The Childcare Professional
EXPERIENCE
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A Quarterly Journal for Childcare Providers Discussing Legal, Administrative & Professional Issues

On the Inside…

COBRA: Premium Reduction Under ARRA

By: Dawn K. Martini

On Tuesday, February 17, 2009, President Barack Obama signed the "American Recovery and Reinvestment Act of 2009." (ARRA) Among the many programs effected by this act the Consolidated Ominbus Budget Reconciliation Act of 1985 (COBRA) receives its first revisions in its 20 plus year history.

Aimed at reducing the burden of maintaining health care coverage for employees who have lost their jobs in these difficult economic times, the ARRA has added a subsidy to the traditional COBRA continuation of coverage guidelines. If an employee has a "qualifying event" making them eligible for continuation of health care coverage, the ARRA provides for a subsidy of 65% of the COBRA premium for eligible persons for up to 9 months. To be considered eligible for the 65% COBRA premium subsidy an employee must **not** be eligible for health care coverage on a spouse's, parent's or partner's health care plan, or Medicare. There is also a maximum adjusted gross income threshold of $125,000 for individuals and $250,000 for married couples filing jointly. If an employee exceeds the maximum adjusted income threshold they may be responsible for paying all or part of the premium subsidy back through an increase in their tax liability on their 2009 Federal Tax return.

The subsidy program is in effect for persons who are COBRA eligible due to their own or a family member's loss of employment (involuntary termination) which occurred between September 1, 2008 through December 31, 2009. Employees who meet the requirements are only required to pay 35% of the eligible COBRA premium. The 65% balance is paid by either the multiemployer health plan or an employer maintaining a group health plan who would then be eligible to claim a ***TAX CREDIT*** on their 2009 Federal Tax return for the amount paid to cover the COBRA subsidy.

If a person was offered COBRA coverage between September 1, 2008 and February 16, 2009 and they declined coverage at that time or selected and later discontinued it they may have another opportunity to reenroll in COBRA with the premium subsidy under this ARRA extension.

Employers should be aware of this additional burden and the effect it may have on their bottom line. The amount paid out to cover the 65% COBRA premium subsidy will be repaid in the form of a TAX CREDIT on the 2009 Federal Tax return and will either reduce or negate the total tax due or if the amount paid out is greater than the total tax due, a refund will be issued from the US Treasury. The immediate concern for employers will be paying these funds out through December 31, 2009 and the cash flow issues that it may create.

For more detailed information and FAQ's related to this topic visit www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionEE.html.

CHILDREN'S BOOK CORNER

By: Janice Nieliwocki

While on a recent visit to my nephew's house, his two young daughters (ages 2 and 4) asked me to read them a story as their naptime rapidly approached. While browsing through their book collection, I came across *The Napping House*, appropriate for the related activity that was (hopefully) going to take place. I also recalled that *The Napping House* was a favorite of my preschoolers, so I was delighted to revisit this wonderful book.

The Napping House written by Audrey Wood and illustrated by Don Wood tells the story of a quiet house where all the inhabitants settle down for a nap on a dreary, rainy afternoon. However, this is no ordinary nap! All those who partake, from the Granny to the mouse, pile onto one bed, on top of one another. All goes well until the flea bites the mouse and then the ruckus begins! As you can guess, the quiet napping house transforms to a house full of fun and activity! Undoubtedly, the rain ceases and the sun shines once again.

Audrey Wood does a wonderful job in telling this charming story. Her use of simple, repetitive text is richly appealing to young children. Don't be surprised to find your youngsters repeating the text with you as you read aloud. Children are drawn into the story as the scenario of napping individuals builds, anxiously awaiting which character will join the sleeping pile and what will transpire next.

Not to be overlooked, are Don Wood's wonderful illustrations. Colorful, whimsical and engaging, they clearly compliment the storyline. You'll want to slow your pace in turning the pages so that your viewers/listeners can spend some additional time looking at the captivating pictures.

The Napping House is the perfect book to read when settling your youngsters down for naptime. However, don't be surprised if they all want to pile onto one mat to make their own "Napping School"!

"Disability" Definition Expanded

By: Dawn K. Martini

In response to 18 plus years of case law which has chipped away at the rights of the disabled, as intended in the Americans with Disabilities Act, the US Congress looks to force courts into broader interpretations of the term "disability" by passing, in late 2008, the ADA Amendments Act.

In the past, courts have focused a great deal of time and energy on determining whether an individual was covered under the ADA, not whether discrimination occurred. The new legislation redefines "disability" to make it clear that: 1. The courts should favor broad coverage of individuals under the ADA, 2. A condition the substantially limits one major life activity need not limit other major life activities in order to be a disability, 3. A condition that is episodic or in remission is a disability if when active substantially limits a major life activity and 4. Determining if a condition substantially limits a major life activity shall be made WITHOUT regard to health improvements caused by mitigating measures such as medication and hearing aids or other assistive technology. This final point is the biggest change in the ADA Amendments Act.

For more information on the ADA Amendments Act go to www.doj.gov and click on ADA Homepage.

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FMLA: Summary of Recent Changes and Additional Leave

By Dawn K. Martini

Over the last several issues we have included various articles addressing new legislation extending Family Medical Leave coverage and/or changing existing definitions and provisions of the Family Medical Leave Act. This article serves to summarize 9 of the most important changes and additions to FMLA.

1. **NEW MILITARY CAREGIVER LEAVE:** Employees are now eligible to take up to 26 weeks of unpaid FMLA leave in each 12 month period to care for family members who have suffered a serious injury or illness related to active military duty.
2. **NEW LEAVE FOR FAMILIES OF NATIONAL GUARD AND RESERVE SERIVCE MEMBERS:** Families of National Guard and /or Reserve Service personnel who have been called up to active duty are permitted to take up to 12 weeks of FMLA leave per year to manage the National Guard Member and/or Reservists affairs. The leave must be related to certain qualifying circumstances related to the military service. Rules define this as: I. Short-notice deployment, II. Military events and activities, III. Arranging child care and school activities, IV. Financial and legal arrangements, V. Counseling, VI. Rest and recuperation, VII. Post-deployment activities, VIII. Additional activities in which the employer and employee agree to the leave.
3. **'SERIOUS MEDICAL CONDITION' REDEFINED:** FMLA defines a 'serious medical condition' as a condition involving more than 3 consecutive days of incapacity plus 2 visits to a health care provider. The new rules clarify that the 2 visits to a health care provider must occur within 30 days of the period of incapacity. This change was made to counter a court ruling which required the 2 health care provider visits to occur within the 3 or more day period of incapacity.
4. **EMPLOYER MAY DIRECTLY CONTACT THE DR:** The new regulations allow employer to directly contact the health care provider to ask for clarification of information on an employee's FMLA Leave Certification Form. The regulation limits the employer to asking ONLY about information contained in the Certification Form. Further, the regulation restricts who may contact the health care provider to: HR professionals, a leave administrator, or a management official.
5. **EMPLOYER NOTICE OBLIGATIONS:** Employers are required to post, in a conspicuous location the FMLA Leave Policy and complaint-filing procedures. This notice must also appear in the Personnel Policy Manual or must be given directly to the employee at the time of hire. Employers have been given 5 business days to send out FMLA eligibility and designation forms to employees. This is a change from 2 business days.
6. **EMPLOYEE NOTICE PERIODS:** With regard to intermittent leave, employees may, in most cases, use the employer's call-in procedures for reporting an absence.
7. **SETTLEMENT OF PAST FMLA CLAIMS ALLOWED:** Regulations specify that employees may, as part of severance and/or settlement agreements, volunteer to settle their FMLA claims without approval or oversight from the Department of Labor. Waviers of FMLA rights are still prohibited.
8. **FMLA AND LIGHT DUTY ASSIGNMENTS:** New regulations specify that Light Duty Assignments DO NOT count toward the 12 weeks of FMLA entitlement.
9. **PERFECT ATTENDANCE:** FMLA regulations now allow employers to count FMLA Leave as an absence from work in relation to attendance records, and employers can deny employees "perfect attendance" bonuses for FMLA Leave related absences.

Health Insurance Portability and Accountability Act (HIPPA)

By: Janice Nieliwocki

Many Community Action Programs and other multi-service programs, because of the services they offer, must now comply with the regulations as set forth by the Health Insurance Portability and Accountability Act (HIPPA). If your program provides medical, dental and/or mental health services, you may now find yourselves in the position of having to comply with this somewhat complicated law.

HIPPA was enacted by Congress in 1996 with the purpose of providing consumers with greater access to health care, promote more standardization within the health care industry and protect the privacy of health care information. Undoubtedly, HIPAA was a much needed law in light of the drastic changes that have taken place within the world of health care. The days of one physician and "paper" medical records have given way to managed care, health partnerships and electronic storage and transfers of medical information. In addition, prior to HIPAA, State laws offered little protection concerning storing and transmittal of health information. Thus, the HIPAA ruling put into place a method of standardization within the health care industry while providing consumers with a much needed protection of personal health information.

With the enactment of the HIPPA, many entities needed to reexamine their way of doing business and implement procedures to ensure compliance with the new law. The first course of action as a multi-service program, is to determine ***if*** you need to comply with HIPAA regulations.

The following entities must comply:

- Health Plans: Individual and group plans that provide or pay the cost of medical care such as health, dental, prescription insurers, HMOs, Medicare, Medicaid, employer or government sponsored health plans, etc.
- Health Care Clearinghouses: Entities that process nonstandard information that they receive from one format into a standard format (i.e. billing services).
- Health Care Providers: Health care providers of medical or other health services, who *electronically transfer* health information in connection with a transaction fo which standard requirements have been adopted, must comply. (Typically includes health plans,hospitals, pharmacies, doctors, nurses, social workers, drug counselors, etc).

Some multi-service programs will find themselves in the last category and thus must comply with HIPAA regulations.

HIPAA covers a number of important health care issues, including **the Portability of Health Insurance, Administrative Simplification**, and the **HIPAA Privacy Rule.** Each one of these area requires a closer look:

The Portability of Health Insurance protects health insurance coverage for workers and their families if they change or lose their jobs. Basically, this provision ensures that individuals can take their health insurance with them from one place to another, thus minimizing dilemmas such as waiting periods or non-coverage of pre-existing conditions.

Continued on page 5...

...continued from Page 4

Administrative Simplification is meant to streamline the administration of health care and promote uniformity by adopting standards for several types of electronic health care transactions. These transactions (under HIPAA) include claims or information related to claims, specifically: *payment and remittance, *benefit eligibility inquiries, *referral authorization requests *enrollment or disenrollment in a health plan, *health plan premium payments, *coordination of benefits, *claims attachments (pending). Under the Administrative Simplification regulations, all covered entities doing business electronically, must provide the same information in a standard format, using specific code sets and identifiers.

Additional Administrative Simplification requirements include a privacy requirement (meant to oversee disclosure of patient protected health information while protecting patient rights), a security requirement (to prevent unauthorized access to protected health information), and a national identifier requirement (whereby providers, plans and employers must have standard national numbers to identify
themselves on standard transactions).

The HIPAA Privacy Rule is perhaps the most publicized aspect of the law and the one which impacts the most individuals. The HIPAA Privacy Rule established Federal standards to protect "individually identifiable health information". It protects medical records and other individually identifiable health information, whether on *paper, in computers or communicated orally*. Before the HIPAA ruling, personal health information could basically be released to anyone, without notification or authorization, for reasons that had nothing to do with a person's medical treatment or health care reimbursement. The Privacy Rule provides patients with specific protections while requiring covered entities to adopt policies and procedures which will protect the confidentiality of their patient's health information.

The specific protections provided patients:

- Access to their personal medical records
- Guaranteed Notice of Privacy practices: Covered entities must provide a notice to their patients how they may use their personal medical information and their rights under the new privacy regulations
- Limits the use of personal medical information by setting limits on how health care providers may use personal health information. However, the rule does not restrict the ability of providers to share information needed to treat their patients. In addition, personal health information may not be used for purposes *unrelated to health care* unless the patient signs a specific authorization allowing the release of information
- Places restrictions on the use of patient information for marketing purposes
- Does not affect State Laws that offer additional privacy protections for patients
- Confidential Communication: Health care professionals must take reasonable steps to ensure that communications with the patient are confidential
- Allows consumers to file complaints regarding privacy practices.

In addition to the patient protections listed above, health care plans and practitioners must:

- Have written privacy procedures in place: These written privacy procedures must include who has access to protected information, how it will be used and how and when it will be disclosed.
- Train their employees in privacy procedures and have a designated individual who is responsible for ensuring that the privacy procedures are being followed.

Although HIPAA has put limitations on the release of personal health information, in order to promote quality health care for patients, there ARE permitted uses and disclosures allowed without an individual's authorization. The health care provider can disclose protected health information to the *individual* who is the subject of the information. In simple terms, this means that the health care provider can speak to the individual about his or her own personal health condition. In addition, a health care provider can release information to another health care provider for the *treatment* and related services of an individual including consultation and/or referral between providers. Obtaining written consent from an individual to release his or her protected health information for *treatment* and related services is optional under the Privacy Rule.

Continued on Page 6...

Employee Free Choice Act??

By: Dawn K. Martini

The childcare industry has faced increasing unionization over the last 15 years. New bills in the House and Senate may make forming unions easier.

On March 10, 2009 two bills (H.R. 1409 and S . 560) were introduced into both chambers of Congress. These bills, both referred to as "Employee Free Choice Act" (EFCA), look to amend the "National Labor Relations Act" by making it easier for employees to form unions in the workplace.

There is strident support for and fierce opposition to these proposed changes. The political lines for or against these bills are not limited to pro-union for and anti-union against. Many union supporters find themselves questioning the changes these bills propose.

Under current law, to form a union, employees must receive actual signature cards from non-management employees showing a desire to form a union. Once 30% of the eligible workforce has signed a union card, the employer or the employees can call for a "secret ballot election." If the "secret ballot election" favors union representation the NLRB will certify the union as the official and exclusive representative of the employees for the purpose of negotiating a collective bargaining agreement.

The EFCA seeks to change this procedure by allowing the NLRB to certify a union as the exclusive representative of the workforce if a majority of the employees sign the signature cards and without holding a "secret ballot election."

Opponents fear that without a "secret ballot election" employees can be coerced into signing union cards by fellow employees and/or union organizers. Many feel that by removing the private and secret voting principal from the process the employee's "free choice" will be greatly compromised.

Proponents argue that employers will often intimidate and threaten employees who have signed union cards and/or make demands and threats against employees prior to their vote in the secret ballot that would skew the results in favor of NO Union vote.

Additional changes include a mandatory binding arbitration clause for the first contract negotiations if a contract is not agreed upon within the first 90 days following the certification of a union as the employee's exclusive representative.

If you are an employer, an employee or a union representative, you will want your voice heard on this issue. To follow developments and progress you can visit both the House of Representative's and Senate's websites and enter the corresponding bill numbers listed at the beginning of this article.

...Continued from Page 5

However, the use and disclosure of **psychotherapy notes** for treatment and related services require an authorization. (The specific content of the authorization will be addressed later).

The HIPAA Ruling also allows for "use and disclosure with opportunity to object" without written consent. An example of this would be listing a patient in a hospital directory whereby informal verbal permission is acceptable or the patient can simply opt out of being included. In addition, the HIPAA Ruling does not require written consent for certain public interest activities as are required by law, such as public health activities, law enforcement, judicial proceedings, cadaver organ donations, essential government functions, etc.

However, a covered entity MUST obtain an individual's written authorization for any use or disclosure of protected health information that is **not** for the treatment (or related services) or as otherwise permitted or required by the Privacy Rule. The authorization must be * written in plain language, * specify what information is to be released, * identify the person releasing and receiving the information, * include an expiration date, * include a right to revoke in writing, and * include any other applicable data.

Also central to the HIPAA Privacy Rule, is the principle of "minimum necessary" when releasing information. Basically, a covered entity must make a reasonable effort to release only what information is *necessary* for the purpose that it is being released. It should be noted, however, that "minimum necessary" does not apply to disclosure to an individual about his or her own personal health care or information or in matters of complaints.

Different aspects of the HIPAA Rule have different dates for compliance, most by were required by October 2003. Thus, it is in the best interest for covered entities to become HIPAA compliant as quickly as possible. The Department of Health and Human Services, (responsible for overseeing the HIPAA rule) is "not out to get you", so to speak, but wants covered entities to exercise "reasonable diligence" in following the HIPAA regulations. Keep in mind that your good faith efforts will go along way as work towards compliance. However, there can be civil and/or criminal penalties for non-compliance.

The Department of Health and Human Services is offering guidance and technical support to assist covered entities as they work to comply. Visit their website at http://www.hhs.gov/ocr/hipaa/assist.html or call their information line, toll free at 866-627-7748.

SUMMER TRANSPORTATION SAFETY GUIDE

By: Tymothy Smith

During the summer months, many programs transport children to and from field trips and other activities. Below are some safety recommendations your program can take to ensure quality loading and unloading of children.

Loading and Unloading Vehicle Procedures

* Children are never allowed to enter or exit the vehicle by themselves.
* Children should be loaded and unloaded at the curb-side of the vehicle or in a protected parking area or driveway.
* Children should not be allowed to cross a street any time before entering or after leaving a vehicle unless accompanied by an adult.
* All children exiting the vehicle must be accounted for prior to leaving the vehicle unattended.
* Never leave a child unattended in a vehicle.
* The vehicle emergency notebook must be in the vehicle at all times during use and information must be updated before a new child is transported.
* Staff child ratios must be maintained on vehicles at all times.

Loading:

Step one

* The vehicle should not be running. Turn off the engine, remove the keys from the ignition and keep in the driver's possession. Set the emergency brake.
* The driver must exit the vehicle and stand beside the door personally loading the children onto the vehicle.
* Always hold the door so the wind will not catch it.
* As children board the vehicle, identify each child by name.
* Once children have boarded, take roll visually, making eye contact with each child as you check off the children's names on the vehicle roll sheet.
* Visually and physically check seat belts to see that each child is secure and that there is only one child using each belt.
* Take a head count to match roll to identify if children are missing or if you have a child that should not be with you.
* If driving a van, children should never be allowed to sit in the front seat.
* It is suggested that children under the age of six sit in the front two rows of the vehicle.
* Lock and close the door. Never allow a child to do this.

Step two

* Driver is to circle the vehicle to ensure it is free from obstacles-especially children.
* Enter the vehicle, fasten your seat belt, adjust mirrors, and recheck that the area is free of obstacles using the mirrors.
* Always try to park in a manner that will allow you to pull forward and avoid situations in which you must reverse.
* Always observe all traffic regulations - use blinkers, always make complete stops, never run yellow lights, and drive 5 miles under the posted speed limit.

Unloading at a Elementary School:

* Pull to the curb and unload at the curbside.
* The vehicle should not be running. Turn off the engine, remove keys from the ignition and keep them in your possession, and set the emergency brake.
* Driver opens the exit door. Children should never be allowed to do this.
* Driver exits the vehicle and stands outside the exit door, holding the door to keep the wind from catching it.
* The driver assists children as they exit the vehicle.
* The driver should always remind the children to walk directly into the school.
* Driver should observe the children entering the elementary school before pulling away from the curb.
* After dropping off all children, the driver walks the vehicle to see that no children remain on the vehicle.
* A second adult should come and also walk the vehicle to ensure that no children are left on-board.

Unloading at your program:

* The driver walks the vehicle, counting children on the vehicle that are to be unloaded. The number should be written down on the bus log.
* Wake any sleeping children and assist any children that need help unbuckling their seat belts.
* Assist the children off the vehicle.
* Have the children form a line on the curb or sidewalk close to the vehicle.
* Once the children are unloaded, take roll visually, making eye contact with each child as you check off children's names on the bus log.
* Match the head count number to the total count noted on the bus log.
* The children are escorted into the building.
* An adult inside the program then checks roll using the bus log once again.
* The driver returns to the vehicle, walks the vehicle again to ensure that no children were left on-board.
* The driver parks the vehicle in its designated parking space.

NOTE: Never rely on verbal responses from the children. Always do visual checks before marking a child present.

For information on training products and seminars, visit www. tymthetrainer.com

WHERE IN THE WORLD…

Ron, Dawn and Jan will be traveling to the following cities for Local, State, Regional and National Conferences on the dates indicated. We welcome you to attend the conferences. Information has been provided so you can contact the organization conducting the training/conference.

If we are going to be in your state or area, we welcome you to contact us about coming to your program or organization to do a private training. The cost of bringing us in to your program or organization is significantly reduced because we are already traveling to your area. We certainly don't mind adding a day or two to our travel schedules to work with you. **Contact us at (215) 785-3400 to see if we can visit your program when we are in town.**

April 24 - 26: Maryland State Child Care Association, Ocean City, MD. For information go to www.mscca.org

April 22 - 25: National Association of Child Care Professionals, Lake Buena Vista, FL. For information go to www.naccp.org

April 27 to May 2: National Head Start Assocation, Orlando, FL. For information go to www.nhsa.org

May 6: 4C: Community Coordinated Child Care, DeKalb, IL. For information contact www.four-c.org

May 14: Osceola County Director's Retreat. Osceola County, FL.

June 14 - 17: NAEYC National Institute, Charlotte, NC. For information go to www.naeyc.org

June 23 - 25: RVM and Associates: 2009 Cape May Training Seminars, Cape May, NJ: Strategic Planning for Business Owners and Administrators. For information go to childproviderlaw.com under upcoming seminars

June 30 - July 2: RVM and Associates: 2009 Cape May Training Seminars Cape May, NJ: Employment Issues and Strategies for the Advanced Administrator. For information go to childproviderlaw.com under upcoming seminars

July 21- 23: RVM and Associates: 2009 Cape May Training Seminars Cape May, NJ: Current Issues for Child Care Professionals. For information go to childproviderlaw.com under upcoming seminars

July 28 - 30: RVM and Associates: 2009 Cape May Training Seminars Cape May, NJ: Your Agency's Personal Policy Manual and Parent Handbook. For information go to childproviderlaw.com under upcoming seminars

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