Of Note

Can Doctors Be Compelled to Provide Futile Care?

New Jersey appeals court judges will decide whether family members can compel Trinitas Regional Medical Center to continue life-sustaining treatment for their comatose father when hospital physicians consider further treatment medically inappropriate. Legal experts said a ruling in the case, *Betancourt v. Trinitas*, has the potential to set a precedent in New Jersey and beyond for decisions about end-of-life care.

"We're not saying patients have the right to demand extraordinary or experimental treatment a hospital feels is inappropriate," said Betancourt family attorney Todd Drayton. "The facts of our case are whether or not a hospital can unilaterally terminate life-sustaining support over the objections of the family."

"Patients do have a right to choose among available and appropriate treatment, but not to decide what's medically appropriate," said Trinitas vice president and general counsel Sam Germana. In this case, doctors had done all they could do." Amy Lynn Sorrel, *Amednews.com*, May 17, 2010

Study Finds Doctors' Orders Help Patients Get Preferred End-of-Life Treatment

Nursing home patients are more likely to receive the treatment they want and less likely to have unwanted hospitalizations and medical interventions under a program using medical forms signed by a physician that detail patient decisions about end-of-life care. The program called Physicians Orders for Life-Sustaining Treatment (POLST) began due to concerns that traditional patient-generated orders and advance directives were often too vague or did not offer enough detail to be helpful in a clinical setting.

The study found that people with POLST forms who said they wished to receive care primarily for pain relief were 59 percent less likely to receive unwanted treatment than those with only a "Do Not Resuscitate" order. POLST forms record wishes for CPR, hospitalization, and treatments such as antibiotics, feeding tubes and other medical interventions. Researchers from Indiana University and the Oregon Health & Science University participated in the study, which is published in the July issue of the *Journal of the American Geriatrics Society*. Jessica Marcy, *Kaiser Health News,* July 2, 2010

New Law Could Help Hospice Patients Continue Aggressive Medical Treatments

One of the most difficult decisions patients face in deciding whether to enter hospice care is giving up aggressive treatment to receive end-of-life counseling and palliative care.

However, the new health reform law could lead to a major change in Medicare policy for hospice care. Effective immediately, Medicaid will simultaneously cover hospice and curative care for children with terminal illnesses. The law also directs Medicare to begin up to 15 pilot projects to test the concept for other patients as well. If the experiments are deemed successful and don't increase costs, Medicare could make the benefit available to everyone in hospice.

Hospice care is one of the fastest growing components of Medicare. In 2008, more than one million Medicare beneficiaries used the hospice benefit at a cost of $11.2 billion, according to the Medicare Payment Advisory Commission.

Some people fear that providing both palliative and curative care in a hospice setting will muddle efforts to get patients to embrace the hospice philosophy which emphasizes quality of life. "It could be great," said Terry Berthelot, attorney with the Center for Medicare Advocacy, a patients' rights group. But it also "may make dying more difficult because some people may be chasing after cures instead of what hospice is about, to say 'thank you,' to say 'I forgive you' – that emotional work." Jordan Rau, *The Philadelphia Inquirer,* May 10, 2010

A Decade Later, Human Gene Map Yields Few New Cures

Ten years after President Bill Clinton announced completion of the first draft of the human genome, medicine has yet to see any large part of promised benefits for the diagnosis, treatment and prevention of disease.

Although the Human Genome Project has yielded many insights for biologists, the primary goal of the $3 billion project remains largely elusive in terms of ferreting out the genetic roots of diseases like cancer and Alzheimer's and generating treatments.

"Genomics is a way to do science, not medicine," said Harold Varmus, president of the Memorial Sloan-Kettering Cancer Center in New York, who became head of the National Cancer Institute in July.

The pharmaceutical industry has spent billions of dollars to reap genomic secrets and is starting to bring several genome-guided drugs to market. Although drug companies continue to invest heavily in genome research, it has become clear that the genetics of most diseases are more complex than anticipated and that it will take many more years before new treatments may be able to transform medicine. Nicholas Wade, *The New York Times,* June 13, 2010.

Vatican Official Urges Equitable Distribution of Medicine, Health Care

Efforts by international organizations to ensure people in the developing world have access to essential medicines are falling far short of the goal, according to Archbishop Silvano Tomasi, the Vatican's representative to agencies of the United Nations.

Addressing a meeting of the Human Rights Council in Geneva in June, Tomasi said equal and nondiscriminatory access to health care was a basic human right, but that those rights "are far from being realized" in the world's poorest nations. People in developing countries suffer diseases of poverty ten times more than those in wealthier countries from the lack of basic tools and medicines. Moreover, diseases such as HIV, AIDS, malaria and tuberculosis are often aggravated by hunger or malnutrition.

Children are particularly deprived of medicines. One reason is that pediatric doses for many medicines, including antiretroviral drugs used for HIV and AIDS, have not been established, causing health care workers or parents to guess at how to divide adult doses for children. According to Tomasi, only 38 percent of children who are HIV-positive received proper medication at the end of 2008. Sarah Delaney, Catholic News Service, June 22, 2010.

The Do-It-Yourself House Call

Insuror-endorsed remote-monitoring technology lets heart patients take readings for blood pressure, weight and other key metrics at home using electronic devices that transmit the data to case managers or medical care givers who can catch and address early warning signs of problems or potential emergencies. Although the technology allows patients to stay in their homes while transmitting important medical information to care givers, the systems can't catch everything. Ill patients also have to remember to use the technology. Moreover, difficulties can arise if technical problems occur or if patients don't use the devices properly.

However, the technology provides benefits for cost savings and convenience allowing many problems to be addressed before they become serious. Heart failure, which can be triggered by simple mistakes such as consuming too much salt, is a leading cause of hospital readmissions, with about 25 percent of patients returning to the hospital within 30 days. It's also one of the biggest single claims expenses for insurers. Aetna estimates 40 percent of readmissions are avoidable. Avery Johnson, *The Wall Street Journal,* July 27, 2010

Students from 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 law student Meredith Farese (JD/PhD in Health Care Ethics anticipated '11).

Tribe Wins Fight to Limit Research of Its DNA

The Havasupai Indians reached a settlement agreement with researchers at Arizona State University, after the university allegedly used blood samples from the tribe in research without receiving full, informed consent. The laboratory performing the research receives federal funds, and is required to provide "informed consent" to participants about all of the risks and benefits involved in the research. The settlement agreement is significant because it implies that the rights of individuals who donate samples for research can be violated if they are not fully informed on how their DNA would be used.

Members of the Havasupai tribe donated blood samples for research that the tribe hoped would help provide some direction and guidance on fighting the tribe's devastating rate of diabetes. However, researchers also began using the DNA for studies on mental illness and theories of the tribe's geographic origin that conflicted with their traditional stories. Tribe members argued that they did not consent to this use of their blood samples, and it was therefore illegal.

The settlement agreement requires the university to pay $700,000 to 41 of the tribe's members, return the blood samples, and provide other forms of assistance to the impoverished tribe. Amy Harmon, *The New York Times,* April 22, 2010

Army Examines Units Treating Injured Soldiers

The Army began an investigation into its Warrior Transition Units that treat soldiers with physical injuries and severe psychological trauma. WTUs have been criticized by soldiers and their families in recent months. General Peter Chiarelli, vice chief of staff of the U.S. Army, stated that the majority of experiences reported at the WTUs were positive, but that the units were extremely new and the complaints needed to be investigated thoroughly and responded to. Army officials have focused on how to reduce the amount of time spent in WTU and more quickly transition soldiers into the Veterans Affairs medical care system. Dan Frosch, *The New York Times,* May 3, 2010

For Part-time Workers, Help Is on the Way, But Not Quickly

Many part-time employees do not have health insurance. Employers either do not offer it, or the plans are too expensive for those who have low-paying, part-time employment. The new health care legislation will make affordable coverage available to these employees, but not until 2014. States will make subsidized care plans available to part-time employees seeking health insurance. Most of the plans available now are "limited benefits" plans with lifestyle limits and yearly caps, but these will be eliminated by the new

legislation beginning in the fall. Michelle Andrews, *Washington Post,* June 29, 2010

New Rules on Changes to Benefits

The White House issued new rules that strongly discourage employers from cutting health benefits and increasing costs of coverage. The rules limit what employers can do if they want to be exempt from the new health care legislation. Many employers are opting for the exemption, hoping that it will make the transition smoother when the new legislation is fully in effect. Employer-sponsored plans that are exempt will be "grandfathered in", but they can lose this status if they make sweeping changes to policies or premiums by increasing co-pays and eliminating coverage for certain conditions. Robert Pear, *The New York Times,* June 14, 2010

Questions Over Insurance Eligibility for Young Adults

One of the most attractive parts of the new health care legislation is the option for young adults without health insurance to remain on their parents' plans until age 26. However, deadlines for compliance with the new law are causing much frustration. Many insurance companies and several large employers acted quickly and began allowing dependants to remain covered in advance of the deadline. However, many employers have not yet complied with the option, instead deciding to wait closer to the required deadline.

While young adults are healthier on average, they are less likely to purchase health insurance. Insurance companies assume that young adults wishing to purchase insurance are sickly or more prone to illness, and as a result charge more for these plans. N. C. Aizenman, *Washington Post,* June 27, 2010

Judge Hears Arguments on Health Overhaul Challenge

The federal government received its first challenge in federal district court by the Commonwealth of Virginia challenging the mandate that all citizens must purchase health insurance. Attorneys for the Department of Justice argued that the state did not have standing to challenge the new law. The judge stated that he planned to issue a ruling within the next 30 days. One of 21 states challenging the new bill, the Virginia case is the first to reach oral arguments. The central argument in the case is that the government does not have the power to impose a penalty on a citizen for not buying something – what it terms the "absence of commerce". Kevin Sack, *The New York Times,* July 1, 2010

V.A. Easing Rules for Users of Medical Marijuana

The Department of Veterans Affairs will begin allowing V.A. hospital patients to use medical marijuana in states where it has been legalized. Effective the end of July, the new policy defers to state rules

permitting medical use of the drug, deferring to state laws rather than the federal law prohibiting use of marijuana. Doctors will not be allowed to prescribe marijuana but patients will no longer fear repercussions if they are caught using it. Current policy denies veterans access to pain medications if they are caught using illegal drugs. The new policy will still allow doctors the ability not to prescribe pain medications if they believe they would interact negatively with medical marijuana, but denial of these medications will now be done on a case-by-case basis, rather than a broad department-wide policy of denial. Dan Frosch, *The New York Times,* July 23, 2010