



## Best Practices for Today's Plan Documents

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## Phia Podcasts



Podcasts Coming Your Way Soon:

- What Is Going On In D.C.?
  - Tune in to hear about what is currently happening in D.C.
  - Special Guest: Attorney Brady Bizarro
- Plan Drafting Tips and More
  - Tune in for tips on plan drafting, as well as details about the Phia Group's Flagship Template
  - Special Guest: Attorney Jennifer McCormick



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Check out  
Chapter 13

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## Today's Speakers



- **Adam V. Russo, Esq.,** CEO & Principal
- [arusso@phiagroup.com](mailto:arusso@phiagroup.com)
- **Ron E. Peck, Esq.,** Senior Vice President and General Counsel
- [rpeck@phiagroup.com](mailto:rpeck@phiagroup.com)
- **Jennifer McCormick, Esq.,** Vice President of Consulting
- [jmccormick@phiagroup.com](mailto:jmccormick@phiagroup.com)
- **Brady C. Bizarro, Esq.,** Consulting Attorney
- [bbizarro@phiagroup.com](mailto:bbizarro@phiagroup.com)









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## Agenda



- Phia Housekeeping
- Political Update
- PGC FAQ
- **Plan Documents: Best Practices**



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## Agenda



- **Plan Documents: Best Practices**
  - Definitions
  - Exclusions
  - Services & Payable Amounts
  - Discretion
  - Eligibility / Enrollment
  - Subrogation



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## PHIA HOUSEKEEPING



- Subro: Questionnaire changes
- Reference-Based Pricing
  - Litigation
  - Balance-billing + OOP max = DOL guidance (maybe?)
- Catherine Dowie wins legal brief competition



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## A POLITICAL WHIRLWIND IN WASHINGTON



- Secretary Tom Price Resigns over Travel Spending Scandal
  - Deputy Sec'y Eric Hargan Now Serving as Acting HHS Sec'y
  - Unclear What His Priorities Are or How Long Until He Is Replaced
- **Graham-Cassidy Is Dead, but Republicans Will Not Give Up On Repeal & Replace**
  - Who Was Right?
  - Budget Reconciliation Rules have Expired (for This Year...)
  - New Budget Resolution could Mean New Reconciliation Rules
  - The Truth Is, with Rs in the Majority, Repeal Will Never Die
- President Trump Is Taking Matters into His Own Hands



**Donald J. Trump** @realDonaldTrump · Oct 10

Since Congress can't get its act together on HealthCare, I will be using the power of the pen to give great HealthCare to many people - FAST

26K

23K

99K



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## CRUSHING OBAMACARE



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## THE POWER OF THE PEN



- Trump Admin. Narrows the ACA's Contraceptive Mandate (10/6)
  - This **Directly Impacts** Employer-sponsored Insurance
  - New Rules on "Moral Exemptions" and "Religious Exemptions"
  - The "Optional" Accommodation Process and the Impact on TPAs
- Executive Order (10/12)
  - Association Health Plans
  - Short-term Insurance
  - "The Secretary Shall" ...Maybe Not
- Trump Admin. Ends Cost-sharing Reductions ("CSRs") (10/13)
  - What are CSRs?
  - The Impact on the Market
  - Stepping up the Pressure



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## PGC FAQ



- How will the new HHS interim final rule on contraceptives impact an employer's self-funded plan?
- If a plan covers dependents, can the contribution levels be variable based on a dependent child's marital status?
- I'm thinking of making a change to my benefit plan. What other considerations should I take into account?



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## BEST PRACTICES: DEFINITIONS



- Actively at Work
- Maximum Allowable Charge ("MAC")
- Provider
- Essential Health Benefits ("EHBs")
- Dependents – same-sex marriage, domestic partners
- Genetic testing & pre-certification/authorization
- Medically Necessary – "maintenance therapy/treatment"



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## BEST PRACTICES: EXCLUSIONS



- Alcohol
  - Supplementing the “Illegal Acts” exclusion
- Provider Error
  - Reasonable vs. unreasonable
- Vehicle Accident
  - Seatbelts and helmets
- Occupational
  - Going beyond the “Worker’s Comp.” exclusion
  - Wage, profit, gain, eligible for, entitled to, self-employment, etc.



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## BEST PRACTICES: EXCLUSIONS (cont.)



- Fraud Termination
  - Retroactive application
- Excess
  - U&C/Max Allowable needs to be defined and properly excluded
  - Negotiated rates must be taken into account
- Hazardous Pursuits/Hobbies/Activities
  - Language is static but interpretations vary greatly
- Foreign Travel / Medical Tourism
  - Domestic & foreign



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## BEST PRACTICES: SERVICES & PAYABLE AMOUNTS



- “Should we cover X? Do we have to?”
- U&C is often excluded across the board, with no allowance for negotiations or even ordinary PPO rates
  - Can cause fiduciary issues and stop-loss denials
  - Ensure that SPD (including carve-out) lines up with PPO
- Mental Health Parity Compliance
- Air Ambulance
  - The importance of utilization and distance limitations



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## BEST PRACTICES: DISCRETION



- Plan Administrator should have the maximum legal discretion to interpret ambiguous terms of the Plan Document
- Guarantees deference if challenged in court
- No matter how good the language, there will always be exceptional and unexpected circumstances requiring interpretation of Plan Document terms
  - Example: Is “mountain unicycling” a hazardous activity? (It’s probably not mentioned within the exclusion...)



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## BEST PRACTICES: ELIGIBILITY / ENROLLMENT



- Ensure eligibility criteria and employee classifications are clearly defined
- Compliance with the Employer Mandate
- Waiting Periods – Plans cannot impose different waiting periods for employees
- Dependents – Are you covering everyone you need to cover?



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## BEST PRACTICES: SUBROGATION



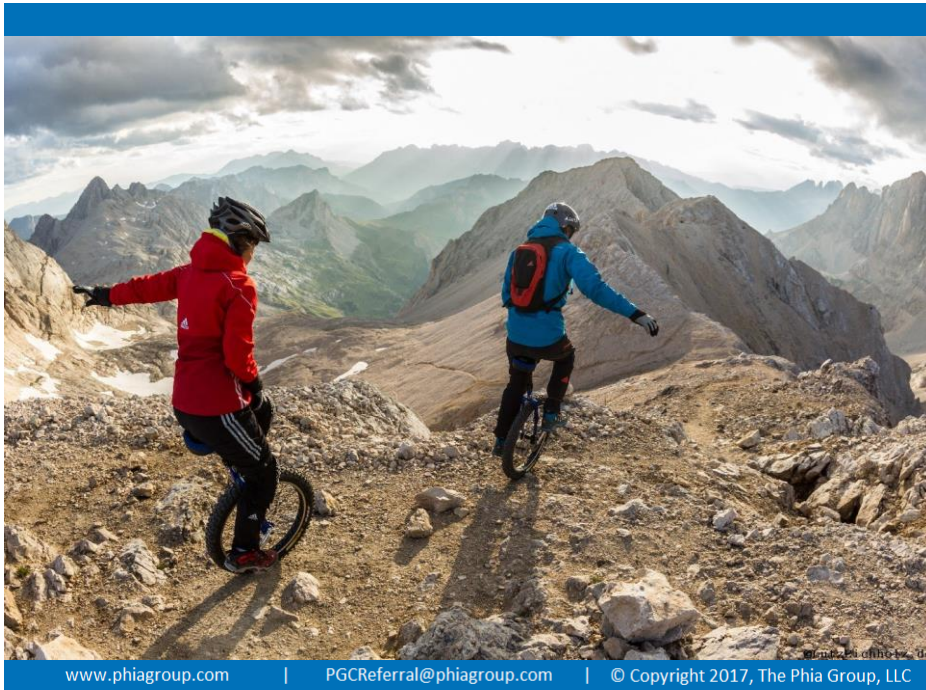
- Plan should differentiate between “subrogation” and “reimbursement”
- Disclaim “Made Whole” and “Common Fund” doctrines
- Advanced language: offset, severability, minors, wrongful death, trustee over Plan assets
- No signed subrogation agreements!
- Know your COB



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## Guess What Is Sitting in Your Inbox?



4<sup>TH</sup> QUARTER 2017

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