programs Promising Quick Fixes

A TPA contracted with a vendor promising an innovative solution to the problem of high-cost claimants. The program toed the line of ERISA and HIPAA compliance.

An aggrieved medical provider ultimately tipped off the DOL regarding the plan's practices, and the DOL informed the plan that its program was not compliant.

The vendor refused to reimburse the fees it received from the group (almost \$50,000) and the two are currently in litigation.



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## PROMPT PAY

### Failure to Pay Claims Timely Resulting in Lost Discounts

MedAssets, Schumacher Group...

- When is a claim “Clean?”

Untimely payment can also result in stop-loss denials!

- When is a claim “Paid?”



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## PLAN LANGUAGE

### Implementation of New Practices Without Proper Language

A group decided that it was going to carve out dialysis and pay all dialysis claims at 125% of the Medicare allowable amount. The group also decided that it did not need to amend the Plan.

The Plan paid a provider based on this method. The provider appealed and asked the Plan to justify its payment. The Plan argued its point, but ultimately a mediator was the voice of reason and found for the provider.



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# THANK YOU

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