

FORUM

Volume 15, Issue 1

Winter 2010

EDITORS: GLENN R. DAVIS, ESQ. AND STEVEN M. MONTRESOR, ESQ.

LATSHA DAVIS YOHE & MCKENNA, P.C.

ATTORNEYS AT LAW

- Mechanicsburg, PA
(717) 620-2424
- Exton, PA
(610) 524-8454
- Mt. Laurel, NJ
(856) 231-5351
- Maryland
(410) 727-2810



IN THIS EDITION:

Home Care Licensure Update	1
New HIPAA Responsibilities Under the HITECH Act	2
Discrimination Claim against CCRC Rejected by D.C. Office of Human Rights	2
COBRA Subsidy Benefit Extended	3
Use of Limited Liability Companies	3
Employment Law Seminar	4
Inside the Firm	4



The material in *FORUM* is for informational purposes only and is not intended to render legal services or advice.

© 2010 LATSHA DAVIS YOHE & MCKENNA, P.C.

HOME CARE LICENSURE UPDATE

By: Dayna E. Mancuso, Esq.

In July of 2006, Governor Edward Rendell signed Act 69 of 2006 (“Act 69”), which amended the Pennsylvania Health Care Facilities Act to include “home care agencies” as a new category of licensed health care providers. Home care agencies arrange for or provide home care services to individuals in their homes or other independent living environments. Home care services include personal care services, assistance with instrumental activities of daily living, companionship services, respite care, and specialized care services.

The Department of Health (“DOH”) published home care regulations, which became effective on December 12, 2009. In order to provide home care services, a provider must submit an application for a license as a home care agency to DOH. Existing providers of home care services may continue to operate, but must submit an application for a license no later than March 31, 2010. There is no continuing care retirement community (“CCRC”) exception to the home care regulations. If a CCRC provides “home care services” as defined within the regulations, DOH has taken the position that the CCRC must obtain a home care license in order to continue to provide those services.

Under the regulatory framework, home care agencies are required to disseminate an informational packet to consumers in advance of the commencement of services. The required disclosures include a listing of the available home care services that will be provided, the hours when those services will be provided, and the total costs of those services. The regulations do not require the execution of a contract between a home care agency and a consumer; however, home care agencies that do not currently utilize a contract should consider implementing one in order to clearly define the relationship between the parties and to address important risk management issues.

If a CCRC or an affiliate of the CCRC is providing home care services to residents, these services generally would fall within the scope of a licensed activity under Act 69 and its implementing regulations. CCRCs providing personal care services to residents in their independent living units must also consider the potential applicability of the Department of Public Welfare’s personal care home regulations to that service. CCRCs should carefully review their service programs to determine whether licensing is now required under the home care regulations.

If you have questions on the applicability of the new regulations, or would like assistance in obtaining a license, drafting a home care contract, or corporate structuring, please contact Kimber L. Latscha, Esq., David C. Marshall, Esq., or Dayna E. Mancuso, Esq.



NEW HIPAA RESPONSIBILITIES UNDER THE HITECH ACT

By: DAVID C. MARSHALL, ESQ.

The federal "Stimulus Bill," signed into law in February of 2009, included the "Health Information Technology for Economic and Clinical Health Act" or the "HITECH Act." The HITECH Act changes existing HIPAA requirements in several major respects, including:

- Extending many of the HIPAA Privacy and Security rules to business associates;
- Imposing duties on covered entities and business associates to notify individuals in case of a breach of their unsecured protected health information ("PHI");
- Expanding a covered entity's duty to provide an accounting of disclosures of individual PHI where the covered entity maintains an electronic health record;
- Prohibiting the receipt of remuneration for exchange of PHI;
- Allowing and increasing an individual's right to access PHI electronically;

- Enabling an individual to restrict disclosures of his/her PHI held by health plans and related to services paid for "out of pocket"; and
- Strengthening the criminal and civil penalties for violations of the HIPAA rules.

The deadlines for compliance with the HITECH Act requirements are staggered, some requiring compliance as early as September 23, 2009, and, in many instances, indexed to the CMS Office of Civil Rights' duty to issue regulatory guidance.

The new mandates under the HITECH Act will require modifications to existing HIPAA policies and forms. All covered entities and business associates should review their HIPAA policies and protocols to ensure continued compliance with the Privacy, Security and Electronic Transaction Rules. If you would like assistance in developing or revising your organization's HIPAA policies to meet the requirements of the HITECH Act, please do not hesitate to contact David C. Marshall, Esq. ■

DISCRIMINATION CLAIM AGAINST CCRC REJECTED BY D.C. OFFICE OF HUMAN RIGHTS

By: DANIEL R. JAMESON, ESQ.

Recently, Latsha Davis Yohe & McKenna, P.C. ("LDY&M") successfully represented a Continuing Care Retirement Community ("CCRC") in an investigation by the District of Columbia, Office of Human Rights ("OHR"). The investigation began as a result of a disabled Assisted Living ("AL") resident filing a complaint claiming she was treated differently than Independent Living residents with respect to the terms, conditions, privileges, services and facilities offered to her. The crux of the complaint was that the CCRC provided Independent Living residents with better quality, quantity and access to meals, more significant access to elevators, access to better activities, and better access to transportation services than it offered to AL residents. As such, the complainant believed the CCRC should blend the levels of the continuum so that all residents would be treated the same.

In support of the contention that no discriminatory practices existed, LDY&M argued that accommodating the complainant's demands, i.e. blending the residents at each level of care, would fundamentally alter the nature of the continuing care program, invite significant regulatory and/or licensing violations, and pose the threat of an undue financial burden on the CCRC.

The OHR agreed with LDY&M and found the complainant's claims meritless. The OHR based its decision on the fact that the nature of the continuing care program and the applicable licensing regulations impose regulatory requirements that contemplate separate staffing, separate credentialing of staffing, separate activities, and distinct dietary meal services within the separate, distinct levels of care.

If you have questions on the decision rendered by the OHR, or how the "aging in place" issues addressed by the OHR may affect you as a CCRC operator, please contact Kimber L. Latsha, Esq. ■

COBRA SUBSIDY BENEFIT EXTENDED

By: ANGELA L. THOMAS, ESQ.

On December 19, 2009, President Obama signed legislation extending the COBRA subsidy benefit. Under the subsidy, eligible persons pay 35% of the COBRA premium and employers pay the remaining 65%. The employers then get a credit for their 65% share against payroll and federal income taxes.

The benefit extension has several components. First, the law expands the coverage pool to include any qualified beneficiary who is eligible for and elects COBRA as a result of an involuntary termination, other than for gross misconduct, between September 1, 2008 and February 28, 2010. The law increases the subsidy benefit period from nine months to fifteen months.

Employers are required to notify certain current and former participants of the extension and related information. The Department of Labor has made available model notices for use in connection with these new requirements.

All persons experiencing a qualifying event at any time from September 1, 2008 through February 28, 2010, who have not yet received an election notice should receive a General Notice updated to include information on the subsidy extension. Individuals experiencing any qualifying event after December 19, 2009, must receive the updated General Notice within the normal time frames for issuing election notices.

Individuals who were "assistance eligible individuals" (had a qualifying event of involuntary termination at any point between September 1, 2008 and February 28, 2010 and timely elected COBRA coverage) as of October 31, 2009 (unless they are in a transition period), and individuals who were involuntarily terminated from employment on or after October 31, 2009 and lost health coverage must be provided notice of the recent changes made to the premium reduction provisions **by February 17, 2010**, unless already provided a timely, updated General Notice.

Individuals who are in a "transition period" must be provided notice of the COBRA subsidy extensions **within 60 days** of the first day of the transition period. The "transition period" is the period which begins immediately after the end of the original nine months of COBRA premium reduction, as long as the COBRA premium reduction provisions would apply due to the extension from nine to fifteen months. Individuals in a transition period have the ability to make retroactive payments for certain unpaid reduced premiums.

If you need assistance with ensuring your company becomes compliant with these new COBRA requirements or have any questions about these issues, please contact Angela L. Thomas, Esq.



USE OF LIMITED LIABILITY COMPANIES


By: DOUGLAS C. YOHE, ESQ.

A 501(c)(3) organization wishing to provide ancillary services may want to consider creating a new entity in the form of a limited liability company ("LLC"), with the LLC operating as a controlled affiliate of the organization.

There are several advantages to structuring the new entity as an LLC. An LLC offers its members limited liability for the debts and obligations of the LLC, with minimal corporate formalities and greater flexibility in structuring the company. For example, annual meetings and minutes are not required for an LLC. Control of the LLC may be vested in either managers or members (who can be individuals, corporations or other LLCs).

There are also tax benefits to an LLC. If the parent organization is the sole member of the LLC, the LLC does not need to file a separate federal tax return; rather, its information is reported on the parent organization's information return (Form 990). If the LLC's actions are related to the parent organization's exempt purposes, the LLC is not subject to the Unrelated Business Income Tax. Also, the LLC's net revenue can be distributed to its members without limitation, which is not true for a non-profit corporation.

For example, providers that offer separate ancillary services (i.e., pharmacy, therapy or home care) may benefit from the creation of an LLC. Creating a separate LLC to provide the ancillary services could avoid licensure and certification issues for the parent entity. The new LLC, which would be controlled by the parent entity, would become the entity that is licensed to provide the ancillary service. The services would then be delivered by the LLC, which would also enjoy all of the other benefits described above.

If you would like to discuss forming an LLC or have any questions about corporate reorganization, please contact Douglas C. Yohe, Esq. 



LATSHA DAVIS YOHE
& MCKENNA, P.C.

ATTORNEYS AT LAW

1700 Bent Creek Boulevard, Suite 140
Mechanicsburg, PA 17050

7TH ANNUAL EMPLOYMENT LAW SEMINAR

Presented by

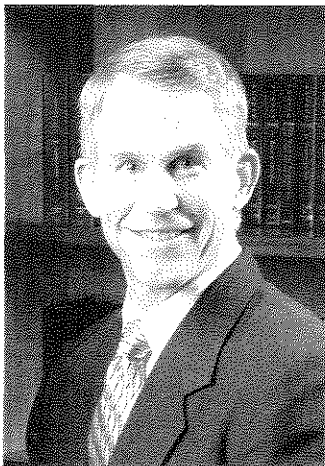
LATSHA DAVIS YOHE
& MCKENNA, P.C.

ATTORNEYS AT LAW

Tuesday, April 13, 2010
Carlisle, PA

Thursday, April 15, 2010
Plymouth Meeting, PA

For more information, contact Helen Samuels at (717) 620-2424 or hsamuels@ldylaw.com



INSIDE THE FIRM

LATSHA DAVIS YOHE & MCKENNA, P.C.

PROUDLY CONGRATULATES *Kimber L. Latsba, Esq.* on his selection to the Best Lawyers® in Central Pennsylvania for the second consecutive year. Mr. Latsba has lectured and written on legal issues affecting continuing, post-acute and long-term care providers for many state and national trade associations representing that industry. He is recognized as one of the preeminent lawyers in the country regarding legal issues impacting long-term care providers.