

Legal Lens

Students from the Saint Louis University School of Law Center for Health Law Studies contributed the following items to this column. Amy N. Sanders, associate director, supervised the contributions by Shannon Rempe (JD/MPH anticipated May 2020) and Valerie De Wandel (JD/PhD anticipated, May 2020), Saint Louis University School of Law Center for Health Law Studies.

AI ‘OUTPERFORMS’ DOCTORS DIAGNOSING BREAST CANCER

A study in the journal, *Nature*, suggests that artificial intelligence is more accurate than doctors in diagnosing breast cancer from mammograms. A study was conducted by researchers from Google Health and Imperial College London, who designed and trained a computer model on X-ray images from nearly 29,000 women. In reading mammograms, the algorithm outperformed six radiologists. The study indicated that the AI model used was just as effective as the current double-reading system used by the National Health Service radiologists. Moreover, it outperformed tremendously at cancer-identification in comparison to a single doctor. According to Professor Ara Darzi, report co-author and director of the Cancer Research UK (CRUK) Imperial Centre, “This went far beyond my expectations. It will have a significant impact on improving the quality of reporting, and also free up radiologists to do even more important things.” Although very promising,

for now these results were just part of a research study.

Fergus Walsh, BBC News, Jan. 2, 2020

<https://www.bbc.com/news/health-50857759>

IN THE DEMOCRATIC DEBATES ON HEALTHCARE: HOW MODERATE IS THE “PUBLIC OPTION”?

The single-payer health plans, also called “Medicare for All,” proposed by Senators Bernie Sanders and Elizabeth Warren have been criticized as being “too disruptive” to the health insurance market. This criticism is not unwarranted: the implementation of a single-payer system would effectively eliminate the private insurance market and require tens of millions of Americans to give up health insurance that they may like. This is why candidates like Joe Biden and Pete Buttigieg have put a “public option” in their health care proposals, which would preserve the current private market and give people the option to choose government insurance. However, although a public option may be less disruptive than a single-payer system, if this public option is inexpensive and attractive, the notion that this will preserve the choice of private insurance may become a fallacy. Based on the market, though, it seems these public option plans would look similar to existing insurance, as the price of coverage would be high and the covered doctors and hospitals would be limited. In order for these plans to be successful they would need to have lower prices and demonstrate their value to

customers by offering special services. The plans could do so if they explicitly linked to Medicare — then requiring providers that accept Medicare patients to also accept public-option patients — which would allow these plans to have negotiating power in setting lower prices and covering more doctors and hospitals. But because Medicare is able to pay doctors and hospitals lower prices than private insurance there may be backlash in the form of some doctors no longer accepting Medicare patients. Ultimately a public option plan would not directly affect private insurers, but because it would affect consumers and the rules of the market, it could influence any insurance company's business decisions.

Margot Sanger-Katz, *The New York Times*, Dec. 3, 2019
<https://www.nytimes.com/2019/12/03/upshot/public-option-medicare-for-all.html>

MORE WORK REQUIREMENTS – THIS TIME FOR ACCESS TO FOOD STAMPS

The Trump administration has proposed three rules targeting the Supplemental Nutrition Program, known as SNAP — a program that feeds more than 36 million people. The first of these proposed rules will limit a state's ability to exempt work-eligible adults from having to maintain steady employment in order to receive SNAP benefits. Under the current rules, work-eligible adults between the ages of 18 and 49, without any dependents can only receive three months of SNAP benefits in a three-year period if they do not meet the 20-hour work requirement. But waivers have been allowed to be granted in states with high unemployment rates or a lack of sufficient jobs. The new proposed rule only allows states to issue waivers if the applicable city or county has an unemployment rate of 6% or higher, and the

waivers must be supported by the governor and will expire after one year. In the same way that Section 1155 waivers have claimed they will move people “from welfare to work” these rules are claiming the same, but it is predicted that this will disproportionately affect minorities and people with seasonal or part-time jobs. The Department of Agriculture estimates that over five years, this change would cut benefits to around 688,000 SNAP recipients, but it would save the administration \$5.5 billion. The other two proposals also involve limiting eligibility, such that the Urban Institute estimated the three proposals would affect approximately 2.2 million households and 3.7 million individual beneficiaries. Denying basic food and nutrition to Americans who face the highest barriers to employment and economic stability will only worsen food insecurity in America and cause serious harm to individuals, communities, and the nation.

Juliet Linderman, *The Associated Press*, Dec. 4, 2019
<https://apnews.com/46cda2574cbad2a31d52c33d07d7c77d>

A WOULD-BE BIG SAVER FOR MEDICARE: DRUG PRICE NEGOTIATION

On Dec. 12, 2019, the House passed legislation to empower the federal government to negotiate prices with pharmaceutical manufacturers and ultimately lower the rising cost of prescription drugs. The bill also included provisions to create new vision, dental and hearing benefits, while also capping out-of-pocket drug costs for Medicare beneficiaries at \$2,000. The central provision of the measure enables the Department of Health and Human Services to negotiate the price of up to 250 commonly used drugs — including insulin — and would also require pharmaceutical manufacturers to

offer the agreed-upon price to private insurers. Manufacturers would also be required to pay rebates to Medicare if the prices of their drugs increase faster than inflation. President Trump has stated he will veto the bill despite curbing the cost of prescription drugs being a central theme in his 2020 reelection campaign and the attractiveness of this priority among both voters and politicians across either side of the aisle. Alongside President Trump, pharmaceutical companies and drug manufacturers are also strongly opposed to the bill. A less contentious bill has been proposed in the Senate, which would also cap out-of-pocket expenses and require the rebates paid to Medicare but does not include any negotiating power. Other bills that have drawn more bipartisan support tack on the requirement of price transparency from both pharmaceutical and insurance companies. Critics of the House bill warn that this would open the door to a government takeover of the prescription drug market and essentially force pharmaceutical companies to eliminate research and development, which would deprive the public of lifesaving treatments. Based on estimates by the Congressional Budget Office, over the next decade this House bill could result in approximately 20 fewer drugs created but also would save taxpayers \$5 billion. It remains to be seen if the pockets of special interest backers or American citizens will be prioritized.

Sheryl Gay Stolberg, *The New York Times*, Dec. 12, 2019
<https://www.nytimes.com/2019/12/12/us/politics/house-prescription-drug-prices.html>

BILL OF THE MONTH: FOR HER HEAD COLD, INSURER COUGHED UP \$25,865

Forty-year old Alexa Kasdan's week-long sore throat led her to go see a doctor. She went to her primary physician at Manhattan Specialty

Care just off Park Avenue South. When the bill came, although insured by Blue Cross and Blue Shield through employment insurance, Ms. Kasdan's bill totaled \$28,395.50 for an out-of-network throat swab. Her insurer presented her a check for \$25,865.24. There are many reasons this lab work could cost so much. According to Dr. Ranit Mishori, professor of family medicine at the Georgetown University School of Medicine, the lab tests ordered were entirely unnecessary. She said, "There are about 250 viruses that cause the symptoms for the common cold, and even if you did know that there was virus A versus virus B, it would make no difference because there's no treatment anyway." Another reason could account for the high cost — using an out-of-network lab for analysis. And, yet another cause for the shocking price could have been a connection between the lab and Alexa Kasdan's doctor. Richelle Marting, a lawyer specializing in medical billing, indicated that this is a common problem for insurance companies and practices like this eventually drive up premiums for all plan participants. Investigations of this case are currently underway.

Richard Harris, NPR News, *Kaiser Health News*, Dec. 23, 2019
<https://khn.org/news/medical-bill-of-the-month-head-cold-throat-swab-dna-tests-insurer-coughed-up-25k/>

AS VAPING-RELATED DEATHS RISE, ARE REGULATORS DOING ENOUGH?

On Jan. 2, 2020, the Trump administration announced a ban on popular e-cigarette flavors, including fruit and mint, while allowing only menthol and tobacco flavors to remain on the market. Department of Health and Human Services secretary Alex Azar stated this approach was a "smart, targeted policy that protects our

kids without creating unnecessary disruption [in the market.]” This ban has been met with immediate criticism from public health advocates claiming it does not do enough to protect teens and limit access to e-cigarette products. This flavor ban also does not apply to all e-cigarette liquids, only to those used in disposable pods; e-cigarette liquids that are used in ‘open tank’ e-cigarettes, often sold at vape shops are not subject to this ban. Defenses of the exemptions to the ban claim that a complete ban would lead to an underground market for illegal vaping products and job losses. Whereas critics, such as Gary Reedy, chief executive of the American Cancer Society, claim this ban to be “a hollowed-out policy that will allow the tobacco industry to continue to attract kids to a lifetime of nicotine addiction.” This ban has no impact on the company Juul because they had already pulled these flavors amid criticism linked to surges in teenage use, but now their competitors will be forced to do the same. The flavors that remain are claimed to be unpopular among teenagers, but public health advocates claim they will just simply switch to menthol. The policy will go into effect in early February of this year. Whether it has any effect on documented lung injuries and the percentage of teen-users will be observed.

Chris Kirkham, *Reuters*, Jan. 2, 2020
<https://www.reuters.com/article/us-usa-vaping/trump-administration-restricts-some-e-cigarette-flavors-idUSKBN1Z11B7>

THE DAMAGE OF VACCINE MISINFORMATION

An analysis of vaccination trends in Denmark shows just how detrimental vaccine misinformation can be. Due to wrongful information about the human papillomavirus (HPV) spreading across Danish media outlets, thousands of young females did not receive the vaccine. The study was conducted by researchers at the University of North Carolina at Chapel Hill, who looked at four different time periods to study HPV vaccination rates in Denmark. Researchers found that after the scare induced by the misinformation, there was a 50 percent drop in vaccinations, causing approximately 26,000 Danish females to be left unvaccinated. According to study author Peter R. Hanses, professor of economics at UNC, “Denmark is a good case study to see how a country deals with vaccine misinformation. By using anecdotal stories, media can create a false equivalence between outrageous claims and scientific facts.” This study is essential, as HPV vaccinations are safe and can prevent up to 90 percent of cervical cancers.”

Kayla McKiski, *U.S. News & World Report*, Jan. 23, 2020
<https://www.usnews.com/news/health-news/articles/2020-01-23/the-damage-of-vaccine-misinformation>