RM VITAL SIGNS

YOUR RESOURCE FOR ALL THINGS HEALTHCARE, DISABILITY, SPECIAL NEEDS AND ELDER LAW-RELATED.

CALRB TO HOST A LYME DISEASE SYMPOSIUM ON SEPTEMBER 16, 2014 ON CUTTING-EDGE DIAGNOSTIC TECHNOLOGY, RESEARCH, AND DEVELOPMENT

Sponsored by the Coalition Against Lyme and Related Borrelioses, Inc. (CALRB), a nonprofit organization dedicated to informing the public, the government, and scientific communities of the evidence relating to the diagnosis of Lyme disease and Lyme disease-mimicking borrelia infections. CALRB tasks itself with answering the call of Dr. Paul Mead, chief of epidemiology and surveillance for Centers for Disease Control and Prevention's ("CDC") Lyme disease program. Dr. Mead said, "We would love to have better tests … but it's not as easy as it sounds."

Experts from the medical community are scheduled to speak at the full day symposium on Tuesday, September 16, 2014 at the Connecticut State Capitol in the Legislative Office Building. Delegates to the symposium will be considering a resolution designed to seek the support of healthcare policy makers, the College of American Pathologists, and the CDC to make these tests more widely available nationwide, introduce proficiency tests to improve and ensure the quality of these tests, and demand that insurance companies cover the costs of these tests as part of their healthcare plans.

For more information visit www.calrb.org.

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INVOLUNTARY "WELLNESS PROGRAM" ELEMENT OF WELFARE BENEFIT PLAN SPARKS EEOC LAWSUIT

The U.S. Equal Employment Opportunity Commission ("EEOC") brought a lawsuit against Orion Energy Systems, a Wisconsin based company, claiming violations of the American with Disabilities Act and retaliation against an employee who declined to participate in Orion "wellness program" as part of its welfare benefit plan. Wellness programs are a common element of employee welfare benefit plans, 94 percent of employers with over 200 employees and 63 percent of smaller employers utilize them.

Issues arise when wellness programs are involuntary. An Orion employee declined to participate in Orion's wellness program. Thereafter, Orion forced the employee to pay the health benefit premium, which it had previously covered, and later terminated the employee.

DRAFT PLAN FIRST STEP IN OVERHAUL FOR CONNECTICUT CHILDREN'S MENTAL HEALTH

On September 5, 2014, the Department of Children and Families ("DCF") submitted an executive summary draft plan for improving Connecticut children's behavioral healthcare system to the Connecticut General Assembly. The summary plan is a requirement of Public Act 13-178, emanating out of the General Assembly's efforts to respond to the December 2012 tragedy of Newtown.

According to the summary plan 20%, or nearly 156,000, of Connecticut's children require mental healthcare; however, a plethora of obstacles prevent access to necessary mental healthcare, ranging from race, ethnicity, language, geographic location, insurance status, to involvement in child welfare or juvenile justice.

A collaborative effort by DCF and the Child Health and Development Institute of Connecticut resulted in the identification of seven areas for improvement:

- System Organization, Financing and Accountability
- Health Promotion, Prevention, Early Identification Early Intervention
- Access to Comprehensive Continuum of Care
- Pediatric Primary Care and Mental Healthcare Integration
- Disparities in Access to Culturally Appropriate Care
- Family and Youth Engagement
- Workforce Development

Within each of these areas, the summary plan sets out goals and approaches for reaching those goals. For example, the Family and Youth Engagement area includes the following goal: "Include family members of youth with behavioral health needs, youth and family advocates as paid members in the governance and oversight of the behavioral health system." Behavioral healthcare providers may forward inquiries for more information to Mary Alice Moore Leonhardt, Esq. at mmooreleonhardt@rms-law.com.

AHRQ Report Evinces the Safety of Commonly Used Vaccines

The Agency for Healthcare Research and Quality ("AHRQ") published a report in July of 2014 providing support for the safety of vaccines. AHRQ Director, Richard Kronick, Ph.D., stated, "The use of vaccines ranks among the most significant public health achievements. This review of the evidence provides important reassurances about the safety of used vaccines."

AHRQ reported the following findings:

- There is no connection between influenza and pneumonia vaccines and cardiovascular or cerebrovascular issues in the elderly.
- There is no connection between MMR; Haemophilus influenza type b (Hib); tetanus and diphtheria (Td); diphtheria, tetanus, and pertussis (DTaP); and Hepatitis B vaccines and childhood leukemia.
- There is no connection between vaccines for measles, mumps and rubella (MMR) and autism.

The AHRQ report is founded on scientific evidence gathered from the 2011 Institute of Medicine (IOM) Report and an additional 166 studies published subsequent to the IOM Report.

Persons interested in learning more about the current scientific dialogue regarding a causal link between vaccines for MMR and autism should review the AHRQ Report at http://www.ncbi.nlm.nih.gov/books/NBK230053/

Claims for injuries resulting from vaccines are processed through a special "vaccine court" process administered by the federal government. For more information or assistance with vaccine claims contact Craigin Howland at chowland@rms-law.com.

Insurance Companies Cannot Limit Doctor Visits for Autism Care in Connecticut

Connecticut's Insurance Commissioner, Thomas B. Leonardi, issued Bulletin HC-99 on August 20, 2014, directing that insurance companies may not limit the number of doctor visits to treat autism. The Bulletin rescinds and replaces Bulletin HC-96, issued on April 22, 2014, which clarified Connecticut's mandated coverage for autism spectrum disorders and early intervention services in relation to changes brought about under the ACA.

According to the Connecticut Insurance Department, the ACA prohibits a dollar limit on benefits in a health plan, including money used for "Applied Behavioral Analysis." Guidelines from the U.S. Department of Health and Human Services to state regulators, however, left open the option of an actuarial approach that could be used to limit the number of visits to a clinician's office for autism treatment. Rather than allowing this actuarial approach in Connecticut, which could result in a variety of conversion approaches with potentially varying benefit outcomes, this Bulletin eliminates this as an option. In so doing, the Department has basically lifted any and all limitations on autism treatment for families in Connecticut who are covered commercially. For additional information on treatment options and payments for persons with special needs contact Daniel Csuka, Esq. at dcsuka@rms-law.com.

PARENTS' PLEADINGS ON BEHALF OF DECEASED 22-WEEK FETUS DEFEAT MOTION TO STRIKE

Two parents filed suit on behalf of their deceased 22-week-old fetus against the mother's gynecologist. The plaintiffs alleged three counts claiming wrongful death, medical malpractice, and emotional distress. The defendants filed a motion to strike the first and third count. The superior court granted the motion as to the third count, but denied it for the first count. In support of its holding on the first count, the court cited *In re Valerie D.*, a Connecticut appellate court decision supporting parental rights to sue for negligent injuries to fetuses, regardless of viability.

In September 2010, the plaintiff visited the defendant doctor and had an intrauterine device ("IUD") inserted to prevent pregnancy. In February of 2011, during a periodic office visit, the plaintiff informed the doctor that her last menstrual period had occurred in the first half of September of 2010. A pregnancy test was not performed at that time.

Two months later, the plaintiff returned seeking removal of the IUD. The gynecologist's attempt to remove the IUD was unsuccessful. An ultrasound then revealed the woman was pregnant and that the attempt to remove the IUD had breached the fetal membrane. Emergency hospitalization and induction of labor resulted in the delivery of a 22-week-old fetus, who died the same day.

The court, *Gilardi, J.*, explained that under Connecticut General Statutes § 52-555, which permits an executor or administrator to recover from the legally liable party, there could be no wrongful death claim for a non-viable fetus. The court in its discussion of viability concluded that viability is a question of fact and not appropriately decided on a motion to strike when the plaintiffs had sufficiently plead facts that their child was born viable and then died.

Following its discussion of viability, the court cited to *In re Valerie D.*, stating, "An infant who has sustained injuries prior to birth, whether the infant is viable or not at that time, has a cause of action in negligence against the alleged wrongdoer …. Similarly, a wrongful death action can be brought on behalf of a child who dies as a result of prenatal injuries regardless of whether those injuries were sustained when the fetus was viable …."

The court's decision on the motion strike and the authority relied upon in *In re Valerie D.* permits expectant parents to bring a wrongful death action on behalf of a non-viable fetus. Persons seeking more information on this topic should contact Erin Canalia, Esq. at ecanalia@rms-law.com.

RECENT CHALLENGES TO THE FEDERAL GOVERNMENT'S POWER TO SPEND MONEY FOR SUBSIDIES FOR INSURANCE POLICIES PURCHASED THROUGH THE FEDERAL EXCHANGE CREATED INCONSISTENCIES AMONG CIRCUIT COURTS

A split among the circuit courts occurred this summer when conflicting opinions were issued on similar challenges to the Patient Protection and Affordable Care Act ("ACA"). Jacqueline Halbig, senior policy advisor for the Department of Health and Human Services under George W. Bush's administration, filed suit challenging the federal government's power to allocate funds for subsidies of insurance policies bought on the federal exchange. Ms. Halbig alleges that the language of the ACA permits the federal government to use subsidies exclusively for exchanges established by states. On July 22, 2014, a panel of three judges for the D.C. ruled in favor of Ms. Halbig.

Ms. Halbig's case is one of four cases challenging the validity of the ACA's use of tax credits and cost-sharing subsidies in the 36 states utilizing the federal exchange. The same day of the ruling in Ms. Halbig's case, the government received a favorable ruling in *King v. Burwell*, one of the four cases, which was filed in the Fourth Circuit.

On September 4, 2014 when the D.C. Circuit granted the government's petition for rehearing the case en banc following a vote by the majority of eligible judges. The rehearing briefing schedule begins on October 3rd and expires on November 17th; oral argument is set for December 17th.

While the ultimate fate of the ACA is yet to be determined; however, the Democratic Party appointed the majority of the judges. The D.C. Circuit will likely publish its opinion in the spring of 2015. The two other cases involving challenges to the law are in Indiana and Oklahoma; those challenges are at the district court level. If this issue were to rise to the Supreme Court of the United States, the appeal would likely be heard during the 2015-2016 session of the Court.

FEDERAL GOVERNMENT TAPS HEAD OF CONNECTICUT HEALTH INSURANCE EXCHANGES TO LEAD HEALTHCARE.GOV INTO ITS SECOND YEAR

Kevin Counihan, who led Connecticut's health insurance exchange to be one of the most successful in the nation, was hired as CEO of Healthcare.gov. Mr. Counihan's new position provides a grander challenge than leading the Connecticut exchange. Currently, 36 states utilize healthcare.gov to provide insurance pursuant to the ACA.

Mr. Counihan will oversee the continued revamping of the federal healthcare.gov web site, which encountered operational challenges upon its launch. Mr. Counihan's responsibilities are not exclusive to the federal exchanges. He will also assist states running their own exchanges and manage the Center for Consumer Information and Insurance Oversight, which is the body authorized to govern health plans under the ACA.

Last year, under Mr. Counihan's watch, the Connecticut exchange signed up approximately 79,000 people for coverage and an additional 120,000 signed up for Medicaid coverage, about half of whom were previously uninsured. The Connecticut exchange's success is due to the exchange's well executed marketing strategy and its operational effectiveness and efficiency as compared to other exchanges. The Connecticut exchange was advertised at jazz festivals, in a storefront on a city street, and even at Lil' Wayne concerts. Maryland took Connecticut's lead and recently purchased the Connecticut software to replace its own software.

504 PLAN – AN EDUCATIONAL PLAN

Is your child in need of a 504 plan? His/her school actually may be required to provide a 504 Plan to provide an appropriate education. Under Section 504 of the Rehabilitation Act of 1973, a child who has a "disability" – a physical or mental impairment that substantially limits one or more major life activities as defined by law – requires schools to establish a written 504 Plan. Providing this plan may not only be required by law, but can be crucial to your child's ability to safely attend school. The determination of what law(s) apply to a particular school (e.g. public, private, daycare), whether your child qualifies for protection, and what proposed accommodations may be "reasonable," are usually determined on a case-by-case basis. At times, a parent may need guidance on these and other related issues and/or assistance negotiating with the school.

On Tuesday, September 16, 2014, Attorney Jonathan Chappell will present regarding 504 Plans and the protections available to students with diabetes. For more information, contact him at jchappell@rms-law.com.

Want to learn more about us or any of the things you have read about in this newsletter? Feel free to contact us.

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