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## The Affordable Care Act's New Patient's Bill of Rights

**Source: U.S. Dept. of Labor**

A major goal of the Affordable Care Act—the health insurance reform legislation President Obama signed in to law on March 23, is to put American consumers back in charge of their health coverage and care.

On June 22, 2010, the Depts. Of Health & Human Services (HHS), Labor, and Treasury issued regulations to implement a new Patient's Bill of Rights under the Affordable Care Act—which will help children (and eventually all Americans) with pre-existing conditions gain coverage and keep it, protect all Americans' choice of doctors and end lifetime limits on the care consumers may receive. These new protections apply to nearly all health insurance plans.

### **Stop insurance companies from limiting the care you need.**

Most plans starting on or after Sept. 23rd, these rules stop insurance companies from imposing pre-existing condition exclusions on your children; prohibit insurers from rescinding coverage, ban insurers from setting lifetime limits on your coverage; and restrict their use of annual limits on coverage.

### **Remove insurance company barriers between you and your doctor.**

Most plans starting after Sept. 23rd, ensures that you can choose the primary care doctor or pediatrician you want from your plan's provider network, and that you can see an OB-GYN without needing a referral. You will also be able to seek emergency care at a hospital outside of your plan's

network without prior approval.

### **Reviewing Insurers' Premium Increases**

HHS recently offered States \$51 million in grant funding to strengthen review of insurance premiums.

### **Getting the Most from Your Premium Dollars**

Beginning in January 2011, the Affordable Care Act requires individual and small group insurers to spend at least 80% and large group insurers to spend at least 85% of your premium dollars on direct medical care and efforts to improve the quality of care you receive

### **Keeping Young Adults Covered**

Starting Sept. 23rd, children under 26 will be allowed to stay on their parent's family policy, or to be added to it. Grandfathered plans can limit this option to adult children that don't have another offer of employment-based coverage.

### **Providing Affordable Coverage to Americans without Insurance Due to Pre-Existing Conditions**

Starting July 1, 2010, Americans locked out of the insurance market because of a pre-existing condition begin enrolling in the Pre-existing Condition Insurance Plan (PCIP). This program offers insurance without medical underwriting to people who have been unable to get it because of a pre-existing condition. It ends in 2014, when the ban on insurers refusing to cover adults with pre-existing conditions goes into effect and individuals will have affordable choices through Exchanges.

### **Reducing the "Hidden Tax" on Insured Americans**

By making sure insurance covers people who are most at risk, there will be less uncompensated care and the amount of cost shifting among those who have coverage today will be reduced by up to \$1 billion in 2013.

### **Improving Americans' Health**

By making sure that high-risk individuals have insurance, the rules will reduce premature deaths. Insured children are less likely to experience avoidable hospital stays than uninsured children and, when hospitalized, insured children are at less risk of dying.

### **Protecting Americans' Savings**

High medical costs contributed to some degree to about half of the more than 500,000 personal bankruptcies in the U.S. in 2007. these costs borne by individuals might be assumed by insurance companies once rescissions are banned, annual limits are restricted, lifetime limits are prohibited, and most children have access to health insurance without pre-existing condition exclusions.

### **Enhancing Workers' Productivity**

Making sure that kids with health problems have coverage will reduce the number of days parents have to take off from work to care for family members. Parents will also be freed from "job lock" which occurs when people are afraid to take a better job because they might lose coverage for themselves or their families.

**DOL Interprets FMLA to Cover Same-Sex Partners**

**“No one who loves and nurtures a child day in and day out should be unable to care for that child when he or she falls ill,”**

Source: NY Times

The U.S. Dept. of Labor (DOL) on June 22, 2010, clarified the definition of “son and daughter” under the Family and Medical Leave Act (FMLA) to ensure that an employee who assumes the role of caring for a child receives parental rights to family leave regardless of the legal or biological relationship. The DOL interpretation applies to nontraditional families, including unmarried partners and families in the lesbian-gay-bisexual-transgender (LGBT) community. The interpretation provides that “employees who have no biological or legal relationship with a child may nonetheless stand in loco parentis to the child and be entitled to FMLA leave.” It added that the fact that a child has both a mother and father would not prevent a finding that a child is the “son or daughter” of an employee who lacks a biological or legal relationship with the child. “Neither the statute nor the regulations restrict the number of parents a child may have under the FMLA,” stated Nancy J. Leppink, deputy administrator of DOL’s Wage and Hour Divisions. “For example, where a child’s biological parents

divorce, and each parent remarries, the child will be the ‘son or daughter’ of both the biological parents and the step-parents, and all four adults would have equal rights to take FMLA leave to care for the child.”

Leppink added that when an employer has questions about whether an employee’s relationship to a child is covered by the FMLA, the employer may require an employee to provide reasonable documentation or statement of the family relationship. “A simple statement asserting that the requisite family relationship exists is all that is needed in situations such as loco parentis where there is no legal or biological relationship.

“No one who loves and nurtures a child day in and day out should be unable to care for that child when he or she falls ill,” said Secretary of Labor Hilda L. Solis. “No one who steps in to parent a child when that child’s biological parents are absent or incapacitated should be denied leave by an employer because he or she is not the legal guardian. No one who intends to raise a child should be denied

the opportunity to be present when that child is born simply because the state or an employer fails to recognize his or her relationship with the biological parent.

As the interpretation makes clear, an uncle who is caring for his young niece and nephew when their single parent has been called to active military duty may exercise his right to family leave. Likewise, a grandmother who assumes responsibility for her sick grandchild when her own child is debilitated will be able to seek family and medical leave from her employer. And an employee who intends to share in the parenting of a child with his or her same-sex partner will be able to exercise the right to FMLA leave to bond with that child.

“This is a critical step in ensuring that children have the support and care they need from the persons who have assumed that responsibility,” Leppink said. “Nothing in the statute or regulations suggests that we should restrict the rights of various individuals who take on that very important role.”

**Obama Signs 6-Month Doc Fix**

The house approved a Senate bill (417-1) staving off a 21 % cut in Medicare payments to doctors. The \$6.5 billion legislation that provides a 2.2 percent raise for Medicare doctors was taken out of a jobless benefits bill by the Senate after Republicans blocked the larger bill. “Obama has signed a bill that temporarily spares doctors

from a 21 percent cut in Medicare payments,” The Associated Press reported. “The measure delays cuts through the end of November while lawmakers work on a more permanent solution. There was some urgency to approve the \$6.5 billion bill. Medicare officials announced that the program would begin processing claims it had

already received for June at the lower rate.” Rep. George Miller, D-Calif., was the only “no” vote. In November, the House passed legislation to repeal Medicare’s physician payment formula, but the bill was show down by the Senate. This vote means lawmakers won’t have to revisit the problem before the November midterm elections.



## Disabilities, Claims on the Rise

The leading causes of disabilities in the U.S. are musculoskeletal and connective tissues disorders, such as back pain and joint and muscle disorders, according to research from the Council for Disability Awareness.

Musculoskeletal and connective tissues disorders accounted for 26.2% of new long-term disability claims in 2009, up slightly from 25.5% in 2008. Cancer was also a leading cause of disability in 2009, with 15.3% of new LTD claimants reporting this diagnosis, up from 14.9% in 2008.

The results are from CDA's 2010 Long-Term

Disability Claims Review, which analyzed private and public long-term disability claims data from 16 CDA member companies that represent more than 75% of the commercial disability insurance market.

CDA members observed little evidence that the recession has broadly impacted claims in any significant way. Fifty-three percent of companies saw no meaningful change in claim duration during the economic downturn, while 41% say they experienced increasing or slightly increasing claim durations.

Overall, the companies surveyed approved LTD insurance benefits for 141,000 new individuals, down 1% from last year as insured lives in 2009 decreased by 2.2%. According to the CDA, this is a reflection of the broad economic picture.

Despite the record number of people receiving disability payments, the claims review reports that roughly 100 million workers have no private income protection insurance. In addition to the decline in the number of insured, fewer employers provided long-term disability programs in 2009.

**Considering offering Long Term Disability Insurance for your employees? We offer both group plans and voluntary plans to meet all the needs of your employees.**

## Supreme Court Rules Employer's Search of Text Messages Was Reasonable

The Supreme court ruled unanimously June 17, 2010 that the City of Ontario, CA's search of policy sergeant Jeff Quon's text messages to his colleagues and to a woman with whom he was having an affair was reasonable, and therefore Quon's constitutional privacy rights were not violated, reversing a decision of the 9th U.S. Circuit Court of appeals. Writing for the court, Justice Anthony Kennedy noted that the

case "touches issues of far-reaching significance," but added that it could be resolved simply by applying several principles on when a search is or is not reasonable.."

"The court must proceed with care when considering the whole concept of privacy expectations in communications made on electronic equipment owned by a government employer," Kennedy

stated. "The judiciary risks error by elaborating too fully on the Fourth Amendment implications of emerging technology before its role in society has become clear."



**This was first reported in our June 2010 Newsletter and has now been unanimously decided by the Supreme Court.**



## 6th Circuit: Inability to Get Along with Colleagues Is Sufficient Basis for Adverse Action

Employers often are hesitant to discipline or fire an employee who is in a protected class, knowing that the potential for a lawsuit can be higher in those circumstances. This issue was addressed by the 6th U.S. Circuit Court of Appeals in an unpublished opinion in which an employee failed to prove that the company's reason for not rehiring him after a layoff—that he was a “troublesome employee” - as a pretext for age discrimination.

Lucent Technologies hired Brian Viergutz in 1997 as an installer. Viergutz was 43 at that time. In December 2002, Viergutz was laid off as part of a reduction in force. During his employment, Viergutz admittedly had numerous personal conflicts with his peers.

In 2005, in response to a job posting by Lucent, Viergutz applied for re-employment as an installer at the company. Upon receipt of Viergutz's application, Melissa Reznick, Lucent's hiring manager, recognized Viergutz's name because she had briefly supervised him during his initial period of employment. Based on her own knowledge, and because she had heard comments from other managers about him, Reznick decided not to interview Viergutz.

She specifically informed the HR department that Viergutz had a “bad reputation” and “would not be a good candidate” for the job. In addition, Viergutz had much more experience than was required in the new position. Lucent ultimately hired an individual who was younger than 40 and had a background as a general laborer.

Viergutz filed complaints in both state and federal court, alleging age discrimination and various state court causes of action, including one labeled “harassment/defamation of character” based on what he alleged to be “rumors and lies” related to his reputation as a technician. The actions were consolidated in federal court, and the district court granted Lucent's motion for summary judgment. Viergutz filed a timely appeal to the 6th Circuit, which upheld the lower court's decisions.

In its opinion, the appellate court outlined the three-step burden-shifting process and held that Viergutz had set forth a prima-facie case of age discrimination, thereby fulfilling the first step. Therefore the burden shifted to Lucent to state a legitimate nondiscriminatory for not hiring Viergutz. To fulfill that burden the company

submitted evidence and testimony, including an affidavit averring that his supervisors, indicated that Viergutz “did not work well with others” and “needed constant supervision.” at that point he burden shifted back to Viergutz to prove that the reason provided by Lucent was pretext for discrimination.

The court held that Viergutz failed to show that Lucent's decision had no basis in fact. Viergutz was unable to show that his superior skills made him more qualified for the open position, because the job posting stated specifically that the person hired would “free up higher-skilled installers for higher-skilled jobs.” Further, Viergutz was unable to factually dispute his poor reputation, or that he had been sent by the company for evaluation and counseling after an incident with a co-worker in 2002. His own testimony chronicled multiple disputes with co-workers, although he disputed the characterization of the disagreements.

*Viergutz v. Lucent Technologies, Inc., 6th Cir., No. 08-3626, unpublished.*

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