

## A CHANGING INDUSTRY: KEEPING *PACE* WITH THE TRENDS



**THE  
PHIA  
GROUP**

EMPOWERING PLANS

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## OVERVIEW

- Costs: What Do You Care About?
- Growth of Self-Funding
- The New Self-Funded Industry
- Fiduciary Finger-Pointing
- What Today's Appeals Look Like
- Keeping *PACE* With the Trends
- Containing Costs and Staying Competitive



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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...*

*...and what about fiduciary duty?*

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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## GROWTH OF SELF-FUNDING

The numbers:

Percentage of self-funding employers

- Employers sized 1-99: less than 5% self-fund
- Employers sized 100 to 499: 26% self-fund
- Employers sized 500+: 82% self-fund

Self-funded growth & fully-insured decline

- From Q4 2013 to Q2 2014, self-funding enrollees increased by approximately 4 million
  - Never previously been self-funded; never needed to be a fiduciary
    - That's 4 million new self-funded lives that could go to ASOs as a result
- In the same time period, fully-insured enrollees decreased by approximately 5 million



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## GROWTH OF SELF-FUNDING

- ASOs create a bundled experience and mimic fully-insured carriers
- What are ASOs doing right?
  - Comprehensive networks
  - No stop-loss “gaps”
  - Assumption of fiduciary duties



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## GROWTH OF SELF-FUNDING

- Customization
  - Self-funded plans can employ custom processes
    - Subrogation
    - Negotiation
    - Fiduciary shifting
    - Employee “skin in the game”
    - Medical tourism
    - Plan design
    - Narrow networks, direct provider contracts
    - “New school self-funded plans” – Level-funded, “skinny”/MEC plans
- Costs
  - Fully insured products can cost up to \$10,000 PEPY
  - Self-funding can save approximately 12% (Source: benefitspro.com)
- But, there’s also risk!
  - With the ability to make choices comes fiduciary liability
  - Imposed on plans, TPAs, brokers, vendors...
    - ...all responsible to protect the plan



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## THE NEW SELF-FUNDED INDUSTRY

- TPAs need to adapt to survive
  - In a growing marketplace, TPAs need to distinguish themselves from their competition
  - Millions of new self-funded lives on the way – and they’re scared of fiduciary duties
  - RFPs asking for fiduciary options, claim negotiation, overpayment recovery, high accuracy
    - 88% of broker RFPs submitted to TPAs include a fiduciary shift question
- Plans need to cut costs to survive
  - Last chance to keep groups, or they will go to ASO market, if they stay self-funded at all (alternative: drop plans, pay penalty, send EEs to exchange...)
- Stop-loss needs innovative TPAs *and* plans



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## FIDUCIARY FINGER-POINTING

- “Medical judgment” denials subject to external appeal (IROs)
  - The frequency of external appeals will continue to increase
- At Least 3 URAC accredited IROs required
- Changing interpretations of regulations
  - Rose v. HealthComp, Inc. – when are disclosures proper?
    - Plan Administrator asked TPA for plan PHI; TPA disclosed to an individual specifically designated to receive
    - Plan Administrator used data for non-plan purposes; patient sued TPA in response
      - Allegation: TPA acted in the employer’s interest rather than the plan’s
      - Why sue the TPA?
      - Implications on the TPA industry as a whole?



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## FIDUCIARY FINGER-POINTING

- Johnson & Towers v. Corporate Synergies Group
- Express Oil Change v. ANB Insurance Services
- ERISA Penalties of \$110 a day
- Treble Damages



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## FIDUCIARY FINGER-POINTING

### Examples:

- Claim incurred resulting from DWI. SPD excludes “felonious acts.” TPA interprets the phrase “felonious act” to include DWI, which is actually a misdemeanor – not a felony
- Claims incurred by a participant who was not offered COBRA in a timely manner and therefore could not properly elect
- Claim incurred for off-label drugs. SPD’s definition of E&I is silent on the topic. Plan Administrator denies the claim as being E&I due to being off-label use, based on non-SPD rationale
- Claim incurred and sent to vendor for clinical audit and code edits. SPD only defines U&C as the prevailing charge in the area, but claims are denied as being excessive compared to vendor’s definition



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## FIDUCIARY FINGER-POINTING

### Examples:

- Claims incurred by a participant out on FMLA leave which questionably runs concurrently with other leave
- Claim arises from an incident that occurred at a hospital. Plan excludes for malpractice, but there is no basis for that theory
- A provider appealing the plan’s reference-based payment at 150% of the Medicare rate
- A claim for injuries incurred by horseback riding, possibly subject to the SPD’s “hazardous activities” exclusion, which lists some examples but not horseback riding



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## KEEPING *PACE* WITH THE TRENDS

- **Plan Appointed Claim Evaluator (PACE):** A fiduciary transfer solution
  - PACE makes the decision on final, internal appeals
- A vital piece in creating the “new” TPA and self-funded experience
  - Lets TPA match the benefits of an ASO or fully-insured carrier, and claim some of those 4 million new self-funded lives
  - Helps self-funding become less scary for both first-timers and veterans
  - Useful for all plan types (RBP, traditional PPO, EPO, level-funded, “skinny”)
    - *All self-funded plans involve fiduciary duties!*
- Phia stands behind the PACE directive
  - Do away with the concern & liability
  - Unsurpassed legal analysis, clinical review and facilitation of IROs
  - PACE is responsible – not you



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## CONTAINING COSTS AND STAYING COMPETITIVE

- Prescription drug programs
- Medical tourism (not just foreign!), direct provider contracts
- New ways of addressing providers
- Reference-based pricing vs. OOP maximum?
- Montanile – The latest from the Supreme Court
  - Oral arguments scheduled for November 9<sup>th</sup>
  - The potential fallout for you (and everyone else)



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# THANK YOU

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