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# Long-Term Care Newsletter

## **GINA in the bottle? Employers need to know about changes in the law.** By Jeanelle R. Lust

Employers became subject to the provisions of the Genetic Information Nondiscrimination Act of 2008 (GINA) on November 21, 2009. Employers need to be familiar with the basic provisions of this Act.

Under GINA employers:

- \* Are prohibited from requesting, requiring or otherwise acquiring genetic information from applicants, employees and former employees;
- \* Are prohibited from using genetic information in making decisions related to any terms, conditions, or privileges of employment; and
- \* Are prohibited from retaliating against employees for opposing or complaining about unlawful employment practices and/or filing a claim pursuant to GINA.

\* Are required to maintain confidentiality with respect to genetic information.

GINA defines genetic information to include information about an individual's genetic tests, genetic tests of a family member, family medical history, and information about "the manifestation of disease or disorder in family members of the individual."

Employers must be able to recognize when a trigger of GINA's provisions may have occurred. The inclusion of "family medical history" in GINA's provisions may be a trap for the unwary. For example, if an employer learns that a particular form of cancer runs in an employee's family, the information may trigger GINA's protections against employment discrimination, even though no information

specifically related to the employee has been revealed.

GINA does have provisions protecting employers if they inadvertently obtain genetic information (e.g. the employee reveals genetic information in casual conversation). However, if such information is obtained, employers must keep the information strictly confidential and, if in writing, must maintain such information in a confidential medical file which is separate from other personnel information and which is properly secured by restricted access.

The biggest area of concern regarding GINA will be for employers that have been requiring post-offer medical/physical examinations. An employer must not obtain ANY family medical history as part of (continued pg. 3)

## **Royal College of Physicians Releases New Report Regarding Use of Feeding Tubes**

By Laura Troshynski

According to a recent report from the Royal College of Physicians, tube-feeding may not be the most beneficial option for feeding terminally ill patients.

The report, which is entitled 'Oral feeding difficulties and dilemmas: A guide to practical care, particularly towards the end of life,' was issued by the Royal College of Physicians and the British Society of Gastroenterology in early January in order to address the appropriateness of feeding tubes for patients approaching the

end of life. According to the report, hand feeding, modified if necessary, should be the primary aim of a nutrition strategy for terminally ill patients. In addition, the report states that even in situations where tube feeding is necessary, oral intake should be additional whenever possible. The report also makes several other recommendations, including the recommendation that a risk management approach be used to evaluate all patients deemed to have "unsafe swallow." Additionally, the authors of the report rec-

ommend that there be a clear agreement between the parties involved regarding the aims of any nutritional regimen.

According to the Royal Academy of Physicians, the report was prepared to respond to the lack of consensus among physicians and others regarding the appropriateness of artificial nutrition and hydration in certain situations.





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## Your Therapy Allowance is Shrinking, Healthcare Reform Already!

By Michael Khalili

Long-term care residents started fresh this year, January 1, 2010, with their annual allowance for therapy. This is due to the expiration of Medicare Part B therapy exceptions. The spending limits are \$1,860 for combined speech and physical therapy, and \$1,860 for occupational therapy. But how long will the allowance really last? If the healthcare reform bill should pass, it would extend the therapy caps exceptions process.

When a resident exhausts the therapy benefit, it causes a problem for the resident who needs the therapy and the nursing home which provides it. The options the residents have are not very appealing but they include: the resident privately funding the therapy; the facility could continue to provide the therapy with the expectation it will be reimbursed when the bill

passes; or it could altogether suspend the therapy. Another option is to send a resident to a hospital outpatient facility where there is no limit on the therapy because Hospitals are not subject to the therapy caps rule. However, there can be many problems transporting residents who may be frail or unwilling. The resident who most likely would feel the impact of the allowance cap would be someone who suffered a high-acuity event, such as a stroke or hip or knee replacement, and needs intensive, short-term therapy.

Although there is no cause for alarm just yet, with each day that passes residents and nursing homes are stuck with the dilemma of what happens next. At this point it seems that the best option for residents in need of regular therapy is for Congress to pull

together and pass the healthcare bill. As each day passes, the health needs of residents are depending on it. Some are optimistic in swift action by Congress, such as Peter Clendenin, executive vice president for the National Association for the Support of Long Term Care, stating "I think they'll [Congress] get to it early this month, but we're sort of hanging out there until that gets done." The Senate bill would extend the exceptions process for one year, while the House bill would extend it for two.

Thus, whether or not you are a fan of healthcare reform, this is at least one reason you may consider supporting it.



## New Nurses Don't Feel Comfortable Implementing Quality Improvement Measures

By Tammy Schroeder

An analysis of survey responses by researchers at New York University's College of Nursing has found that a large number of new nurses feel ill-prepared to implement quality improvement measures and more than 12% have never heard of "quality improvement."

The survey was sent to 436 newly graduated nurses with bachelor and associate's degrees from around the country. The

study found that 38.6% of those surveyed felt that their degree courses either "poorly" or "very poorly" prepared them to implement quality improvement measures and 41.7% didn't feel prepared at all to use national patient safety resources including the National Quality Forum.

The researchers defined quality improvement as the "use of data to monitor the outcomes of care processes and use of improvement methods to design and test

changes to continuously improve the quality and safety of health care systems." There is debate over just exactly who should be responsible for teaching quality improvement with some believing it should be the school and others believe it should fall to the employer. However, the study's authors note that only 23.3% of those surveyed said that their employer provided quality improvement training that was "very helpful."

## Five-Star One Year Later

By Tammy Schroeder



The Five-Star Quality Rating System has hit its one year anniversary. Unfortunately there isn't a lot of celebrating going on. In theory the program is a good idea. In practice providers are finding it falls short of acceptable standards.

Providers have criticized the system's approach and its results and that has only grown louder in the last year. A senior policy analyst for the American Association of Homes and Services for the Aging says that the program is a good one, but it's time has yet to come.

Five-Star is a part of the Nursing Home Compare Website created by CMS to guide consumers in their considerations of long term care

options. The program gives nursing homes a rating of one to five stars. Providers find that the program fails in several areas to capture how well facilities actually perform.

Previously, Bruce Yarwood, President and CEO of the AHCA has stated that the current system doesn't measure quality, rather only measures compliance with state and federal regulations. Yarwood doesn't deny that the survey information is important but that the resident and the family's perception of the actual care is a much better indicator of the quality of care and quality of life a resident receives.



## GINA in the Bottle? (continued from pg. 1)

those physical examinations even if the employer may feel that such information is vital to evaluating the employee for duty (safety concerns etc.).

Here is what an employer should do to make sure they are complying with GINA:

1. Train, train, train. Train all staff about GINA's provisions.
2. Post the new "Equal Employment Opportunity is the Law" poster in all Company facilities. [http://www.eeoc.gov/employers/upload/eeoc\\_self\\_print\\_poster.pdf](http://www.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf)
3. Review your Company's employee manual to make sure the

policies list genetic discrimination as a prohibited activity.

Make sure the policies also include a prohibition on retaliation for making a complaint about genetic discrimination.

4. Review your Company's record-keeping procedures, and make sure that all medical information is maintained in a confidential medical file separate from personnel files and properly secured.
5. Review your Company's employment forms to ensure they do not request genetic information. This review should include all medical leave request forms.

6. Take steps to limit the risks of employee "self-disclosure."

Inform staff that such information is protected and not to be discussed.

7. Ensure that if your Company requires employees to have fitness for duty exams that no genetic information - including family history - is requested.

8. Review your Company's wellness program to ensure that no genetic information is being requested or revealed.

**What You Can Look Forward To In March:**

**Registered Dietician Day is the 10th**

**Daylight Savings Time Begins the 14th**



**Spring Begins the 20th**

## Nurses! Most Trusted Professionals

By Tammy Schroeder



The annual Gallup Honesty and Ethics of Professionals Poll asked Americans who they believed to be the most honest and ethical professionals in the US. In front of pharmacists and physicians, were nurses at 83% versus 66% for pharmacists and 65% for physicians.

Nurses have taken the top spot in the poll all but one time in the ten years they were included in the poll. Firefighters took the top spot in 2001 edging out nurses.

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