

Of Note

The Requirement of Health: How Companies Could Discriminate

Companies are looking to reduce health insurance expenses through creating wellness programs to foster healthy employees. Some programs consist of employees attending wellness classes while others require physical measurement of employees and still others a combination of both. Gioia Zuccherro presents a question: Are wellness programs discriminatory? CVS Caremark's health policy determines "healthy" people through the measurements of weight, body fat percentage and glucose level. Zuccherro finds this troubling. "Taking all three metrics together, it's still not possible to make a determination about someone's health based on these basic measurements alone." Requiring personal information is not discriminatory but the discrimination lies in "penalizing an employee who yields 'unhealthy' numbers, either simply because they are deemed unhealthy or because the unhealthy employee chooses not to participate in the subsequent 'intervention' program." Zuccherro concludes that "to penalize someone on the basis of correlation without causation is discriminatory." (Gioia Zuccherro, www.bioethics.net, March 27, 2013)

E.R.s Account for Half of Hospital Admissions, Study Says

A report by the RAND Corporation, a nonprofit research group, found that the increase in hospital admissions between 2003 and 2009 was almost exclusively a result of an increase in patients admitted through the emergency room. Dr. Arthur L. Kellermann, a study author, notes that the role of the emergency room has expanded to serve as a place for patients to go on evenings and weekends to receive "complex, time-efficient diagnostic workups." With rising numbers of admissions some question if the emergency room is the best place to be making decisions regarding admissions. "Patients may benefit from the speed and thoroughness of the diagnosis taking place in the emergency room ... but the expense could be much higher, and emergency physicians may be too eager to order costly tests." In contrast, the report also found reasons to believe that emergency physicians are good at avoiding unnecessary hospital admissions. (Reed Abelson, *The New York Times*, May 21, 2013)

Stem Cells Give Young Girl a New Life

Hannah Warren, a 2-year-old born with a defect known as tracheal agenesis, became the youngest patient to receive stem cell therapy. Hannah received a new windpipe

grown from stem cells extracted from her hip bone. The trachea is functioning well, and her recovery is being closely monitored. Stem cells divide quickly and are relatively unspecialized but can become tissue-specific making them the perfect tool in creating a new windpipe for Hannah. Recently stem cell therapy gained more public attention when NFL quarterback Peyton Manning received stem cell therapy in Europe to aid in nerve and bone growth in his neck. His therapy was unsuccessful but Hannah's treatment has more positive results. (Naomi Parikh, *The Examiner*, May 2, 2013)

[Editor's note: Hannah Warren died Saturday July 6th of lung complications following her second surgery. Her new windpipe was not a cause in her death.]

Hundreds of Immigrants Are Being Deported from Their Hospital Beds

A recent report by the Center for Social Justice at Seton Hall Law School has uncovered new information concerning undocumented immigrants that seek care in American hospitals. The report found that in the last five years over 600 undocumented immigrants were deported from their hospital beds, even some while still unconscious. Lori Nessel, director for the Center for Social Justice, says that although hospitals call immigration authorities to handle the deportation of these patients, the authorities rarely take responsibility. The article author, Esther Yu-His Lee, notes that "medical

repatriation is an often necessary but cruel fact of life for hospitals that are facing financial cutbacks and the inability to be reimbursed." Without more federal funding, hospitals will continue to deport undocumented immigrants that need costly long-term care. (Esther Yu-His Lee, www.thinkprogress.org, April 23, 2013)

Transplant Panel Orders Policy Review

In Philadelphia, a case of two children in need of a lung transplant has prompted the Organ Procurement and Transplantation Network to begin a year-long review of current guidelines for allocation of lungs to children. The current policy says children under the age of 12 must wait for pediatric lungs to be available. The panel agreed to allow a case-by-case review in the interim. "All three committees at OPTN agreed that the underlying policy should not be changed in response to public pressure over individual cases. The question of how to best allocate scarce organs among terminally ill people is an ethically complex one." The families of the children, Sarah Murnaghan and Javier Acosta, sued the U.S. government and HHS Secretary Kathleen Sebelius to have their children placed on the adult donor list. U.S. District Judge Michael Baylson issued a temporary ruling in favor of the parents allowing Sarah to be placed on the adult donor list. HHS Secretary Kathleen Sebelius has received criticism for not waiving the policy for the sick children. In a *Washington Times* op-ed, Jane Orient called Sebelius "a death panel of one."

Some argue that if Sebelius would have allowed the exception to the policy she would have been seen as a “meddling government bureaucrat.” (Brett Norman, *Politico*, June 10, 2013)

[Editor’s note: Sarah Murnaghan received a set of adult lungs on June 12th which failed. She received a second set on June 15th.]

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 health law students Daniel J. Sheffner (JD anticipated May '14) and Courtney Thiele (JD anticipated May '14).

Psychiatrists Introduce the DSM-5

The American Psychiatric Association (APA) released the newest edition of the “Diagnostic and Statistical Manual of Mental Disorders,” the DSM-5, this May. Containing over 300 mental illnesses in just under 950 pages, the new DSM was 14 years in the making, with revisions of the DSM-IV beginning in 1999. However, the publication, the definitions contained in which designate what counts as a mental disorder, has been met with harsh criticism from many within the medical community. Dr. Thomas Insel, director of the National Institute of Mental Health, complained that the DSM-5 lacked validity because the vast majority of the mental illnesses listed in

the manual are derived from self-reported symptoms and subjective conclusions, instead actual science. The very subjective nature of mental illnesses make diagnostic foundation on biological or genetic bases impossible at present; however, this does not prevent psychotherapist Gary Greenberg from characterizing the DSM-5 as unreliable and “hopelessly and dangerously flawed.” Critics are alarmed at what they see as an inflation of mental disorders which, they argue, makes it easier for one be diagnosed with a disorder. Equal alarm is generated by the removal of Asperger’s syndrome from the list and other changes to autism spectrum disorders that will most likely result in fewer autism diagnoses. The APA plans to regularly update the DSM-5 in association with advancements in scientific research. (Sharon Begley, “Psychiatrists Unveil Their Long-Awaited Diagnostic ‘Bible’,” Reuters, May 17, 2013) <http://www.reuters.com/article/2013/05/17/us-science-psychiatry-dsm-idUSBRE94G04420130517>.

Obesity is Now a Disease

The American Medical Association (AMA) House of Delegates voted to recognize obesity as a disease. While the AMA’s Council of Science and Public Health, the body tasked with reviewing the issue, counseled the House of Delegates against such a decision, the AMA nonetheless agreed with a resolution accepted by groups such as the American College of Cardiology and the American Association of Clinical Endocrinologists,

defining obesity as a “multimetabolic and hormonal disease” that leads to heart disease and Type 2 diabetes. Dr. Patrice Harris of the AMA believes that the organization’s recognition of obesity as a disease will prompt physicians and other health care professionals to take the condition more seriously and will increase efforts directed at curbing rates of heart disease and Type 2 diabetes. Such increased attention will hopefully minimize the stigma associated with obesity. The AMA’s decision may also increase access to care for obese patients by inducing insurers to improve reimbursement for obesity pharmaceuticals and medical procedures. Opponents of the classification argue that obesity is merely a risk factor, not an actual a disease. Despite the AMA’s decision, there is no generally accepted definition of disease.

(Andrew Pollack, “A.M.A. Recognizes Obesity as a Disease,” *The New York Times*, June 18, 2013)

<http://www.nytimes.com/2013/06/19/business/ama-recognizes-obesity-as-a-disease.html?adxnnl=1&ref=health&adxnlnx=1371735772->

GhaeWJbbQrv7r3FXoI+XHA.

HPV Vaccine Decreases Infection Rate in Teens

A study published in *The Journal of Infectious Diseases* this year reported that the rate of infection in teenage girls of the human papillomavirus (HPV), a virus that infects nearly 19,000 women and 8,000 men each year in the U.S., has decreased by half thanks to a 2006 vaccine. HPV is a

leading cause of cervical cancer, a disease that claims nearly 4,000 deaths per year in the U.S. Despite its success, only about one-third of American girls have been introduced to the full vaccine, as opposed to the 80 percent vaccination rates in countries such as Britain, Denmark, and Rwanda. A March study published in the *Pediatrics* journal reported that 44 percent of American parents in 2010 intended to prohibit their daughters from undergoing vaccination, an increase from 40 percent in 2008. Worries that the vaccine’s successes will contribute to unrestrained sexual behavior or even, according to U.S. Representative Michele Bachman (R-Minn.), that the vaccine has “dangerous side effects,” are possible reasons for the low vaccination rates. However, public health officials are confident that the HPV vaccine has no such detrimental effects. Cervical cancer is one of the most common cancers affecting women, and with nearly 79 million Americans currently infected with HPV, the HPV vaccine is, according to Dr. Thomas Frieden, director of the Centers for Disease Control and Prevention, “an anticancer vaccine,” nothing more, nothing less.

(Sabrina Tavernise, “HPV Vaccine is Credited In Fall of Teenagers’ Infection Rate,” *The New York Times*, June 19, 2013)

<http://www.nytimes.com/2013/06/20/health/study-finds-sharp-drop-in-hpv-infections-in-girls.html?ref=health>.

Abortion Remains Election Issue for 2014

Abortion, ever a contentious and national issue since the U.S. Supreme Court's 1973 *Roe v. Wade* decision, has yet again been thrust to the forefront of American politics. Republicans throughout the country have proposed bills that would ban abortions after the 20th week of conception, mandate ultrasounds prior to receiving an abortion, and affect other wide-ranging measures. Forty-three new laws have been enacted this year alone by Republican state governments that regulate or restrict access to abortion. The Congress has also joined the fray with the U.S. House of Representatives passing a bill banning abortions after 20 weeks, even while *Roe* prohibits restrictions until "viability" (which has been determined to occur around 24 weeks). The increased attention may ensure a large turnout of social conservatives at the polls in the upcoming congressional and presidential elections, which can only serve to benefit Republicans. Democrats accuse Republicans of working to restrict women's constitutional rights all while ignoring the pressing economic difficulties affecting Americans. They believe that moderate voters will register their disagreement at the polls, perhaps even delivering the 18 seats needed to gain a majority in the House of Representatives in the 2014 congressional elections. However, whether the spotlight cast over the abortion debate will provide either party with a winning edge in the upcoming elections is uncertain: a Gallup

poll from last May reported that, although 49 percent of Americans believe abortion to be morally wrong, only 20 percent believe that it should be absolutely prohibited.

(Jennifer Agiesta & Gary Robertson, "Republicans Return Abortion to the Front Burner for 2014 Elections, Democrats See Gains as Result," The Associated Press/*Washington Post*, July 15, 2013)

http://www.washingtonpost.com/politics/federal-government/republicans-return-abortion-to-front-burner-for-2014-elections-democrats-see-gain-as-result/2013/07/15/1baa1580-ed28-11e2-b46e-f15eec37b46c_story.html.

No Patents on Human Genes

In a unanimous decision, the United States Supreme Court ruled that isolated human genes cannot be patented. This decision came in response to a challenge on the genetics company, Myriad's, patent on the BRCA1 and BRCA2 genes used to identify a genetic predisposition towards breast and ovarian cancers. Justice Thomas stated, "A naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated." Myriad, and consequently other companies invested in genetic research, did have a partial victory, however, as the Court simultaneously ruled that "complementary DNA," also known as cDNA, which is created in the laboratory, can be patented. This allows for genetic researchers to alter DNA and

still be able to patent the product of their work when something new is created. (Justices, 9-0, “Bar Patenting Human Genes, Adam Liptak,” *The New York Times*, June 13, 2013)
http://www.nytimes.com/2013/06/14/us/supreme-court-rules-human-genes-may-not-be-patented.html?hp&_r=1&

Study Finds Benefits in Delaying Severing of Umbilical Cord

A recent study involving 3,911 mother-infant pairs has found that delaying clamping the umbilical cord by at least a minute after birth “significantly improves iron stores and hemoglobin levels in newborns and does not increase the risks to mothers.” This finding contrasts with current medical practice, which usually leads to clamping the umbilical cord less than a minute after the baby is born. This study found that infants who had delayed clamping showed much better iron levels up to six months after they were born. These babies also had higher birth weights, as they were able to recover some blood from their mothers through this procedure. Part of the reason for the standard practice of almost immediately clamping the umbilical cord after birth was out of fear for the health of the mother. Concerns regarding postpartum hemorrhaging, blood loss and reduced hemoglobin levels all contributed to this common practice. However, this study found these concerns unwarranted. Delayed clamping was not found to increase any risk for the mother, and with the exception of a slight increased risk of the baby becoming jaundiced, was found

to be very beneficial to the new baby’s health. It is important to note this study did not include women delivering via cesarean section. (“Study Finds Benefits in Delaying Severing of Umbilical Cord,” Catherine Saint Louis, *The New York Times*, July 10, 2013)
<http://www.nytimes.com/2013/07/11/health/study-endorses-later-severing-of-umbilical-cord.html?ref=health>

Stem-Cell Therapy May Cure HIV

Using adult stem-cells from a donor with genetic mutation resistance to the HIV virus, two Boston patients have been cured of HIV. After completing a treatment process of using stem-cell transplants, the HIV virus appears to have been eliminated, although doctors are continuing to follow-up with the patients for at least a year in order to be sure the virus does not resurface. After the patients had been off of their antiviral treatment for 15 and seven weeks, respectively, neither had any indication of reappearance of HIV. Because the cost of using stem-cell treatment for HIV is still very expensive the treatment will not be widely available in the near future. However, as 34 million people worldwide are infected with HIV, implications of this discovery have the potential to profoundly impact many people once (and if) treatment becomes more widely available. (“Stem-Cell Therapy Wipes Out HIV in Two Patients,” Ben Hirschler, Reuters, July 3, 2013)
<http://www.reuters.com/article/2013/07/03/us-hiv-stemcells-idUSBRE9620IL20130703?irpc=932>