AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Services Agreement - The Phia Group, LLC

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: The Phia Group, LLC, GPA, Inc. and Gunnison County

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

This is the agreement that allows PHIA to handle subrogation on behalf of the Plan.

Fiscal Impact:

Submitted by: Cheryl Seling **Submitter's Email Address:** cseling@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
The fee for the service is 30 or 33.33% of recoveries, depending on type. No concerns. ln

Reviewed by: Discharge Date: 11/1/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 10/24/19

Reveiwed by: Discharge Date: 11/1/2019 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: Discharge Date: 11/1/2019

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 11/5/2019

Revised April 2015

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GROUP & PENSION ADMINISTRATORS, INC.
PARK CENTRAL 8 • 12770 MERIT DRIVE 2ND FLOOR • DALLAS, TX 75251 • (972) 238-7900

Cheryl Seling
Gunnison County
200 E. Virginia
Gunnison, CO 81230

Re: The Phia Subrogation Group

Dear Mr. Seling:

Thank you for your support in choosing Group & Pension Administrators, Inc. as your third party administrator. In our ongoing effort to provide you with the best administrative and cost containment claim services, we are pleased to announce that we have selected The Phia Group as our recommended subrogation representative.

Because of the current business climate and continued complexity of personal injury and subrogation litigation, we have determined that it would be to your advantage to have a subrogation and cost containment specialist investigate, manage, and negotiate your subrogation cases. After inquiring into several recovery firms, we are confident that we have found the best in The Phia Group, which works with TPAs and self-funded employers across the country. They utilize their own staff of attorneys and have self-developed software that identifies recovery cases.

Through their specialization and experience, we expect that The Phia Group will increase recoveries in three ways: by better identifying claims that have reimbursement potential at the outset, by being better able to manage and evaluate a claim as it progresses, and by being better able to negotiate a maximum recovery at the end of the process. They also have the capability to protect the Plan's interests in court if need be. We are confident that with The Phia Group's resources and attorney involvement, overall Plan recoveries will increase dramatically over time.

The Phia Group operates on a contingency basis, so they are not paid unless they recover. Thus, there is no up-front cost or risk to you. Working with The Phia Group will allow us to focus on what we do best while allowing them to spend the time and resources needed for the best subrogation and recovery effort possible.

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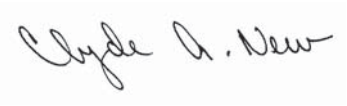
Going forward, The Phia Group's contacts with your members will be kept to a minimum and we are confident of their respect for your goodwill. You should be aware that The Phia Group will contact members at the outset when a payment on a trauma-related claim is made, just as we would do now. The purpose of this contact, via a letter, will be to obtain the details of an injury so that a determination of subrogation potential can be made. The Phia Group will fully identify who they are, whom they represent, and why they are requesting the information. We trust that we can continue to count on your Plan members' full cooperation in pursuing your Plan's rights.

It is our recommendation that all of our groups take advantage of this service enhancement. We will have The Phia Group working on all of our current cases immediately and all new cases will be referred to The Phia Group as they are identified.

Enclosed is a Performance of Recovery Service Agreement. Please review, sign and return to Joanie Verinder at GPA. Upon receipt, we will implement the subrogation process with The Phia Group. Again, we are confident that you will be extremely satisfied with the results.

If you have any questions or wish to speak with a representative of The Phia Group, please do not hesitate to contact your Account Manager.

Sincerely,



Clyde Ann New
Director of Marketing

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Phia Frequently Asked Questions

1. If The Phia Group investigates a claim for subrogation and tries to get settlement on the claim and the attorney will not settle, the Phia Group may recommend litigation. What extra costs is the client going to be charged to litigate the case?

   The client would only be charged court costs. These are the charges that that The Phia Group would have to pay to file suit in court. The client would **not** be charged for attorney fees (billing hours) by Phia. The court costs are usually minimal and are charges such as fee for sheriff to serve papers; depositions; fee for filing suit in court, etc. Adam said that they have only gone to court twice since they've been doing this and have won both times. These additional charges would only be billed if the client has approved for them to take it to court.

2. If it went to court, what would the total cost be if The Phia Group **won**?

   The Phia Group would get 33.33% of the settlement plus reimbursement for the court costs that The Phia Group paid upfront on behalf of the client.

3. If it went to court, what would the total cost be if The Phia Group **lost**?

   The Phia Group would only get reimbursement for the court costs that they paid upfront on behalf of the client.

4. Will The Phia Group get the client approval to litigate a claim?

   The Phia Group will **never** litigate a claim without prior client approval. The Phia Group will be able to tell the client approximately how much it will cost for court fees when the client is contacted for their approval.

5. Will The Phia Group settle for less than 100% of the paid claim amount?

   Yes, depending on the laws of the state and whether the group is an ERISA plan. Certain states have restrictions and certain groups are not governed by ERISA.

6. Why does the client need a subrogation company when GPA is handling subrogation?

   GPA is not a subrogation company, we are a claims processing company. Prior to the new DOL Claims Regulations effective 7/1/02 - If we notice that a claim was an auto accident, we could pend the claim and send out a subrogation letter to the employee. Follow up letters would go out two more times. If we did get the signed subrogation form back from the employee, which would indicate that the employee agreed to reimburse the plan should there be a reimbursement from a third party, the form was filed with the claims. Nothing was pursued on behalf of the plan. If an attorney called to negotiate a recovery, we would then get involved by calling the client to determine if they agreed with the reimbursement. If they didn't, they would need to get their own attorney involved to negotiate on behalf of the plan. If the form was never signed, we would pend the claim until it was signed. By pending the related claim(s), this prompted the employee to sign the subrogation letter because they would be getting letters from the provider.

   Because of the new strict DOL Claims Regulations, we cannot pend these claims any longer. We have to either process them or deny them. The need for an outside subrogation vendor has become necessary because we now will pay these claims upfront and subrogate afterwards. We decided to go to the outside subrogation company because subrogation is all they do. They have the expertise, manpower and time to investigate more claims for possible subrogation.

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PHIA Services Agreement

This is the agreement that allows PHIA to handle subrogation on behalf of the plan.

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PERFORMANCE OF RECOVERY SERVICES AGREEMENT

This Services Agreement (the "Agreement") is entered into as of January 1, 2020 (the "Effective Date") between The Phia Group, LLC ("The Phia Group"), a Massachusetts Limited Liability Company, Group & Pension Administrators, Inc. ("GPA"), and Gunnison County ("Client").

1. Purpose of Agreement

To understand and define the terms in which The Phia Group will handle recovery matters, including subrogation, overpayment recovery, and other recovery collection activities, which it undertakes for the Client.

2. The Obligations of Parties

A. The Phia Group

1. The Phia Group shall investigate all claims forwarded by GPA for potential subrogation, reimbursement and/or overpayment recovery, respectively, and shall then pursue and protect the rights of subrogation, reimbursement and/or overpayment recovery for the Client's plan(s) from that third party.

2. At The Phia Group's election, it may choose to pursue the recovery potential in any single case, or in multiple cases, by any lawful means chosen by The Phia Group, unless prohibited by the Client.

3. The Phia Group expressly reserves the right to reject any case transmitted by GPA. The Phia Group will use best efforts in attempting to recover funds for the benefit of the Client's plan(s) from third parties or their insurers.

4. The Phia Group will provide GPA with a Client Account Manager who will be available to answer any questions from GPA and/or Client.

5. The Phia Group will provide GPA and/or Client with regularly scheduled customized monthly reports on the status of cases being reviewed by The Phia Group.

6. The Phia Group will provide GPA with regularly scheduled customized monthly reports of all recoveries in a given period.

7. The Phia Group will protect all GPA data by following non-disclosure rules and security measures.

B. GPA

1. On behalf of the Client, GPA will transmit cases at reasonable and regular intervals to The Phia Group for recovery evaluation. GPA will use good faith and best efforts to isolate cases that appear to have recovery potential.

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2. On behalf of the Client, GPA will provide The Phia Group with standard monthly data of all claims processed by GPA. Each claim will include detailed information on the claim, the plan participant, the patient, and the provider.

3. On behalf of the Client, GPA will provide The Phia Group with read-only access to GPA's in-house claims system in order to supplement and update standard monthly data and to review patient and/or member information.

4. On behalf of the Client, GPA acknowledges that The Phia Group may supplement this information by communication with the plan participant and ask the plan participant to execute a form reaffirming the obligation to reimburse GPA and/or its Client.

5. On behalf of the Client, GPA will provide The Phia Group with an Account Executive that will be available to answer any questions from The Phia Group.

6. On behalf of the Client, GPA will provide The Phia Group with copies of standard plan document language as of the Effective Date of this Agreement.

7. On behalf of the Client, GPA will provide detailed plan documents, if requested by The Phia Group.

3. <u>The Phia Group's Fee for Services Performed</u>

The Phia Group will retain thirty percent (30%) out of any sum recovered on behalf of Client regardless of the manner of recovery. Of that amount, The Phia Group will keep twenty-five percent (25%) as its fee, and GPA will receive five percent (5%) for GPA's administration services such as, but not limited to, eligibility formatting and maintenance, report distribution, Client communication services, claims coordination and support, electronic connections and vendor support.

A. Litigation

If it becomes necessary to pursue litigation for purposes of enforcing Client's right to secure reimbursement, The Phia Group will, with express permission from Client, obtain counsel. The fee owed to The Phia Group (set forth above) will increase from thirty percent (30%) to one-third (33.33%) of the total funds recovered for and on behalf of Client, and GPA shall waive its fee for administrative services. This increased one-third (33.33%) fee for cases involving litigation shall also apply to those cases in which The Phia Group, or a subcontractor retained by The Phia Group on The Phia Group's behalf, intervenes in or otherwise becomes involved in litigation relating to class actions, product liability, mass tort, or other litigious subrogation on behalf of Client. Any and all other attorney's fees will be the responsibility of The Phia Group. Other costs of litigation, besides attorney's fees, will be the responsibility of Client.

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4. Trial Decisions

It will be the Client's decision to litigate a particular case. The Client will use good faith to decide whether to pursue such litigation and disburse reasonable related expenses upon settlement. Court fees and costs, if any, shall be recovered by The Phia Group in addition to its one-third (33.33%) fee set forth in Section 3A above.

The Phia Group will seek the Client's authority to file suit if it is deemed necessary to collect the recovery or if The Phia Group deems a case in need of adjudication by trial or appeal. The Phia Group will also seek filing, service, and related expenses, but not attorneys' fees, from the Client.

5. Case Acceptance

The Phia Group is entitled to its fee, under Section 3, when it has accepted a case and there is a recovery in the case. The Phia Group accepts a case upon receipt of the standard claims data from GPA and/or when GPA on behalf of Client provides the basic information identifying a case to The Phia Group. If there is no recovery in a case, The Phia Group does not collect a fee, as the service fees are contingency-based.

GPA and/or Client have the right to request The Phia Group to close a particular case and halt recovery efforts. However, GPA and/or Client may not then reopen the case and resume recovery efforts for that particular case either by themselves or through another recovery firm.

If GPA and/or Client retract and assume control of a case, The Phia Group will still earn its fee from the Client on the original recovery amount that The Phia Group would have obtained if their recovery efforts had not been halted. If Client terminates its relationship with GPA and ultimately takes its recovery cases elsewhere, The Phia Group retains rights in contract and equity against the Client for the fee owed on the original recovery amount that The Phia Group would have obtained if their recovery efforts had not been halted due to the Client's termination of its relationship with GPA.

6. Duration

The agreement will automatically renew on a yearly basis, provided however that any of the parties to this Agreement may terminate the Agreement within thirty (30) days prior written notice to the other parties. This Agreement can be modified and extended by a subsequent writing.

7. Governing Law

This agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of laws principles.

8. Severability

All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions shall not affect the validity or enforceability of the remaining provisions. The

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remaining provisions will be construed in such a manner as to carry out the full intention of the parties. Section titles or references used in this Agreement shall not have substantive meaning or content and are not a part of this Agreement.

9. Arbitration

All disputes under this Agreement shall be settled by arbitration in Massachusetts, before a single arbitrator pursuant to the rules of the American Arbitration Association. Arbitration may be commenced at any time by any party to this Agreement giving written notice to the other parties that such dispute has been referred to arbitration under this Section. The arbitrator shall be selected by the joint agreement of Client and The Phia Group, but if they do not agree within twenty (20) days after the date of the notice referred to above, the selection will be made pursuant to the rules maintained by the association. Any award rendered by the arbitrator will be conclusive and binding upon the parties and is to be accompanied by a written opinion of the arbitrator giving the reasons for this reward. This provision for arbitration will be specifically enforceable by the parties. The decision of the arbitrator will be final and binding and there will be no right of appeal. Each party will pay its own expenses of arbitration and the expenses of the parties will be equally shared unless, if in the opinion of the arbitrator, any claim or any defense or objection was unreasonable, the arbitrator may assess, as part of his award, all or any part of the arbitration expenses of the other party(ies) (including reasonable attorneys' fees) and of the arbitrator against the party(ies) raising such unreasonable claim, defense or objection.

10. Force Majeure

No party will be liable for any failure or delay in performance of its obligations hereunder by reason of any event or circumstance beyond its reasonable control, including, without limitation, acts of god, war, riot, strike, labor disturbance, fire explosion, telephone network failures, flood or shortage or failure of suppliers. If any delay in performance under this Section continues for more than sixty (60) consecutive days, the unaffected party(ies) will have the right to terminate this Agreement with ten (10) days prior written notice to the affected party(ies).

11. Amendment

This Agreement may be modified, amended or supplemented only by a writing signed by the authorized representatives of the parties to this Agreement. Such amendments, modifications or supplements will be deemed as much a part of this Agreement as if so incorporated herein.

12. Integration

The parties acknowledge that they have read this Agreement in it entirety and understand and agree to be bound by its terms and conditions. This Agreement constitutes a complete and exclusive statement of the understanding between the parties with respect to its subject matter. This Agreement supercedes any and all other prior communications between the parties, whether written or oral. Any prior agreements, promises, negotiations or representations related to the subject matter not expressly set forth in this Agreement are of no force and effect.

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13. <u>Authority</u>

Each party represents and warrants to the other that the signatory identified beneath its name below has authority to execute this Agreement on its behalf.

The parties, intending to be legally bound, have executed and delivered this Agreement as of the date set forth above. In Witness whereof, we set our hands and seals:

The Phia Group, LLC

Name: *Adam Russo*

Title: Principal

Date:

Gunnison County

Name:_____

Title:_____

Date:_____

Group & Pension Administrators, Inc.

Name:_____

Title:_____

Date:_____