

### **U.S. Company Finds “Safer” Way to Make Stem-Like Cells**

Researchers at Harvard University and Massachusetts-based Advanced Cell Technology Inc said they have come up with the safest way yet to make stem-like cells using a patient’s ordinary skin cells. The technique involves soaking the cells in human proteins that turn back the clock biologically, making the cells behave like powerful embryonic stem cells. Dr. Robert Lanza of Advanced Cell said the firm would seek approval from the FDA to test the cells in people next year. *Maggie Fox, Thompson Reuters, May 28, 2009.*

### **AMA Exhorts Doctors To Offer Charity Care, Help the Uninsured**

The American Medical Association House of Delegates adopted a policy in June saying that physicians have an ethical obligation to care for patients, regardless of ability to pay. So long as it is fiscally sustainable, doctors should accept uninsured patients, maintain relationships with those who have lost coverage, and help patients access public programs and charitable sources. Regina M. Benjamin, MD, outgoing chair of the AMA’s Council on Ethical and Judicial Affairs, President Obama’s nominee for Surgeon General, and former CHA board member, said the AMA’s ethical stance on access to care dovetails with its lobbying efforts to cover the uninsured. “We need to use whatever resources we have, be it our voices or our advocacy – and health reform is just part of that,” she said. *Kevin O’Reilly, AMNews, amednews.com, June 29, 2009.*

### **Terminally Ill Patients Delay Talk of Hospice**

According to a study released by Harvard Medical School in May, many terminally ill patients and their doctors put off conversations about end-of-life care. About one-half of the 1,517 surveyed patients with metastasized lung cancer discussed hospice care with their health care provider within four to seven months of diagnosis. Discussions about terminal care are growing in importance as an estimated 90 million Americans live with serious and life-threatening illnesses. That number is expected to more than double over the next 25 years as baby boomers age, according to a recent report from the National Palliative Care Research Center. *Kay Lazar, Boston Globe, May 26, 2009.*

### **Wait To Get New Organs Gets Longer**

Nationwide, there are 101,943 people on the organ transplant waiting list according to the United Network for Organ Sharing of Richmond, Va., which administers the nation’s only organ transplant waiting list. Experts say kidneys are in the greatest demand because multiple illnesses, such as hypertension and diabetes, can diminish kidney function. The list for organs is getting longer. “People are added to the list because their lifestyles lead to poor health, and organ transplantation has proved very successful,” said Jennifer Tislerics, special events coordinator for Gift of Life Michigan. Nationwide, there are nearly 80 million registered organ donors. Only two percent die in a way that allows their organs to be considered for transplants, according to Aisha Huertas, public

outreach coordinator for Virginia-based Donate for Life. *Christina Stolarz, The Detroit News, May 19, 2009.*

### **Health Care Quality Showing Slow Improvement**

“The progress of quality is incredibly slow, and disparities are persisting,” said Ernest May, MD, Ph.D. of the Agency for Healthcare Research and Quality which produces annual reports on health care quality and disparities. May noted that rates of improvement differ by measure. For example, there was greater improvement in measures for hospital and acute treatment compared with much lower rates for chronic care and chronic disease management. Less than one-half of the 38 metrics for patient safety showed improvement. Patient safety was the only area that showed an annual decline since 2003, driven largely by health care associated infections. At least 60 percent of the disparities measures stagnated or worsened from 2000 to 2006. Disparities persist across minority groups in colorectal cancer screening, patient-centered care and mental health treatment. *Kevin O’Reilly, AMNews, amednews.com, May 27, 2009.*

### **Medical Bills Play a Role in 62% of Bankruptcies**

A Harvard University study released in June 2009 found that medical bills, and related problems such as lost wages for those who are ill and their caregivers, contributed to 62% of all bankruptcies filed in 2007. Having health insurance is not necessarily a guarantee against bankruptcy. “Lots of health insurance comes with big co-payments, deductibles and uncovered services,” said Steffie Woolhandler, MD, an

author of the study who is a practicing physician and associate medical professor at Harvard. “So you can be uninsured and still end up with big bills. Even if you have good insurance through your employer, you can lose it if you get sick and can’t work.” *Lisa Girion, Los Angeles Times, June 4, 2009.*

#### **Nota Bene**

The Center for Health Law Studies at Saint Louis University School of Law contributed the following items to this column. Amy N. Sanders, assistant director, Center for Health Law Studies, supervised the contributions of health law student Meghan McNally (JD anticipated ’10).

### **Medicare Fraud Strike Force Operations Lead to Indictments for More Than \$50 Million in False Claims**

On June 24, 2009, the Detroit Attorney General, Secretary of Health and Human Services (HHS) and director of the FBI announced that 53 individuals had been indicted for schemes to submit more than \$50 million in false claims to Medicare. These allegations stem from the use of Medicare data analysis techniques and a focus on community policing by the Medicare Fraud Strike Force. The group is a joint collaboration of a Department of Justice (DOJ)-HHS team of federal, state and local investigators whose primary focus is combating Medicare fraud. The indictments were returned by a grand jury in Detroit. Daniel R. Levine, Inspector General of HHS said,

“Today’s landmark series of arrests in Detroit and across the country demonstrate that health care fraud can happen anywhere in America. We will continue to detect and respond rapidly to emerging fraud schemes to protect our federal health care programs and conserve scarce health care dollars so critically needed for the care of our beneficiaries.”

<http://www.hhs.gov/news/press/2009pres/06/20090624a.html>

### **A Transplant That Is Raising Many Questions**

Apple Chief Executive Officer, Steven Jobs’ recent liver transplant in Tennessee has invoked concerns regarding organ allocation. Speculation remains as to the underlying medical condition that led to his need for a new liver, but experts indicated that “the most likely reason stems from his pancreatic cancer having spread or metastasized to his liver.” Under current liver allocation procedure, a transplant center ranks potential recipients on a waiting list” based on patient sickness and length of time on the list. Waiting times vary in different parts of the country. People who have financial capacity can travel to states with shorter waiting lists. Sometimes individuals register on several waiting lists across the country. (Denise Grady and Barry Mier, “A Transplant That is Raising Many Questions, *The New York Times*, June 22, 2009). [www.nytimes.com/2009/06/23/business/23liver.html?em](http://www.nytimes.com/2009/06/23/business/23liver.html?em)

### **IRS Regulation Upheld by Eighth Circuit As Reasonable Interpretation of FICA Statute**

On June 12, 2009, the United States Court of Appeals for the 8th Circuit held in a case entitled *Mayo*

*Foundation for Medical Education and Research v. United States*, that “Internal Revenue Service guidelines that say stipends paid to medical residents who work more than 40 hours per week are subject to employment taxes are not invalid.” The court held that the IRS’s interpretations of “an ambiguous term in the student exception to taxation under the Federal Insurance Contribution Act are reasonable.” This decision is significant because it affects academic medical center and university residency programs. Currently it is uncertain how other circuits will come down on a similar decision. Only time will tell if other circuits adopt the same rationale. *BNA Health Law Reporter*, June 18, 2009.

### **Biden Cheers Deal With Hospitals on Health Reform**

On July 8, 2009, Vice President Joe Biden, joined by Health and Human Services Secretary Kathleen Sebelius and members of the health care industry, announced “the hospital industry has pledged to contribute \$155 billion in Medicare and Medicaid savings in the next decade.” Hospitals have been working with Senate Finance Committee to come forward with a proposal that “produces real savings in federal health care spending.” Biden indicated that these savings will be applied to President Obama’s goal of enacting health care reform. Not everyone in Washington agrees with the administration’s position. House Minority Leader John Boehner (R. Ohio) accused the administration of “bullying health care groups into cutting backroom deals to fund the government takeover of health care.” Last month pharmaceutical companies agreed “to cut drug costs for elderly

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Americans,” which will discount medications for Medicare beneficiaries when there is a gap in coverage. *CNN*, June 8, 2009. [www.cnn.com/2009/POLITICS/07/08/biden.health.care/index.html](http://www.cnn.com/2009/POLITICS/07/08/biden.health.care/index.html)

### **U.S. Court Upholds Injunction Blocking State Medi-Cal Cuts**

On July 9, 2009, the 9th Circuit Court of Appeals upheld a lower court ruling blocking a ten percent cut ordered by the State legislature in 2008 in Medi-Cal payments to doctors, dentists, pharmacists and other providers. Medi-Cal is California’s version of the federal Medicaid program and currently serves 7.1 million Californians. The decision

issued by a three judge panel stated “that the California Department of Health Services violated federal law by failing to consider the impact of the cut on quality and access to health care” and that “a state budget crisis could not be used as a justification for illegal cuts in the program.” *Wire Reports*, *The Examiner*, July 9, 2009.

### **Jury Awards Woman \$5 Million Over Wrong Diagnosis**

In Marion County Indiana, a jury awarded Roxanna Smith \$5 million for ill effects she suffered from a misdiagnosis almost ten years ago. Damages were awarded against Clarian Health Partners, Radiologic Specialties of

Indiana and now retired physician Richard Gilmor, MD. At the time, Ms. Smith, age 18, arrived at the emergency room with a ruptured diaphragm. Due to miscommunication regarding her X-ray results, she was diagnosed with a urinary tract infection, muscle strain and sent home. Over the next two weeks, her condition deteriorated, resulting in emergency surgery for the removal of a third of her stomach. Since then, the patient has required six additional surgeries, has to limit food intake to avoid vomiting and expects further complications. *Jon Murray, IndyStar*, June 18, 2009.