



EMPOWERING PLANS

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**BROWNING PUBLIC SCHOOL DISTRICT #9 EMPLOYEE HEALTH BENEFIT PLAN
PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION ASSESSMENT**

Plan Name: Browning Public School District #9 Employee Health Benefit Plan ("Plan")
Claims Administrator: Employee Benefit Management Services, LLC
Services Elected: ICE
Review Type: Plan Document and Summary Plan Description Assessment
Requestor: Leavitt Group
Documents Reviewed: Plan Document and Summary Plan Description (Restated July 1, 2023)
Date: June 20, 2023

We are pleased to provide you with the following plan review performed by The Phia Group, LLC ("Phia").

Phia has taken these concepts into account while reviewing the Plan, and has structured the plan assessment to center around three critical areas:

1. **Discretionary Authority:** Does the Plan Administrator clearly assert discretionary authority?
2. **Cost-Containment:** Does the Plan include cost-containment language and methodology to the fullest extent possible?
3. **Federal Law* Compliance and Conflicts in the Plan Language:** Does the Plan address applicable federal laws? Does the Plan contain language that conflicts with each other) i.e., Covered Benefit language conflicts with Plan Exclusion language)?

*This assessment does not include a review for compliance with state mandated benefits.

SUMMARY

Purpose

The objective of providing this assessment is to identify key areas an employer may want to consider for additional review (i.e., best practice update, cost-containment upgrade opportunity, or compliance risk), as well as recommendations for next steps. The scope of this assessment, however, is limited to commentary only. Provision of plan language and further in-depth discussions regarding this analysis may be provided as a separate request by contacting ICE-Email@phiagroup.com.

Important Note: Many items noted in this review are Phia's best practice recommendations and not related to coverage gaps or compliance issues and may not require an update or further discussion. As a result, many items noted herein may, or may not, be a good fit for the Plan. It is recommended that the Plan consider these recommendations in context with the recommendations of the Plan's claims administrator.

Next Steps

What are the next steps after the assessment is completed and returned?

1. Review all Phia's commentary (i.e., best practices, compliance issues or areas of concern) with the employer and/or claims administrator to identify any suggestions the employer would like to implement. **Important Note:** The employer must first discuss the suggested modifications with the claims administrator to ensure the items can be both supported and implemented. This step must occur prior to contacting Phia for a plan modification (i.e., restatement, amendment, or new document).
2. Once all parties have come to a consensus, if the claims administrator does not have preferred language to update the document or is unable to make the document changes, Phia can be contacted to further assist.
3. For additional Phia assistance, please use the Employer Action column within the below assessment to indicate which changes the employer is requesting. Use the "Keep or Amend" column to make a selection.
4. Please send all requests via email to ICE-Email@phiagroup.com.
5. The Phia team will respond with an applicable scope of work for the requested changes, as well as identify any outstanding items necessary to complete the request.

Assessment Overview

Specifically, Phia hopes by identifying concerning areas (i.e., cost-containment, compliance, and best practices) we can assist the Plan in their efforts to increase savings opportunities, mitigate risk and improve understanding of plan terms.

Notable Review Topics:

1. **Cost-Containment** – Coordination of Benefits and Assignment of Benefits
2. **Federal Law Compliance and Conflicts in the Plan Language:**
 - a. Medical Benefits Schedule – Essential Health Benefits, Pregnancy, and Preventive Care
 - b. Eligibility, Funding, Effective Date and Termination Provisions – 105(h) Non-Discrimination Rules and Eligible Classes of Dependents – Adopted Children
 - c. Medical Benefits – Clinical Trials
 - d. Definitions – Allowable Charge, Substance Abuse, and Missing Definitions
 - e. Plan Exclusions – Illegal Acts, Learning Disabilities – Developmental Delays, Sex Changes, and Missing Exclusions
 - f. Internal and External Claims Review Procedures – Authorized Representative, External Review Procedure, and Recovery of Payments
 - g. Notices – Newborns' and Mothers' Health Protection Act, Women's Health and Cancer Rights Act, HIPAA Privacy and Security Standards, Genetic Information Nondiscrimination Act, and Mental Health Parity and Addiction Equity Act of 2008

Disclaimer: This confidential information is intended for the entity to which it is addressed. Unless explicitly stated otherwise, it is for informational purposes, is not a substitute for legal counsel, and does not create an attorney-client relationship.

DETAILED ANALYSIS

DISCRETIONARY AUTHORITY

General Discretionary Authority Considerations

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
General Discretionary Authority Considerations	<p>Area for Review: The following areas were reviewed, and the Plan does a great job of clearly stating the pertinent information:</p> <ol style="list-style-type: none"> 1. Discretionary Authority 2. Fiduciary Status 	No Action Required	No Action Required

Applicable Law – Non-ERISA

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Document Type – Non-ERISA Plan	<p>Area for Review: This document is identified as a combined Plan Document and Summary Plan Description (SPD).</p> <p>Why is this Important: ERISA requires both a Plan Document and an SPD; however, it appears that this Plan is not subject to ERISA. Non-ERISA plans are subject to state law and any applicable state law requirements including any plan document content requirements; however, many states do not have laws addressing the content requirements of plan documents, so these plans usually choose to follow ERISA guidelines because they provide a clear structure.</p> <p>Note: For purposes of this assessment, we will comment on required information for the ERISA Plan Documents and SPDs, as our review is limited to federal law compliance.</p>	No Action Required	No Action Required

COST CONTAINMENT

General Cost Containment Considerations

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
General Cost Containment Considerations	<p>The following areas were reviewed, and the Plan does a great job of clearly stating the pertinent information:</p> <ol style="list-style-type: none"> 1. Claims Audit and Balance Billing 2. Coordination with Medicare 3. Third Party Recovery, Subrogation and Reimbursement 	No Action Required	No Action Required

Coordination of Benefits

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Coordination of Benefits	<p>Area for Review: The Plan wisely includes language reinforcing the Plan's benefits are in excess to any vehicle insurance on page 74. However, the Plan does not include a general excess statement reinforcing that the Plan's benefits are in excess to other coverage sources as well.</p> <p>Why this is Important: A Coordination of Benefits section operates to not only ensure that the proper amount of benefits is paid but establishes the order of payment when there are multiple recovery sources.</p>	We would advise including a general excess statement to reinforce that the Plan's benefits are also in excess to other coverage sources.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p>

			<input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggested language.
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Assignment of Benefits

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Assignment of Benefits	<p>Area for Review: The Plan briefly mentions "assignment of benefits" but does not include a section which allows for and defines assignment of benefits.</p> <p>Why this is Important: An assignment of benefits allows the patient to assign to the provider his/her right to receive payment for services and file a claim on his/her behalf. The providers then charge the Plan for payment directly, instead of submitting their bill to the patient and having the patient receive the money from the Plan. This avoids administrative burdens, delays, and employee ill will. Our suggested Assignment of Benefits language also creates arguments which the Plan can use later to combat balance billing efforts.</p>	The Plan should consider adding a more extensive section which allows for and defines assignment of benefits.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggested language.</p>

AREAS OF THE PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION THAT RAISE A CONCERN (FEDERAL LAW OR CONFLICT IN LANGUAGE)

MEDICAL BENEFITS SCHEDULE

Network Status and Claims Payment Parameters

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Network Status and Claims Payment Parameters	<p>Area for Review: The document clearly indicates payment levels for preferred and non-preferred providers.</p> <p>Why this is Important: A clear distinction between in and out-of-network providers must be made. In addition, the Plan must clearly explain the repercussions of using one over the other, as well as the payment procedures for both.</p>	No Action Required	No Action Required

Essential Health Benefits

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Essential Health Benefits (EHB)	<p>Area for Review: The Plan currently has a dollar limitation on wigs after chemotherapy or radiation treatment and hearing aids. Depending on which state benchmark plan the Plan has chosen to define its essential health benefits, these benefits may be considered essential benefits.</p> <p>Why this is Important: In accordance with Affordable Care Act (ACA) requirements, plans should refrain from imposing dollar limits on benefits that the Plan has identified as essential health benefits.</p> <p>The Plan should select a benchmark plan to reference when identifying essential health benefits and corresponding benefit limitations. Plans can select the benchmark plan of any state. More information is available from the Centers for Medicare & Medicaid Services (https://www.cms.gov/ccio/resources/data-resources/ehb.html).</p>	The Plan may consider reviewing its chosen state benchmark plan to ensure that any benefits that have an associated dollar limit are not considered an EHB under that benchmark plan.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language</p> <p><input type="checkbox"/> The Plan would like to amend the current language and identify _____ as the state benchmark for this Plan.</p>

Pregnancy

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Routine Prenatal Office Visits	<p>Area for Review: The Plan imposes cost sharing requirements on routine prenatal office visits on page 10:</p> <p><i>"If global maternity fee: 40% of Covered Charges will be payable at 100%, no deductible applies; thereafter 70% after deductible."</i></p> <p>Why this is Important: As part of the ACA, the Plan cannot impose cost sharing on certain routine preventive care services related to prenatal care.</p>	The Plan may consider including a caveat to this provision stating that, "Routine preventive prenatal care will be covered according to the Preventive Care provision."	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the changes suggested by Phia.</p>

Preventive Care

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Preventive Care	<p>Area for Review: The Plan includes the following language on page 11:</p> <p>"Routine Well Care Services will be subject to age and developmentally appropriate frequency limitations as determined by the U.S. Preventive Services Task Force (USPSTF)"</p> <p>"Women's Preventive Services will be subject to age and developmentally appropriate frequency limitations as determined by the U.S. Preventive Services Task Force (USPSTF) and Health Resources and Services Administration (HRSA)"</p> <p>Why this is Important: Per the ACA, non-grandfathered group health plans must provide in-network coverage of certain specified preventive services without cost sharing. These preventive services include:</p> <ol style="list-style-type: none"> 1. Evidence-based items or services rated A or B in the United States Preventive Services Task Force recommendations. 2. Recommendations of the Advisory Committee on Immunization Practices adopted by the Director of the Centers for Disease Control and Prevention. 3. Comprehensive guidelines for infants, children, and adolescents supported by the Health Resources and Services Administration (HRSA). 4. Comprehensive guidelines for women supported by the Health Resources and Services Administration (HRSA). 	We recommend listing all sources of preventive care in the benefit information, not just USPSTF and HRSA.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the changes suggested by Phia.</p>

ELIGIBILITY, FUNDING, EFFECTIVE DATE AND TERMINATION PROVISIONS

Eligibility Considerations

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Eligibility Considerations	<p>Area for Review: These areas were reviewed, and the Plan does a great job of clearly stating the pertinent information:</p> <ol style="list-style-type: none"> 1. Hours of Service Requirements 2. Measurement Periods 3. Waiting Period 4. Eligible Dependents (Child is Covered through end of birthday month) 5. Open Enrollment 6. Family and Medical Leave Act (FMLA) 7. Reinstatement/Rehire Provision 8. Employee Termination 9. COBRA Continuation 	No Action Required	No Action Required

105(h) Non-Discrimination Rules

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
105(h) Non-Discrimination	<p>Area for Review: The Plan should ensure that there are no issues with the Section 105(h) non-discrimination rules. The Plan appears to have different eligibility requirements for “Trustees” and “All Active Employees of the Employer.”</p> <p>Why this is Important: Under these rules, self-insured health plans cannot discriminate in favor of highly compensated individuals (HCIs) with respect to eligibility or benefits.</p> <p>Self-funded plans are subject to Section 105(h) non-discrimination rules. While employers are generally permitted to utilize bona fide employment based classifications, setting different eligibility parameters may still create issues with 105(h) testing. Plans should reach out to an entity to perform 105(h) testing on their behalf.</p>	Procedural Reminder	Procedural Reminder

Eligible Classes of Dependents – Adopted Children

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Eligible Classes of Dependents – Adopted Children	<p>Area for Review: The Plan seems to cover adopted children differently than other children. The Plan includes the following language on page 22:</p> <p>“The phrase ‘child placed with a covered Employee in anticipation of adoption’ refers to a child whom the Employee intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption.”</p> <p>Why this is Important: If the Plan is covering adopted children, it should cover them the same as all other children. This will ensure compliance with the ACA mandate requiring plans that cover children to provide coverage to adult children up to the age 26. Since adults over age 18 can be legally adopted, we recommend the Plan review this provision to ensure compliance.</p>	The Plan should treat its coverage of all dependent children the same. We recommend changing the age from 18 to 26 in this provision to ensure compliance with the ACA regulations.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the following changes:</p>

MEDICAL BENEFITS

Clinical Trials

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Clinical Trials	<p>Area for Review: The Plan includes the following benefit language, on page 34 (italics added for emphasis):</p> <p>“(j) Clinical Trials. Covered Charges will include charges made for routine patient services associated with clinical trials approved and sponsored by the federal government. <i>In addition the following criteria must be met:</i></p> <ul style="list-style-type: none"> • <i>The clinical trial is registered on the National Institute of Health (NIH) maintained website www.clinicaltrials.gov as a Phase I, II, III, or IV clinical trial.”</i> <p>Why this is Important: The Affordable Care Act (ACA) mandate for non-grandfathered plans does not require that the clinical trial be registered on the NIH website. Per the ACA, “Approved Clinical Trial” means a phase I, II, III or IV trial that is Federally funded by specified Agencies (National Institutes of Health (NIH), Centers for Disease Control and Prevention (CDCP), Agency for Healthcare Research and Quality (AHRQ), Centers for Medicare and Medicaid Services (CMS), Department of Defense (DOD) or Veterans Affairs (VA), or a non-governmental entity identified by NIH guidelines) or is conducted under an Investigational new drug application reviewed by the Food and Drug Administration (FDA) (if such application is required).</p>	We recommend that the Plan use the language provided in the ACA mandate regarding approved clinical trials.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the changes suggested by Phia.</p>

DEFINITIONS

Allowable Charge

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Allowable Charge	<p>Area for Review: The Plan prudently includes a definition of Allowable Charge. In general, we recommend a definition of ‘Maximum Allowable Charge,’ as discussed below.</p> <p>Why this is Important: Our standard language contains many criteria upon which the health plan may base its determination. Importantly, note that this definition identifies that a negotiated rate will be the payable rate if one exists for a given claim; that is designed to avoid the snafu of the Plan Administrator determining that the proper payable rate is less than what the contract requires.</p>	We recommend updating to the definition of Maximum Allowable Charge and removing the other definition.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the changes suggested by Phia.</p>

Substance Abuse

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Substance Abuse	<p>Area for Review: The Plan's current definition of Substance Abuse on page 55 does not reference the International Classification of Diseases and/or the Diagnostic and Statistical Manual (DSM).</p> <p>"Substance Abuse is regular excessive compulsive drinking of alcohol and/or physical habitual dependence on drugs. This does not include dependence on tobacco/nicotine and ordinary caffeine-containing drinks."</p> <p>Why this is Important: When addressing mental disorders or conditions, the plan is best served by identifying specific parameters upon which to base its definitions. If a provision is ambiguous or left completely to the plan administrator's discretion to interpret, you run the risk of other entities – such as a court – interpreting the language differently from the plan administrator. By tethering the interpretation to an objective, third party resource, it limits the room for differing interpretations.</p> <p>The DSM-5 considers tobacco use disorder to be a substance use disorder. See the DSM Fact Sheet, in the "Updated Disorders" section, at: https://www.psychiatry.org/psychiatrists/practice/dsm/educational-resources/dsm-5-fact-sheets. In addition, non-grandfathered plans are required to cover tobacco use screening/counseling services under the preventive care benefit.</p>	<p>We recommend removing the language regarding dependence on tobacco/nicotine from the definition.</p> <p>While the Plan certainly does not have to cover all disorders that are listed in the DSM, we recommend that plans reference the DSM definition.</p>	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the changes suggested by Phia.</p>

Missing Definitions

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Missing Definitions	<p>Area for Review: The Plan prudently includes definitions for: Covered Charge and Medical Emergency.</p> <p>Why this is Important: Additional definitions should be included in a plan because they strengthen the plan's rights and protect the assets of the plan:</p> <ol style="list-style-type: none"> 1. Adverse Benefit Determination 2. Clean Claims 3. Essential Health Benefits 4. HIPAA 5. Leave of Absence 6. Legal Separation 7. Participating Health Care Facility 8. Preventive Care 	Update per Phia's suggestions.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the changes suggested by Phia.</p>

PLAN EXCLUSIONS

Illegal Acts

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Illegal Acts	<p>Area for Review: The Plan has the following exclusion on page 57:</p> <p>"(19) Illegal acts. Charges for services received as a result of an Illness or Injury occurring directly, or indirectly as a result of a serious criminal act, or a riot or public disturbance, or regardless of causation, if such Illness or Injury occurs in connection with, or while engaged in, or attempting to engage in, a serious criminal act, or a riot or public disturbance. For the purposes of this exclusion, the term "serious criminal act" shall mean any act or series of acts by the Plan Participant, or by the Plan Participant in concert with another or others, for which, if prosecuted as a criminal offense, a sentence to a term of imprisonment in excess of one year could be imposed. For this exclusion to apply, it is not necessary that criminal charges be filed, or if filed, that a conviction result, or that a sentence of imprisonment for a term in excess of one year be imposed. This exclusion does not apply if the Injury resulted from an act of domestic violence or a medical (including both physical and mental health) condition.</p> <p>Charges for services, supplies, care or treatment to a Plan Participant for an Injury or Illness which occurred as a result of that Plan Participant operating a motor vehicle while under the influence of alcohol or drugs or a combination thereof or operating a motor vehicle with a blood or breath alcohol content (BAC) above the legal limit. The arresting officer's determination of inebriation will be sufficient for this exclusion. It is not necessary for this exclusion to apply that criminal charges be filed, or if filed, that a conviction result. Expenses will be covered for injured Plan Participants other than the person operating the vehicle while under the influence or a BAC above the legal limit, and expenses may be covered for chemical dependency treatment as specified in this Plan. This exclusion does not apply if the Injury resulted from an act of domestic violence or a medical (including both physical and mental health) condition."</p> <p>The Plan wisely includes an exclusion for alcohol and the illegal use thereof, however, the exclusion has points of ambiguity in defining by what measures such illegal use is determined. The Plan assumes that in the event of the illegal use of alcohol there will be an arresting officer to determine to what extent the individual is inebriated. This assumption limits the Plan's rights in instances where alcohol is being used illegally but the individual does not come into contact with law enforcement officials.</p> <p>Why this is Important: If a plan provision is ambiguous or left to the plan administrator's discretion to interpret, you run the risk of other entities – such as a court – interpreting the language differently from the plan administrator.</p> <p>Exclusions relating to illegal acts/criminal activities can vary. The Plan should ensure this exclusion meets their exact intentions.</p>	<p>The Plan should ensure this exclusion meets their exact intentions.</p> <p>In addition, the Plan should consider revising its language surrounding the domestic violence exception. As written the exclusion does not apply if the Injury resulted from an act of domestic violence. However, we recommend that the Plan distinguish between the victims and the abusers within this exclusion.</p>	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the changes suggested by Phia.</p>

Learning Disabilities – Developmental Delays

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Developmental Delays	<p>Area for Review: The Plan contains the following exclusion on page 58 (italics added for emphasis):</p> <p>“(23) Learning disabilities, behavioral modifications, or developmental delay services or treatment, except when provided as treatment for an autism spectrum disorder.”</p> <p>Why this is Important: While this exclusion language is perhaps not facially, out of parity, there’s no way to predict what claims it will apply to, and so its application could end up limiting mental health/substance use disorder (MH/SUD) claims to a greater extent than medical/surgical claims.</p>	<p>We recommend removing this exclusion entirely, and instead relying on medical necessity guidelines to determine whether a given treatment for developmental delays is covered. That way, the plan language itself will not contain this non-quantitative treatment limitation (NQTL).</p>	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the following changes _____.</p>

Sex Changes

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Sex Changes Exclusion	<p>Area for Review: The Plan has the following exclusion on page 59:</p> <p>“(39) Sex changes. Care, services or treatment for non-congenital transsexualism, gender dysphoria or sexual reassignment or change. This exclusion includes medications, implants, hormone therapy, surgery, medical or psychiatric treatment.”</p> <p>Why this is Important: We recommend clarifying the Plan’s intent with this exclusion, as the Plan currently covers drugs and medical and psychiatric treatment for non-transgender individuals; excluding these services just for transgender individuals could be viewed as a disparity in coverage.</p> <p>In addition, if the Plan is subject to ACA section 1557, we recommend that the Plan review this exclusion to ensure it meets the Plan’s intent.</p> <p>The 2020 case <i>Bostock v. Clayton County</i> and corresponding <u>Executive Order</u> from President Biden confirm that discrimination based on gender identity or sexual orientation fall within “because of . . . sex” for purposes of discrimination claims under the Civil Rights Act and other federal laws prohibiting sex discrimination. Then on May 10, 2021, the Office for Civil Rights (OCR), the office at HHS charged with enforcing federal civil rights laws, issued a <u>notice</u> that it will interpret Section 1557 and Title IX’s bans on sex discrimination to include discrimination on the basis of sexual orientation and gender identity.</p> <p>The 2022 case <i>C.P. v. Blue Cross Blue Shield</i> also found BCBS, acting as a TPA, to be a Section 1557 Covered Entity due to its administration of Medicaid and Medicare plans (this equated to federal financial assistance). Because of this, BCBS had obligations under 1557 in regard to all benefits it administered, even for groups which are not Covered Entities. This has major implications for many TPAs.</p>	<p>We recommend that the Plan review this exclusion to ensure it meets the Plan’s intent. The Plan covers medications and medical/psychiatric treatment for non-transgender individuals; excluding these services just for transgender individuals could be viewed as a disparity in coverage.</p> <p>The Plan should review their obligations under 1557 and make updates accordingly.</p>	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by removing this exclusion.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by making the following changes: _____</p>

	<p>As for employers, the EEOC will also investigate discrimination complaints falling outside of Section 1557, and discrimination claims against a plan sponsor are always possible under federal and state law.</p> <p>Additionally, exclusions broadly targeting gender affirming treatment create parity problems under the MHPAEA by impacting benefits for Gender Dysphoria, a mental health condition.</p> <p>Although there is no specific federal mandate to cover gender-affirming care for non-1557 Covered Entities, because of all this and the Biden administration's clear desire to extend protections for gender affirming care, Phia's position is that the conservative approach is to cover these services, even if the Plan Sponsor is not a Covered Entity under Section 1557 (although the risk is generally higher for Covered Entities).</p>		
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Missing Exclusions

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Missing Exclusions	<p>Area for Review: The Plan wisely includes important cost-containing exclusions, including: Custodial Care, Experimental or Not Medically Necessary, No Obligation to Pay, Occupational Injury, Relative Giving Services, and Services Before or After Coverage.</p> <p>Why this is Important: The following exclusions should be included in a plan because they strengthen the plan's rights and protect the assets of the plan.</p> <p>The Plan is also missing some important exclusions, for example:</p> <ol style="list-style-type: none"> 1. Deductible 2. Incurred by Other Persons 3. Negligence 4. Not Accepted as Standard Practice 5. Other than Attending Physician 6. Prohibited by Law 7. Provider Error 8. Subrogation, Reimbursement, and/or Third-Party Responsibility 9. Unreasonable 	Incorporate the missing exclusions.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by adding the suggested exclusions.</p>

INTERNAL AND EXTERNAL CLAIMS REVIEW PROCEDURES

Claims and Appeals Considerations

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Claims and Appeals Considerations	<p>Area for Review: These areas were reviewed, and the Plan does a great job of clearly stating the pertinent information:</p> <ol style="list-style-type: none"> 1. Adverse Benefit Determination 2. Appeals Process 3. Recovery of Payments 	No Action Required	No Action Required

Authorized Representative

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Authorized Representative	<p>Area for Review: The Plan mentions Authorized Representatives on pages 69 and 73, but it does not discuss how the participant can appoint an authorized representative to act on his behalf with respect to a benefit claim or appeal of a denial with the completion of a form.</p> <p>The Plan should also mention that the form is required except in the case of an urgent care claim. Including this language allows for a provider to act as the authorized representative for an urgent claim without completing an authorized representative form. (This follows the DOL's Benefit Claims Procedure regulation).</p>	We recommend the Plan include information on authorized representatives, in accordance with the DOL's Benefit Claims Procedure regulation. Such a provision would explain that a claimant would have to complete a form identifying the authorized representative, except in the case of an urgent claim.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggested language.</p>

External Review Procedure

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
External Review Procedure	<p>Area for Review: The Plan's current External Review Process language does not take into account an Adverse Benefit Determination as it relates to wellness programs.</p> <p>Why this is Important: For plan years on or after January 1, 2022, plan documents should also provide for an external review of an Adverse Benefit Determination that involves consideration of whether the Plan is complying with the surprise billing and cost-sharing protections set forth in the No Surprises Act. The plan document should also expand the external review process to include an Adverse Benefit Determination as it relates to wellness programs and NQTL provisions.</p>	The Plan should expand the external review process to include an Adverse Benefit Determination as it relates to wellness programs.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggested language.</p>

Recovery of Payments

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Recovery of Payments	<p>Area for Review: The Plan does not contain a Recovery of Payments provision within the Internal and External Claims Review Procedures section.</p> <p>Why this is Important: Even though the Plan has information in the Third Party Recovery, Subrogation and Reimbursement section regarding recovery of payments, we recommend adding a more extensive provision in this section. For example, we recommend including language in the right of recovery provision such as: language on clean claims, the right to offset benefits, a prohibition against balance billing when the error is due to the provider, obligation to refund the Plan within 30 days of discovery, and an agreement by the payee to abide by the terms of the Plan.</p>	The Plan may want to consider adding information on recovery of payments within this section.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggested language.</p>

NOTICES

Notices Considerations

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Notices Considerations	Area for Review: Upon review of the notices in the Plan Document /SPD, the Plan does a great job of clearly stating the pertinent information: 1. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)	No Action Required	No Action Required

Newborns' and Mothers' Health Protection Act (NMHPA)

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Newborns' and Mothers' Health Protection Act (NMHPA)	Area for Review: The Plan does a great job including language regarding compliance with Newborns' and Mothers' Health Protection Act (NMHPA), on pages 31 and 41; however, it does not cite the act by name. Why this is Important: The DOL SPD regulations specifically require group health plans that provide maternity or newborn infant coverage to include in their SPDs a statement describing (a) any requirements under federal or state law applicable to the plan (or to any health insurance coverage offered under the plan) relating to hospital length of stay in connection with childbirth for the mother or newborn child; and (b) any coverage offered under the plan relating to such a hospital stay.	The Plan may consider citing the act by name.	If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work. <input type="checkbox"/> The Plan would like to keep the current language <input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggestion.

Women's Health and Cancer Rights Act (WHCRA)

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Women's Health and Cancer Rights Act (WHCRA)	Area for Review: The Plan does a great job including language regarding compliance with Women's Health and Cancer Rights Act (WHCRA), on page 40; however, it does not cite the act by name. Why this is Important: The DOL SPD regulations do not specifically require disclosure of the benefits that are available following a mastectomy. However, the general requirement to inform participants and beneficiaries of their rights and obligations under the plan probably includes disclosure of information regarding benefits for reconstructive surgery after a mastectomy. WHCRA requires that a written notice be provided to participants describing the availability of coverage required by WHCRA upon enrollment in a group health plan and annually thereafter. Both of these notices may be furnished separately or as part of the group health plan's SPD if the SPD is provided at a time that complies with the notice requirement. Specific content requirements apply.	The Plan may consider citing the act by name.	If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work. <input type="checkbox"/> The Plan would like to keep the current language. <input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggestion.

HIPAA Privacy and Security Standards

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
HIPAA Privacy and Security Standards	<p>Area for Review: The Plan does a great job of explaining the Plan's uses and disclosures of Protected Health Information (PHI) on pages 93-96.</p> <p>Why this is Important: The notice of the Company's Privacy Practices must identify the Privacy Officer as well as who is permitted to receive Protected Health Information (PHI) within the Company.</p>	We also recommend that the Plan include a statement how the participant can obtain a copy of the Plan's Notice of Privacy Practices (NPP).	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggestion.</p>

Genetic Information Nondiscrimination Act (GINA)

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Genetic Information Nondiscrimination Act (GINA)	<p>Area for Review: Currently the Plan does not include language regarding compliance with Genetic Information Nondiscrimination Act (GINA).</p> <p>Why this is Important: The DOL SPD regulations do not specifically require disclosure of any specific information regarding the GINA, however it is our recommendation to assert compliance as a best practice.</p>	Although it is not a Plan requirement to include this information, the Plan may consider adding this provision to the document.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggestion.</p>

Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)

Topic	Area for Review & Importance	Phia Suggestion	Employer Action
Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)	<p>Area for Review: Currently the Plan does not include language regarding compliance with Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).</p> <p>Why this is Important: The DOL SPD regulations do not specifically require disclosure of any specific information regarding the MHPAEA, however it is our recommendation to assert compliance as a best practice.</p>	Although it is not a Plan requirement to include this information, the Plan may consider adding this provision to the document.	<p>If you would like further Phia services, please complete this section so we can prepare an appropriate scope of work.</p> <p><input type="checkbox"/> The Plan would like to keep the current language.</p> <p><input type="checkbox"/> The Plan would like to amend the current language by adding Phia's suggestion.</p>

NEXT STEPS

NEXT STEPS
We have outlined our recommendations for the Plan’s consideration in this review. If the Plan would like any of the above suggestions converted to an amendment or restated document, please check the applicable box located in the far right column and return to ice-email@phiagroup.com.