THE PHIA GROUP

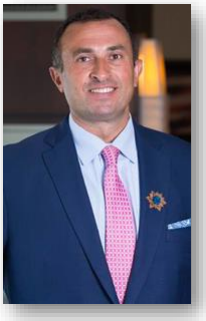
EMPOWERING PLANS




Trump's Executive Order on Transparency:
How it Will Affect Each Segment of Our Industry




Today's Speakers



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PACE Certification Coming Soon

PACE® CERTIFICATION

The PACE® Certification program will educate you using 3 distinct chapters of information:

Chapter One
Explore the ins and outs of self-funding while learning about its risks and rewards. This chapter will transform any individual into a self-funding pro.

Chapter Two
Take a deeper dive into the laws that apply to self-funded plans. We cover it all, from federal preemption to adverse benefit determinations and appeals.

Chapter Three
Explain what PACE is, what PACE does, and how it's obtained, implemented, and utilized.

PACE® Certification will be released on August 1, 2019

A Special Shout-Out!

Special Shout-Out to Natalie Roetheli

of

Natalie is an avid fan of our webinars and podcasts!

Thanks for listening!

Overview

- **Problem, Purpose, Process**
- **Last Month's PGC FAQs**
- **Political Update**
- **Trump's Executive Order on Transparency**

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

Last Month's PGC FAQs

- Can a plan compliantly exclude coverage for congenital birth defects, in light of the prohibition on pre-existing conditions exclusions?
  - Prohibition is on "a limitation or exclusion of benefits (including a denial of coverage) based on the fact that the condition was present before the effective date of coverage (or if coverage is denied, the date of the denial) …"
    - Congenital defects are by definition pre-existing…
    - …but the exclusion is not "based on the fact that the condition was present before the effective date of coverage…"
  - Example: a covered treatment of an ankle sprain cannot be excluded based solely on the date of the injury
  - Is there a *practical* difference, though?

Last Month's PGC FAQs

- Can a plan compliantly charge tobacco users a higher premium?
  - Short answer: YES, if part of a compliant wellness program
  - Two types of wellness programs:
    - Participatory
    - Health-Contingent (two types again)
      - Activity-only
      - Outcome-based

Last Month's PGC FAQs

- What are some concerns we need to look at when incorporating vendor programs?
  - Be wary of simplicity; many things aren't as simple as sales teams make them out to be!
  - Is the TPA willing and able to administer the program, if necessary?
  - Does the vendor need to "approve" unrelated plan changes?
  - Does the service overlap or conflict with anything already being paid for or otherwise administered?
  - Is the program something stop-loss needs to know about?

Political Update

On Tuesday, July 9th, the U.S. Court of Appeals for the Fifth Circuit heard oral arguments in the case of Texas v. Azar.

5th Circuit Court of Appeals Hears Obamacare Case

- Oral Arguments Held on July 9th (Texas v. Azar)
  - Three-judge panel
    - Judge Carolyn King (Carter appointee)
    - Judge Kurt Engelhardt (Trump appointee)
    - Judge Jennifer Elrod (George W. Bush appointee)
- What Is the Case Primarily About?
  - Severability → Is the individual mandate severable from the ACA?
- What Did We Learn from Oral Arguments?
  - Court annoyed at the lack of a political solution
    - The 800 pound gorilla NOT in the room
  - Court seemed open to striking down the ACA
  - Judge King remained silent…
- What Is At Stake?
  - Coverage for 20 million Americans
  - Coverage mandates (pre-existing conditions, dependent children, etc.)

Two Major Setbacks on Drug Pricing

Federal Judge Blocks Rule to Require Drug Prices in TV Ads

- Judge Ruled HHS Lacked Legal Authority
  - *"…HHS cannot do more than what Congress has authorized."*
- DOJ Is Reviewing Next Steps
- A Pattern Has Emerged
  - A Note on ***Chevron*** Deference

Trump Administration Withdraws Medicare Part D Rebate Proposal

- Rebates Would Have Gone Directly to Seniors at Point of Sale
- Analysts Concluded List Prices Wouldn't Go Down & Premiums Would Go Up (~$180b)
- Big setback for HHS Sec'y; Spent Months Promoting It

The Fight Goes On

- Pressure Now on Congress to Pass Bipartisan Legislation
- The President Needs A Win
  - Peg Some Drug Prices to Lower International Prices; Drug Importation

Cadillacs & Short-Term Health Plans

House Votes to Repeal Cadillac Tax

- 40% Tax on High-Dollar Employer-Sponsored Health Plans
- Was Scheduled To Take Effect in 2022
- This Is Good For Employer Plans & Employees
  - 73% of Employers Would Have Been Effected, 94% by 2026
- Senate Version Has > 40 Co-Sponsors; No Date Yet

Short-Term Health Plans

- Federal Judge in Washington D.C. Ruled Trump Admin. Can Expand Sale of Short-Term Health Plans
- Fear Is That Individual Market Will Suffer
- Ruling Allows Insurers to Sell Cheaper (Non-ACA Compliant) Plans to Healthy People
- Plans can last as long as 364 days & be renewed for 3 years

Spotlight Bill: > Half a Million Dollars for Dialysis

The Patient: Sovereign Valentine, 50, personal trainer from Plains, Montana
The Insurer: Allegiance, through his wife, a doctor in a rural hospital
The Provider: Fresenius Medical Care
The Total Bill: $540,841.90

- 90-Day Waiting Period to Join Medicare for ESRD Patients
- Case Manager, "No In-Network Dialysis Clinics in Montana"

- 14 Weeks of Outpatient Dialysis
  - $13,867.74 per session; 59x Medicare Rate ($235); Typical rate is Medicare +400% (Source: Journal of the American Medical Ass'n, 2019)

- Takeaways
  - Patients Often Given Wrong Information
  - Patients Often Not Told Price Up Front
  - Negotiation Works in the Case of Outrageous Bills

The Executive Order

Executive Order on Improving Price & Quality Transparency in American Healthcare to Put Patients First

The Executive Order

A Brief Explainer:

- What Is the Goal?
  - To help consumers know the prices & quality of a good or service & to make informed decisions about their healthcare
  - To avoid ERISA preemption (Gobeille v. Liberty Mutual, 577 U.S. __ 2016)
  - Providers **need** to disclose prices
  - Information regarding quality of providers **needs** to be made available
  - Insurance companies **need** to provide price transparency
  - Agencies **need** to consolidate quality measures
- What Does (and Doesn't) the Order Do?
  - Does not change law or regulations
  - It's a directive to agencies to draft new rules (which must go through the rulemaking process)
- Expect Legal Challenges

The Executive Order

Underlying Assumptions:

- Hospitals and insurers benefit from nontransparent pricing
- Patients care enough to shop around, despite the maximum OOP limitations
- Patients are the ones most affected by the lack of transparency, rather than insurers
- Patients fully understand and embrace all terms and limitations within their insurance plans

The Executive Order

Section 1. Purpose.

> *Opaque pricing structures may benefit powerful special interest groups, such as large hospital systems and insurance companies, but they generally leave patients and taxpayers worse off than would a more transparent system.*

Accuracy: 6/10

- How exactly would a lack of transparency *benefit* a self-funded health plan?
- Why draw a distinction between "patients" and "taxpayers," unless this is regarding Medicare (which is immune to opaqueness anyway)?

The Executive Order

Section 1. Purpose.

> *Improving transparency in healthcare will also further protect patients from harmful practices such as surprise billing, which occurs when patients receive unexpected bills at highly inflated prices from out-of-network providers they had no opportunity to select in advance.*

Accuracy: 5/10

- That is only half of surprise billing; the other half is in-network hospitals utilizing non-network radiologists, emergency physicians, pathologists, and anesthesiologists!
- Lack of choice is almost always in the ER context – but there is *already* a specific requirement for non-network ER payments

The Executive Order

Section 1. Purpose.

> *Shoppable services make up a significant share of the healthcare market, which means that increasing transparency among these services will have a broad effect on increasing competition in the healthcare system as a whole.*

Accuracy: 10/10

- Yippee!

The Executive Order

Section 3. Informing Patients About Actual Prices.

> *…[HHS] shall propose a regulation…to require hospitals to publicly post standard charge information, including charges and information based on negotiated rates and for common or shoppable items and services…that will meaningfully inform patients' decision making and allow patients to compare prices across hospitals.*

But…

- Information is good – but what incentives will patients have to care? Especially once their OOPs are met…?

The Executive Order

Section 4. Establishing a Health Quality Roadmap.

…[the Agencies] shall develop a Health Quality Roadmap (Roadmap) that aims to align and improve reporting on data and quality measures across Medicare, Medicaid, the Children's Health Insurance Program, the Health Insurance Marketplace, the Military Health System, and the Veterans Affairs Health System. The Roadmap shall include a strategy for establishing, adopting, and publishing common quality measurements; aligning inpatient and outpatient measures...

But…

- There are no really good ways to consistently measure quality
- Quality and price share **no** relationship!

The Executive Order

Section 5. Increasing Access to Data to Make Healthcare Information More Transparent and Useful to Patients.

…[the Agencies] shall increase access to de-identified claims data from taxpayer-funded healthcare programs and group health plans for researchers, innovators, providers, and entrepreneurs...

But…

- Taxpayer-funded program data is already heavily normalized
- Public programs are irrelevant to private payor billing

The Executive Order

Section 6. Empowering Patients by Enhancing Control Over Their Healthcare Resources.

…[the Agencies] shall issue guidance to expand the ability of patients to select high-deductible health plans that can be used alongside a health savings account, and that cover low-cost preventive care, before the deductible…

…to treat expenses related to certain types of arrangements, potentially including direct primary care arrangements and healthcare sharing ministries, as eligible medical expenses…

…to increase the amount of funds that can carry over without penalty at the end of the year for flexible spending arrangements…

The Executive Order

Section 7. Addressing Surprise Medical Billing.

…[the Agencies] shall submit a report to the President on additional steps my Administration may take to implement the principles on surprise medical billing announced on May 9, 2019.

Trump's remarks from May 9, 2019:

They're surprised with these bills. It's ruined people's lives. They leave a hospital with something they think is going to be routine and they end up in court, and they end up going to court. And then they end up with lawyers' bills that are bigger than anything they could have imagined. They get it from every side. We're not going to have that anymore.

The Executive Order

Takeaways:

- Transparency doesn't regulate *in*-network billing
- Transparency doesn't regulate *non*-network billing
- Transparency doesn't solve the bigger issue, which is inflated *insurance* billing
- Surprise billing *may* be tackled *somehow*, *eventually*
- Transparency only goes so far; health plans will need systems of incentives to make sure patients have a reason to stay informed!

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Thank You

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