EMPOWERING PLANS

Q&A: USING THE PHIA GROUP AS THE "PACE"

I. Introduction to PACE

Q: What is PACE?

"PACE" stands for **P**lan **A**ppointed **C**laim **E**valuator. It is a service whereby The Phia Group assumes fiduciary duties as they relate to final post-service appeals of benefit denials. When a plan participant appeals a final adverse benefit determination, and the appeal is the last one available to that participant (prior to submitting an external appeal to an Independent Review Organization ["IRO"] or filing a civil suit to appeal), The Phia Group will make the claims payment determination.

Q. What kind of health plans can utilize PACE?

PACE is a service that can be enjoyed by *all* self-funded health plans utilizing any and all plan designs. When the self-funded plan must be overseen by at least one fiduciary, whether the plan is a traditional network plan, utilizes reference-based pricing, carve-outs, or any other innovative model, The Phia Group's PACE service will help the group, Plan Administrator, and/or other named fiduciary avoid making binding determinations on final appeal.

Q. Why does a group need a PACE?

One of the primary concerns of a self-funded group is the daunting nature of being a fiduciary. With the PACE service, the group can rid itself of the riskiest fiduciary burdens. The Phia Group's review as the PACE provides a much-needed level of protection, ensuring that claims are correctly paid pursuant to the Plan Document, the Plan Administrator's decisions aren't further reviewed externally without first passing through the PACE, and arbitrary decision making (and resultant fiduciary breach) is eliminated.

Q. Why is now the time for PACE?

This offering has never before existed in the industry. While there are entities in the industry that assume fiduciary duties for all claims, paying a premium to outsource *all* fiduciary duties is simply a waste of the Plan's money. The PACE's handling of only final administrative appeals is designed to provide only the assistance the Plan actually needs.

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Carriers offering fully-insured policies are able to offer peace of mind in exchange for exorbitant premiums. Now, with PACE, self-funded groups can be given that same peace of mind, without the high premium normally associated with it.

In addition, the United States Department of Labor and state agencies are beginning to crack down on how self-funded plans are administered. The legal climate surrounding the self-funded industry is changing, and in many ways for the worse; with such changes come increased enforcement and scrutiny, and employing a PACE is a way for the Plan to ensure that it is being administered in a compliant manner.

Q. Does PACE make Phia the Plan Administrator?

No. The Phia Group acts in a limited fiduciary capacity upon a claimant filing a final administrative appeal. The Phia Group is only given authority to make determinations on final appeals, where and when it really matters. A final appeal and decision is the determination that will be assessed by an IRO or court of law (during an external appeal).

II. Advantages of PACE

Q. Does using a PACE benefit groups that are new to self-funding as well as veterans?

Yes. A PACE is equally beneficial for groups that are new to self-funding and groups that are self-funding veterans. Groups that are new to self-funding have never had to be a fiduciary before – and we know the prospect is a daunting one. The PACE can help shift that burden and ensure that the transition to self-funding is a smooth one.

To contrast, groups experienced in self-funding are already aware of how intimidating the fiduciary burden can be, especially when it comes to complex legal or medical situations that have no clear answer.

The Plan Administrator is responsible for coming to a determination on the most difficult and complicated benefit determinations, and the PACE is here to relieve the stress of final appeals.

Q. What benefit is there to the group when using a PACE?

(1) Decisions are Reviewed Prior to External Review:

First and foremost, decisions made by the plan to deny will be reviewed by the PACE when the time for a final appeal has come. The plan can thus avoid making the difficult fiduciary determinations, in response to final appeals, that have the potential to be scrutinized by an IRO (for non-grandfathered plans) or court of law (for either grandfathered or non-grandfathered plans).

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(2) Financial Protection for Damages Resulting from Fiduciary Breach:

The Phia Group, when acting as the PACE, takes on liability for damages that may result from an arbitrary or capricious claims determination. The plan can thus avoid liability arising from breaching its fiduciary duty, in connection with final appeals.

(3) Avoid Potential Conflicts of Interest and Ensure Objectivity:

A plan that chooses to outsource a final administrative appeal to the PACE demonstrates a commitment to objectivity. The Plan Administrator does not need to be on the ground making the difficult fiduciary determinations that may result in denying claims to its valued employees; the decisions and procedures to be followed are already present within the Plan Document, and the PACE is tasked with ensuring that the Plan is administered strictly accordance with its terms. Unlike the Plan Administrator, the PACE has no incentive whatsoever to deny claims, and the Plan Administrator itself can avoid the public disapproval and employee dissatisfaction that so often comes with large claim denials.

(4) Complimentary Access to PredictDx and PredictRx:

TPAs that elect the PACE service will receive complimentary access to Advanced Medical Strategies' PredictRx & PredictDx services. These valuable services are beneficial to plans and TPAs alike; they are designed to provide prediction and analysis regarding many aspects of the claims processes and can help streamline and add efficiency to claims processing. The PACE service includes the following tools:

(a) Access to AMS' online claims cost prediction tool
(b) A database of verified information concerning 175+ catastrophic cost drivers
(c) Prediction and comparison of costs and treatments triggered by the diagnoses
(d) Prediction of when stop-loss specific deductible will be met
(e) Identification of most cost-effective treatment plans
(f) Data sourced from multiple vendors, TPAs, and claims processing entities, Government All-Payer Claims Databases (APCD), the Center for Medicare & Medicaid Services (CMS), EOBs, and IRO/IME medical reviews.

Q. What sort of situations would benefit from using a PACE?

The Plan may frequently find itself in situations where claims determinations require certain discretion to be used to apply plan provisions – most often, exclusions. Examples include:

(1) Expenses are incurred from an injury sustained as the result of the member's running a red light while driving. The SPD simply excludes expenses caused by "illegal acts," but does not elaborate. The Plan Administrator determines that "illegal acts" includes running a red light, and denies the claim. The Plan Administrator is potentially liable for breaching its fiduciary duty to interpret the Plan's terms in a reasonable manner.

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(2) A claim is incurred for an off-label drug prescription. The Plan defines Experimental and Investigational treatment in a comprehensive manner, but is silent on the issue of off-label drug use. The Plan Administrator determines that the claims are deniable under the Plan because it feels that off-label drug use is intuitively a type of experimental use. The Plan Administrator may be deemed by a court or IRO to have breached its duty to base its benefit determinations upon reasonable evidence.

(3) A claim for a covered service is incurred and referred to a vendor to perform a clinical audit, including significant code edits. The Plan defines Usual and Customary as the prevailing charge in the area, and the use of the auditor's recommendations are not permitted by any particular language within the Plan. By applying the auditor's recommendations and reducing charges based on them, the Plan Administrator is breaching its fiduciary duty to pay benefits in accordance with the terms of the Plan.

Q. Why do Stop-Loss Carriers Love the PACE Service?

There are many reasons MGUs, Stop-Loss Carriers, and other Reinsurers appreciate the PACE service. Amongst these reasons, two stand out sharply. First, with the advent of the ACA and open access to external appeals with IROs, carriers have adjusted their policies, thereby ensuring reimbursement to plans if and when an IRO or court of law requires the plan to pay a previously denied claim. This ever present threat – that a previously denied claim may be deemed payable by an IRO – haunts stop-loss carriers.

When the PACE analyzes a claim, before it is externally appealed, and confirms the denial is justified, the applicable stop-loss carrier feels confident that – if and when the claim is externally appealed – it will remain denied. Second, if an IRO or court of law forces a plan to pay a previously denied claim, that claim will likely be payable at 100% of billed charges, or, if it is reduced by some usual, customary or reasonable amount, balance billing will ensue against the plan participant. Either way, costs are sure to follow.

When the PACE determines that a previously denied claim is payable, however, the PACE proactively engages the applicable provider in negotiations, securing sign-off before the claim is paid. In so doing, the PACE reduces the exposure suffered by stop-loss carriers, when previously denied claims are later identified as payable.

III. The Client's Role

Q. What does the group/plan have to do when final appeals are submitted?

Nothing. The purpose of PACE is for the Plan Administrator to be able to rest easy knowing that The Phia Group is handling these appeals on its behalf. The PACE, rather than the group, Plan Administrator, TPA, or other named fiduciary will be making determinations on final appeals. The TPA

will be responsible for submitting appeals to The Phia Group and ensuring that all the necessary information is provided.

Q. What about IROs and the plan's obligations under the ACA?

As part of the PACE service's implementation, The Phia Group will determine whether each group plan it is servicing has already secured contracts with at least three IROs, per the requirements of law. If the answer is yes, The Phia Group will offer to add those IROs to a rotation of additional IROs, with whom it has an arrangement. Alternatively, the group may choose to replace its IROs, that are currently under contract, with the PACE's IROs. If the plan has no IROs under contract at the time of implementation, The Phia Group will advise the plan that they must have such contracts, and secure said contracts through the PACE's existent relationships.

IV. Payments and Damages

Q. Does The Phia Group pay medical claims if it makes a determination that is later reversed?

No. If claims are ultimately determined to be payable by an IRO or court of law, despite a decision by the plan to deny, and subsequent similar decision by the PACE, it is the plan's responsibility to pay that claim, pursuant to the terms of the plan document/SPD and applicable law. If a court or IRO, however, determines that that the decision to deny was arbitrary, such that additional damages are owed, then the PACE is responsible for those additional expenses, but in no event is the PACE responsible for the actual benefit payment.

Q. What is The Phia Group's role do if it makes a determination that is later reversed on appeal?

The Phia Group, as the PACE, stands behind its determinations. If appealed, The Phia Group will help defend its determinations and will provide testimony and factual evidence as necessary to support them. If The Phia Group is found to have breached its fiduciary duty in making a given final determination, The Phia Group is responsible for payment of any associated damages short of payment of the actual claim.

Q. What happens if stop-loss denies a claim that The Phia Group has determined to be payable?

Although The Phia Group is very confident of its determinations made as the PACE, the nature of a stop-loss policy is such that no matter how sure the PACE or the Plan Administrator could ever be of the proper outcome for a claim, it is always a possibility that stop-loss will not be on the same page. For that reason, The Phia Group cannot and does not guarantee that all claims deemed payable will be reimbursed by stop-loss. In the event that The Phia Group determines that a claim is payable, The Phia Group will help the Plan correspond with stop-loss and aid in any necessary appeals if stop-loss subsequently denies reimbursement.

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Q. How does The Phia Group handle network payment deadlines?

Upon being referred a final appeal, the PACE must be notified of any applicable network or other payment deadline. Although the deadline will almost certainly expire prior to the PACE's involvement, it is not inconceivable that the clock may not have yet run when the PACE receives the claim. In that event, the PACE needs to know about the deadline, and the PACE will strive to provide a directive prior to that date. In the event the network discount is lost during the time that the final appeal is in the PACE's possession, in the event the PACE ultimately deems the claim payable, the PACE will not be liable for the lost discount unless the PACE was provided sufficient time to handle the final appeal yet failed to make its determination in a timely manner.

V. Getting Started

Q. How is the PACE compensated?

The Phia Group's fee for PACE is assessed on a Per-Employee-Per-Month ("PEPM") basis. The TPA will collect the PACE fee from the group, and the TPA will in turn remit that fee to The Phia Group.

Q. What does the contracting process entail?

The Phia Group signs one agreement with the TPA to outline the specifics of the PACE service, known as the PACE Service Agreement. The TPA may choose to sign another, much shorter, agreement (known as the PACE Addendum) with both The Phia Group and the employer / plan sponsor. The PACE Addendum acts as a "joinder" agreement, through which the group agrees to the provisions of the PACE Service Agreement. The vast majority of relevant provisions are found in the PACE Service Agreement. The group-specific "joinder" agreement is very concise, and serves to secure the group's approval of the arrangement.

Q. Can a group utilize PACE automatically?

Not exactly. Due to the nature of the PACE's duties, it is important that the SPD adopted by the group plan in question be free of compliance issues and other potential problems regarding claims administration. For this reason, The Phia Group will need to examine the SPD, stop-loss policy, and/or network or provider agreements (when applicable), of any given group that wishes to implement the PACE service. Although we do not anticipate a need to deny access to the PACE service, The Phia Group cannot automatically grant access to this service without first ensuring that it will be able to competently perform the tasks involved in the PACE service.

Q. Does the PACE service require changes to the SPD?

Yes. There are two primary elements involved in PACE – allowing the PACE to act as fiduciary when handling final appeals, and the actual handling of those appeals. The SPD may already be fully compliant with laws such as the ACA and ERISA (as applicable), but the PACE implementation process

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entails modifying the SPD to perfect its claims and appeals language, as well as inserting language permitting the plan to utilize the PACE for final appeals. This language in the SPD also informs claimants that the PACE will be acting as the fiduciary for final appeals.

Q. How are the SPD changes made?

As part of the PACE service, the group plan using the PACE service will receive a template SPD amendment, that the group and TPA can customize to fit the particular plan in question. The template amendment will contain those provisions that The Phia Group deems necessary for it to perform the PACE service; it is possible that some of the additions made in the template SPD addendum will be unnecessary due to the SPD's current verbiage. The Phia Group also offers an assessment of the group's current cost-containment verbiage provides suggestions on how to strengthen it. This cost-containment review is optional and is not necessary for the PACE service, but is beneficial to the group nonetheless.

The group will need to adopt the amendment in some form before The Phia Group is able to perform the PACE service.

Q. How else is The Phia Group involved prior to final appeals being submitted to the PACE?

The Phia Group offers other services for a separate fee (such as Claim Negotiation & Signoff, Independent Claim Evaluation, and general consulting services) at every stage of the claims process, but the PACE service is not activated until a final, post-service internal administrative appeal is filed by the claimant. The Phia Group does not assume any fiduciary liability prior to handling such final appeals.

Q. I'm interested... Who do I contact to learn more?

To learn more about the benefits of a PACE, contact your administrator or The Phia Group at PCD@PhiaGroup.com, or 781-535-5622.