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Long-Term Care Newsletter

A CLASS Act By Michael W. Khalili

The Community Living Assistance Services and Support (CLASS) Program, was created to provide assistance for individuals who need long-term care (LTC) services and have difficulty with activities of daily living. CLASS is the first federal and consumer financed LTC program in the United States.

CLASS is a voluntary, government-run LTC insurance program that offers participants a single benefit plan with a daily cash benefit of \$50, indexed to inflation. Beneficiaries can use the money to purchase non-medical services to use either at home or at their chosen resi-

dence. There is no limit on how long a person can receive benefits through CLASS.

Currently, nursing home costs can average \$75,000 per year while home care can average \$20 an hour. These prices will increase in the coming years. Long term care services are utilized by elderly individuals and widely needed by people with disabilities. Most of the provisions in the CLASS Act aim to lessen the impact of outrageous long term care costs on people.

However, there are many concerns about the long-term fiscal soundness of the CLASS plan. The consensus of the

American Academy of Actuaries is that CLASS poses "a significant and likely risk that, in a relatively short time period, the program will either need increased premiums for five years (2012-2016) or pays no benefits for the same period. The Congressional Budget Office estimates that premium payments into CLASS will exceed benefit payments out of CLASS only until 2030; the Centers for Medicaid and Medicare Services approximates that this will happen in 2025. After that, CLASS will add to the yearly federal budget deficits.

EEOC Issues Regulations on GINA

By Jeanelle R. Lust

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities from requesting, requiring or purchasing genetic information of employees or the employee's family members. Although GINA has been in effect for over a year, the EEOC just issued regulations about its application. The biggest clarification by the EEOC is what constitutes acquisition of genetic information.

Per the EEOC requests for genetic information include "conducting an Internet search in a way that is likely to result in obtaining genetic information, as well as 'actively listening' to third-party conversa-

tions or making requests for information about an individual's current health status in a way that is likely to result genetic information."

There are circumstances when an employer may legitimately come into possession of genetic information without violating GINA's prohibition on requesting, requiring or purchasing genetic information. However confidentiality and prohibitions on use remain. These circumstances include:

- Where information is acquired inadvertently. For example, a casual reference overheard at a water cooler that an employee's mother has breast cancer and that the employee

herself has been tested for a gene related to that, will not be a violation. Similarly, employers who employ multiple family members will have a little more flexibility obtaining information from one family member without that being an offense against another family member (remember that one employee's manifestation of disease or disorder could be the family medical history of the brother or sister or father, mother, uncle and so on who also works for the employer).

- Where information is acquired as part of health or genetic services, including wellness programs. Employers are free to (continued pg. 2)



We Help You Deal With It



Golden Living Launches Consulting Pharmacy Services Company by Jeanelle R. Lust

Golden Living announced last month that it has established a new in-house consulting pharmacy company. The Company, Golden Clinical Rx Services, will focus on improving medication safety and patient outcomes. It is designed to have certified geriatric pharmacists (CGPs) as part of the interdisciplinary clinical team that care for Golden Living-Center patients and will use new technology to improve patient outcomes.

“Managing medications is a complex process, especially for patients of skilled nursing facilities, many of whom have chronic conditions and are prescribed multiple drugs,”

said Robert Warnock, DPh, Senior Vice President of Pharmacy Services for Golden Living. “Making pharmacists part of our interdisciplinary clinical teams will better ensure the safe and appropriate use of medications for Golden LivingCenter patients.” In pilot studies, the program helped reduce falls, re-hospitalizations, medication errors, and the number of medications prescribed.

Using the Almagu Unified Intelligence System (UIS) data management system and other technologies, the company will remotely monitor residents’ medications. From the time a resident is admitted,

pharmacists will work closely with clinicians to monitor residents’ medications and conditions and make recommendations to improve medication regimens.

“In today’s changing health-care environment, it’s even more important for healthcare providers to innovate and always act with patients’ best interests in mind,” said James A. Avery, Senior Vice President and Chief Medical Officer for Golden Living. “Golden Living’s approach to pharmacy services is unique in the long-term care industry, and we believe that it will greatly benefit our patients.”

GINA (continued from pg. 1)

offer financial and other incentives to encourage employees to participate in wellness programs, though they cannot offer those incentives to provide genetic information. Employees may still be provided with questionnaires seeking the information, but must be told that they need not provide genetic information in order to receive the incentive, and in fact, a particular notice provided below is recommended.

- Where information is acquired in the form of family medical history in order to comply with Family Medical Leave Act, or Nebraska or other local leave laws, or even certain employer leave policies requiring, for example, return to work certification.

- When information comes from sources that are commercially or publically available, such as newspapers, books, magazines, and even electronic sources. This exception does not apply to court records, medical or research databases, or other sources with limited access such as social networking sites that require a creator’s permission to access. Similarly commercially available sites an employer intentionally accesses with intent to gather, or from which an employer is likely to gather such genetic information are prohibited.

- Where information is gathered as part of a legitimate genetic monitoring program required by law or provided on a voluntary basis. For example, employers may be required to

perform such tests to see if employees are being harmed by substances or energies in the workplace. If doing monitoring that is not required by law, proper notification and fully informed authorization of the employee must be obtained. Similarly, if required by OSHA or otherwise by law, certain notifications may be required. In either case, consultation with an attorney is likely critical before conducting such monitoring.

- Where information is conducted by employers who do DNA testing for law enforcement purposes as a forensic lab, or for human remains identification. Any such employee genetic information can only be used for analysis of DNA markers for quality con-

trol, to detect sample contamination.

Whenever lawfully requesting information from an employee that may reveal genetic information, for example through a wellness program, to support an ADA accommodation request, request for sick leave, FMLA or similar certification, or otherwise, employers should include the following notification:

“The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide (continued pg. 2)

Walking May Stall Decline of Cognitive Function by Laura K. Essay

According to a recent study, walking five miles per week may stall the decline of cognitive function among those who experience mild forms of dementia.

To assess the impact that physical exercise might have on Alzheimer’s progression, Cyrus Raji, MD., Ph.D., and colleagues analyzed the relationship between walking and brain structure in 426 adults. Among the participants, 299 were cognitively healthy and 127 were diagnosed as cognitively impaired.

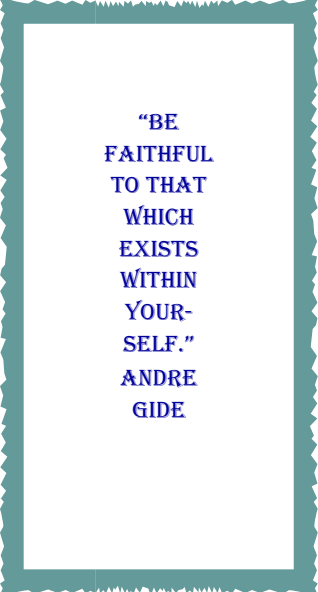
For the study, participants were asked how many city blocks they

walked in an average week. Follow-up questionnaires confirmed that the number of blocks remained steady over time. Participants also underwent MRI exams so researchers could measure changes in brain volume, and took the Mini-Mental State Exam, a test of cognitive skills, at various times throughout the study.

The study indicated that walking protects the brain structure in people with Alzheimer’s and mild cognitive impairment (MCI), specifically in areas of the brain’s key mem-

ory and learning centers. Raji stated that those who walked five miles per week also had a slower decline in memory loss over five years. In those diagnosed with MCI, the exercise reduced brain atrophy and cognitive decline by more than 50%.

The study also revealed that walking six miles per week is associated with a 50% reduction in Alzheimer’s risk in cognitively normal adults.



GINA (continued from pg. 2)

any genetic information when responding to this request for medical information. ‘Genetic information,’ as defined by GINA, includes an individual’s family medical history, the results of an individual’s family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”

Whenever the notice is properly given it will provide a safe-harbor for employers, and any such acquisition will be considered inadvertent, and therefore not a GINA violation.



Health Centers Exempt from Red Flags Rule By Laura K. Essay

The “Red Flags Rule,” developed under the authority of the Federal Trade Commission, aims to ensure “creditors” implement programs to protect consumers against identity theft and fraud. Originally, the rule was to apply to any entity that provides goods or services and then later bills for the goods and services.

On December 18, 2010, President Obama signed the Red Flag Program Clarification Act, which narrows the scope of the Red Flags Rule and limits the type of “creditor” to include only those who regularly and in the course of busi-

ness obtain or use consumer reports, furnish information to consumer reporting agencies, or advance funds. For the most part, health care centers and providers are no longer classified as “creditors” for purposes of the Red Flags Rule.

Additional information may be obtained at www.ftc.gov/redflagrule.