



EMPOWERING PLANS SINCE 2000



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A Pandemic Economy:  
Industry Risks & Opportunities

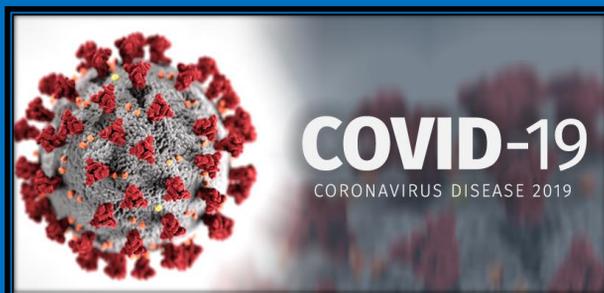
May 19, 2020



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## Phia Group Consulting

### STAY AHEAD OF CORONAVIRUS



Contact Us At [PGCReferral@phiagroup.com](mailto:PGCReferral@phiagroup.com)  
with any and all questions on COVID-19

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## Overview

- I. PGC FAQs
- II. The Future of Health Plans
- III. Political Update
- IV. Navigating Layoffs, Furloughs & Reduction in Hours
- V. The HEROES Act / SIIA's Letter to Congress
- VI. Extension of Deadlines
- VII. Occupational COVID-19 & Other Workers' Comp. Considerations
- VIII. Phia's COVID-19 Response Plan

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## Today's Speakers



**Adam V. Russo, Esq.**  
Chief Executive Officer



**Ron E. Peck, Esq.**  
Executive Vice President  
& General Counsel



**Jennifer M. McCormick, Esq.**  
Sr. Vice President, Consulting



**Brady C. Bizarro, Esq.**  
Director, Legal Compliance  
& Regulatory Affairs

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*Thanks for listening!*

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**Thanks for Listening!**

Special Shout-Out to  
**Elaine Holzhauer**  
Program Manager  
Berkley Accident and Health



**Elaine told us:**

“A fun fact about me...I speak 4 languages, have traveled throughout parts of Europe on River Cruises, and I lived in another country for a short period of time.”

*Thanks for listening!*

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## We Have Moved!

### Phia's New Address

**40 Pequot Way  
Canton, MA 02021**



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## PGC Most Frequently Asked Questions

**Under the FFCRA/CARES Act, can we impose any limitations on COVID-19 testing (i.e., the number of times a person can be tested, whether asymptomatic individuals can be tested, etc.?)**

- The FFCRA states that a group health plan "...shall provide coverage and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements..." for COVID-19 testing and related services.
- FAQ #6 provides that plans and issuers shall not impose any cost sharing requirements (including deductibles, copayments, and coinsurance), prior authorization requirements, or other medical management requirements for these items and services.
- Plans should be erring on the side of coverage when it comes to diagnostic testing.

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## PGC Most Frequently Asked Questions

### If we cannot know when the COVID-19 national emergency will end, how can we implement plan language creating extensions based on that date?

- Not knowing when the declared national emergency relating to COVID-19 will end, means we don't know when the "Outbreak Period" for purposes of extensions for COBRA and other notices and deadlines will end.
- We do know the exact events that must occur. When outlining these extensions in plan language a plan will want to define events, not dates or specific durations.
- Define the "Outbreak Period" in its plan document as defined in law – the period from March 1, 2020 through 60 days after the end of the COVID-19 national emergency (declared by the President – not to be confused with the Public Health Emergency declared by the HHS secretary). All days during this period are disregarded for purposes of determining the various specific deadlines and time limits in question.

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## The Future of Health Plans

- The Buzz: Expect More Consumer Driven Health Plans (CDHP)
  - Less Dependency on Traditional PPO Plans
  - High-Deductible Plan (HDHP) Coupled With a Health Savings Account (HSA)
  - Opportunities for Other Pricing Methodologies?
  - When Faced with High Deductibles or Narrower Network – Which will Participants Prefer?
- Health "Insurance" Will Cost More
  - Employers Can't Overspend
  - Care Isn't Getting Cheaper
  - Cost is Being Shifted to the Employee Opportunity? Offer More for Less & Recruit New Employees When It's Time
    - Better Pricing Methodologies
    - Cut the Fat – Cover Only What the Population Needs
    - Leverage Third Party Payers

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## Obamacare In the Spotlight (Again)

- High Court Rules on Risk Corridors Case
  - Maine Community Health Options v. United States
  - 8-1 decision, Court ruled that insurers were entitled to > \$12 billion in unpaid risk corridors payments
  - Huge win for insurers, will help bolster insurance market generally
- Contraceptive Mandate Case
  - Little Sisters of the Poor v. Pennsylvania and Trump v. Pennsylvania
  - Oral arguments held over validity of Trump-era rules to expand exemptions to the contraceptive mandate
  - Ruling expected later this summer
  - **Our take and a prediction**
- California v. Texas
  - The biggest ACA case of them all
  - Opening briefs were due on May 6th
  - Oral arguments will be heard in the fall, decision in 2021



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## Navigating Layoffs, Furloughs & Reduction in Hours

- Terminology; no universal definition or meaning
  - Furlough → temporary, involuntary leave of absence and/or reduction in hours
  - Leave of Absence → individualized circumstances preventing the employee from being able to work
- Review the current plan language
  - Eligibility provisions
  - Continuation of coverage provisions
  - Termination provisions
- Plan modification may be required continue coverage
  - Must not leave ineligible employees on the plan
  - Should have well defined parameters



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## Navigating Layoffs, Furloughs & Reduction in Hours

- Reduction in Hours
  - Minimum hour requirement should already be outlined
  - Reduction in hours may open door for part-time employees to enroll
  - Impact to grandfathered status if reduction temporary?
- COBRA
  - Plans generally treat employee on unpaid leave as ineligible for continued coverage after a specified time
  - If layoff or reduction in hours triggers COBRA, employer may wish to subsidize part or all of COBRA coverage (temporarily)
- Actions to Consider
  - Define and document parameters within an amendment
  - Coordination and communicate with the stop-loss carrier, TPA and other relevant entities
  - The Employer Mandate

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## Navigating Layoffs, Furloughs & Reduction in Hours

- Modification of Actively at Work provision to account for COVID-19
- Review whatever modifications are made with employment policies and the definition with the stop-loss policy
  - Ensure definition does not inadvertently render participants ineligible
- Examples
  - If eligible and enrolled employee is infected with, quarantined or unable to work due to office closure related to COVID-19, the employee will be considered actively at work during such period
  - Employees on furlough or leave of absence will be considered actively at work if individuals were actively at work on the day before the closure of the business and otherwise satisfied the actively at work provision
  - Employees on the plan considered actively at work the day prior to the closure may be considered actively at work during the period of March 1, 2020 to May 18, 2020

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## Navigating Layoffs, Furloughs & Reduction in Hours

### Considerations When Amending the Plan and Other Documents

- COVID-19 testing/treatment should be treated like any other illness covered under the Plan (i.e., medical necessity and experimental/investigational guidelines)
- Plans should also review the network contract, if applicable, and regarding limits the Plan can do with cost-sharing for out-of-network services
- Confirm no creation of a gap in coverage by extending coverage
- Plan should clearly articulate what benefits will be covered, the applicable cost-sharing for those benefits, and should also outline any other plan changes such as continuation of coverage during a layoff, furlough, or leave of absence

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## Navigating Layoffs, Furloughs & Reduction in Hours

### Timing for Amendments

- Non-enforcement
  - HHS will not take enforcement action against health plans that change benefits or cost-sharing structures mid-year to provide increased coverage for services related to COVID-19 diagnosis or testing
  - Position will continue through end of current public health emergency
  - Plans wishing to maintain coverage beyond the emergency must comply with all other applicable requirements to update the plan
- Plans must provide notice of these changes as soon as reasonably practicable (issuing a new SBC or a notice of material modification)
- Enforcement
  - Enforcement action will be taken against plans that attempt to limit or eliminate other benefits or increase cost-sharing to offset the cost of increasing benefits for COVID-19

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## The HEROES Act



*On March 15th, the House of Representatives passed the HEROES Act, a \$3 trillion coronavirus relief bill.*

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## The HEROES Act

### Stimulus #4

- Passed the House on May 15th
- Senate calls this bill “Dead on Arrival”
- Areas of Contention: Oversight, Funding Priorities, Payroll Taxes, and More
- SIIA’s Government Relations Committee Submitted a Letter to Congress
- A Few Key Issues Resonated & Were Addressed
  - **COBRA Subsidies:** The House draft provides 100% COBRA premium subsidies through January 2021, with the employer receiving a 100% tax credit for the premium
    - Key Point – Self-Funded Plans Must be Included!
  - **COVID Treatment Coverage:** Includes a no cost-sharing mandate for COVID treatment coverage
    - Key Point – Medical Necessity is Still Necessary!
  - **Surprise Billing:** A global issue on a smaller stage. The bill establishes a prohibition on hospital/provider surprise billing as a requisite for federal funding surrounding COVID treatment and care
    - Key Point – Looking at this Crisis as a Blueprint for a Bigger Solution

### THE HEROES ACT

A Bold Response to the Coronavirus Pandemic and the Economic Collapse



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## Extension of Deadlines

- On May 4th, the DOL extended a number of deadlines impacting self-funded health plans
- Plan to disregard the period of March 1, 2020 until 60 days after the end of the public health emergency or such date announced by the Departments
- The update impacts the following periods:
  - HIPAA Special Enrollment Periods
  - COBRA Election Deadline
  - COBRA Premium Payment Extension
  - Claims Filing Period
  - Appeal of an Adverse Benefit Determination
  - Request for an External Review
- CMS will adopt this relaxed policy to extend similar timeframes otherwise applicable to non-Federal governmental group plans



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## Extension of Deadlines

- IRS will allow mid-year health plan changes
- Optional changes for employers to allow:
  - Mid-year election change
    - Enroll, drop coverage (if alternative), change coverage
  - Change FSA contributions
  - Increase carryover limits from \$500 to \$550
  - Extend the grace period to use 2019 carryover

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## Occupational COVID-19

### What COVID-19 means to Workers' Compensation Claims

- Employer Considerations
- Workers' Compensation Considerations
- Employee Considerations
- Health Plan Considerations



### Defining Occupational and Occupational COVID-19

- Occupational
  - Arising out of or incurred during the course and scope of employment
- Occupational COVID-19
  - Employee suffered an injury (i.e., COVID-19)
  - Arose out of employment
  - Particular to an employee's work
    - Higher risk industry considerations

### Rules Differ by State

- Some states have "proposed" WC as primary coverage
- In others, the rule was issued but is being challenged in court

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## Occupational COVID-19

### Making the Connection

- Connecting COVID-19 claims to the workplace will be difficult for employers:
  - OSHA declared that COVID-19 is a recordable injury
  - Employers must notify federal agencies when a worker is infected at work
- How will employers make and prove the connection?
  - Establishing how and when infected and/or exposed
  - Nature of a virus makes it difficult to determine main contributing factor
  - Exposure can occur in public settings, and creates timing questions
- Considerations for Employers
  - Review the merits of each claim individually
  - Review the travel habits and schedule of the individual employee
    - Did the employee travel to a location with a known threat?
    - Did the employee engage in or interact with people who have contracted COVID-19?

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## Occupational COVID-19

### Consequences for a COVID-19 Compensable Claim

- Health Consequences
  - Will recovered employees be able to file for permanent disability?
  - If employee is exposed but not symptomatic, is employer responsible for temporary disability during quarantine?
- Will Employers See More WC claims?
  - Overall claim frequency may be lower overall with less people working (laid off or hours reduced), but not across all industries
  - Individuals newly hired may operate in unfamiliar working environment and prone to work place accidents
  - People may be in a tough economic time and may try to file WC claim to offset costs
- Essential Workers & Higher Risk

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## Occupational COVID-19

### Impact to Workers' Compensation Carriers

- Costs
  - Estimates in NY from late March of \$31B – more than triple the state's current annual losses in both insured and self funded markets
  - WC not designed to cover communicable diseases, and not those associated with a global pandemic
  - Presumption laws shift claims onto WC
  - COVID 19 supplemental health coverage for employers?



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## Occupational COVID-19

### Health Plan Considerations

- Work with TPA, stop-loss and partners to develop a clear plan for claims
- Investigate thoroughly and consider the possibility of fraud
- Consider alternative tools and care (e.g., telemedicine)

### Coordination of Benefits Approach

- If a plan withholds payment they risk losing discounts, balance billing of patients, and prompt payment violations (contractual, regulatory, and statutory). If the claims are substantial, you wouldn't want the deadline to pay claims and submit a request to stop-loss for reimbursement to expire.
- If claims "to be denied for COB" are even close to the specific deductible, someone who denies for COB should get stop-loss to agree to hold the claim open in case the plan does end up paying.

### Subrogation Approach

- If you pay and chase (the subrogation approach), you risk workers' compensation carriers reimbursing the plan or provider only up to the maximum allowed under their payment fee schedule.

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## Phia's COVID-19 Response Plan

### COVID-19 Task Force

- Phia has formed a task force to monitor and coordinate events around the pandemic
- The goal of the task force is to implement practices and policies to promote safety and reduce the spread of COVID-19, protect our physical offices and ensure our employees are as safe as possible within the workplace
- Office Practices and Policies:
  - Self-certification forms
  - Temperature checks
  - Face mask requirements (in shared spaces)
  - Training requirements
  - Office restrictions and protections
  - Workplace safety signage
  - Social distancing guidelines
  - Supplies and frequent cleaning



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## Phia's COVID-19 Response Plan

### COVID-19 Task Force

- Specific Practices and Policies Related to:
  - Voluntary Work from Home
  - Encouraging High Risk Employees to Work from Home
  - Staying Home When Ill
  - Social Distancing
  - Business Travel Limitations
- Confidentiality of Medical Information
  - Our policy is to treat any medical information as a confidential medical record. In furtherance of this policy, any disclosure of medical information is in limited circumstances with supervisors, managers, first aid and safety personnel, and government officials as required by law

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## Thank You!

**Join us for our next free webinar:**  
**June 16, 2020 at 1:00pm EDT**  
[www.phiagroup.com/media/webinars](http://www.phiagroup.com/media/webinars)



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