The Childcare Professional

EXPERIENCE

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

On the Inside…

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Patient Protection and Affordable Care Act
The Basics of Obamacare…

The debate on reforming the American healthcare system has been a political flashpoint for decades. Franklin Roosevelt, as a complement to his proposed New Deal, mounted one of the earliest efforts at establishing a universal healthcare system. Roosevelt was forced to compromise on the issue however, in order to succeed in passing other parts of the New Deal, most notably Social Security. Lyndon Johnson attempted to enact similar legislation as part of his Great Society in the 1960s, as did Bill Clinton during his presidency, but these initiatives proved unsuccessful as well. It wasn't until the 2008 presidential campaign that the push for universal heath care gained legitimate traction. Following his election that year, President Barack Obama made such legislation a key focus of his administration.

Despite strong partisan political opposition, on March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act, colloquially known as "the ACA" or "Obamacare," systematically imposing sweeping changes to the insurance and medical fields. Many states and private parties filed suit almost immediately, alleging that various provisions of the ACA violated the Constitution of the United States. Months of legal and political wrangling ensued, but on June 28, 2012, in a watershed moment for the history of American healthcare, the United States Supreme Court rendered a landmark decision in *National Federation of Independent Business v. Sebelius,* 567 U.S. ___ (2012). By a close 5-4 decision, the Court upheld all of the major provisions of the ACA.

The ACA's most controversial provision was the "individual mandate," which requires virtually every American to obtain some form of health insurance by 2014, either through personal policies or through Medicare, Medicaid, or employer-purchased policies. The Court held this mandate to be constitutional, stating that Congress can require individuals to obtain insurance by penalizing them via a tax for failing to do so. Failure to obtain an acceptable health insurance policy by 2014 will result in a penalty of $95 per individual, or up to 1% of total income above the filing minimum, whichever amount is greater. By 2016, this penalty will increase to at least $695 per individual, or 2.5% of total income above the filing minimum, whichever amount is greater. There are a few extremely narrow exemptions to the individual mandate, but these are primarily religious in nature or limited to individuals who cannot reasonably afford any form of health insurance.

Although the individual mandate received the majority of attention surrounding the ACA's debate, certain employers stand to be profoundly affected as well. Often lost in the debates regarding the ACA is the fact that its tax penalty provisions only affect "large employers," which are those businesses employing fifty or more full-time equivalent employees. Quite simply, if a business employs fewer than fifty full-time equivalent employees, that business is not a "large

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Do You Know Where Your Children Are? The Importance of Active Supervision

We often have a strange phenomenon occur in the law office of Ronald V. McGuckin and Associates whereby one child care agency will call seeking advice or representation regarding a specific legal issue, only to be followed, in subsequent weeks and months, by other child care agencies seeking legal advice on an almost identical issue. We've never quite been able to explain these "trends" that seem to occur in the child care world, but the most recent trend we're seeing has left us quite concerned and perplexed. In the last year or so, we've been called by several child care agencies regarding **a most serious infraction……..that of losing a child in their care.**

This is serious business that can, and should, have serious consequences. Anytime a child is not adequately supervised, even if for a few minutes, the result can be disastrous. Our first and foremost concern is always the well being of the child, not to mention concern for the parent or family once they have discovered their child has not been adequately supervised.

With that being said, there can be dire consequences for the child care agency as well. Although there are exceptions to this rule, our motto in the law office has always been "Lose a child, Lose your license." As a law office that often represents agencies in this situation, despite everyone's good efforts, we've seen this scenario played out numerous times. And in the event you are able to retain or reacquire your license, the price you've paid monetarily and/or personally can be quite substantial.

Imagine being a center owner/director having spent your entire career building a well respected, well run, profitable child care facility only to have your license revoked due to a lapse in supervision. As a director, you need to recognize that the "buck stops with you," so to speak. Although it might be one or more staff members whose lapse in judgment and/or supervision resulted in the lost child, it is ultimately the director's responsibility to ensure that staff is well trained and safeguards are in place so that this type of incident NEVER occurs.

Perhaps one of the most disturbing factors regarding several of the recent incidents involving a lost child is the fact that no one recognized that the child was "gone" for a substantial amount of time. In certain instances, it was the police who found or otherwise acquired the child, bringing him/her back to the center, only to surprise the staff that the child was not in their care. This should NEVER happen. With that being said, following are some suggestions to not only best protect your children but the integrity and well being of your business as well.

As per licensing regulations, children on the facility premises and on facility excursions must be supervised at all times and the staff person shall know the names and whereabouts of the children in his assigned group. In order to ensure compliance, assign staff "primary care groups" and have a system in place that children under a staff person's supervision can be quickly identified and named. We particularly like using a bulletin board system in each classroom, identifying primary care groups with the name and picture of each child currently in attendance listed under the staff person who is assigned primary care of the child. A

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employer" and is therefore outside the scope of the ACA's requirements.

The language used in the ACA follows similar language in other federal statutes, notably the Family Medical Leave Act. Like the FMLA, the ACA dictates the calculation used to determine whether or not an employer has fifty or more full-time equivalent employees. To begin, both full-time and part-time employees are included toward the calculation of full-time equivalence. Full-time employees are those who work thirty or more hours per week, excluding full-time seasonal employees working for less than 120 days each year. Those working less than thirty hours per week are considered part-time. In order to determine the full-time equivalency of these part-time employees, an employer must add together the total number of hours that part-time employees worked during each month, and then divide that number by 120. The resulting calculation is the number of full-time equivalent employees used by the employer. If the total of full-time employees and full-time equivalent employees is fifty or more, then the ACA will apply to that employer.

The ACA states that if an employer has fifty or more full-time equivalent employees, it must offer those employees some sort of insurance coverage, otherwise that employer may have to pay a tax penalty. The current penalty is set at $2,000 annually, multiplied by the number of full-time employees minus thirty, but this amount will change from year to year depending on national insurance premiums. It is important to keep in mind, however, that the penalty provisions of the ACA only apply to those employers who employ fifty or more full-time equivalent employees. To reiterate, a business with less than fifty full-time equivalent employees is not subject to the provisions of the ACA.

Additionally, if an employer offers its employees a health insurance policy, but that policy does not pay for at least 60% of an individual's covered health expenses, or if an individual has to pay more than 9.5% of his or her annual family income for the employer's offered coverage, that employer will have to pay a tax penalty for not offering sufficiently "affordable" coverage. This penalty is currently set at $3,000 annually for each full-time employee receiving his or her own personal tax credit up to $2,000, multiplied by the number of full-time employees minus 30. However, this too will change from year-to-year, ultimately tracking the national average for health insurance premiums. Because these calculations are complex, variable, and subject to periodic change, an accountant is perhaps the best-suited individual to help an employer determine its precise tax penalty, if any, if it decides not to offer some form of health insurance to its employees.

The ACA is not entirely focused on penalizing individuals and corporations for failing to obtain or offer health insurance. One particular provision of the ACA allows some small businesses to claim a tax credit in certain limited situations. This tax credit is aimed at defraying the potentially high cost of health insurance coverage for employees. It is available to employers that have twenty-five or fewer workers, pay an average salary of $50,000 or less, and cover at least half of its employee's health insurance premiums. The precise amount of the tax credit is variable, based on a formula set forth in the text of the ACA, and set to a sliding scale. The Government Accountability Office recently reported that the average tax credit is approximately $2,700. As noted above however, employers are best advised to contact an accountant, who is likely to be quite familiar with the precise mechanics of these tax credits and how they are specifically calculated and applied in each individual situation.

The announcement of the Supreme Court's *Sebelius* decision was a highly publicized event, as both supporters and opponents of the ACA vocalized their reactions. Shortly after the ACA was upheld as constitutional, members of the Republican-controlled United States House of Representatives introduced numerous pieces of legislation proposing to repeal the law. These efforts proved entirely futile however, ultimately failing to pass in either the House or the Democratic-controlled Senate. Political promises to repeal the ACA are likely to ring hollow as well. Throughout its entire history, the Supreme Court rarely overturns its own precedent, thus the ACA is unlikely to be overturned judicially. Furthermore, legislative repeal of a federal law requires an Act of Congress and subsequent approval of that Act by the President. In order for the opponents of this law to successfully repeal it, both the House and the Senate would need to pass the repeal bill by a simple majority vote, which would then need to be signed by the President. If the President vetoes the repeal bill, both houses would then need a two-thirds vote, a so-called supermajority vote, to subsequently override that veto. A viable repeal effort will require opponents of the ACA to be elected in large enough numbers to both houses of Congress to constitute at least a majority, if not a supermajority; a monumentally difficult task to say the least. Because of this fact, the traditional system of checks and balances will likely preserve the ACA for quite some time.

The Patient Protection and Affordable Care Act is the culmination of decades of effort to implement a universal health care system in America. A politically polarizing law, it is as wildly popular as it is unpopular. An incredibly complex and widely expansive work, it is subject to misunderstanding and may even be intimidating to those unfamiliar with it. Fortunately for most individuals however, the ACA itself is reasonably straightforward in its application. But like Social Security and Medicare before it, now that it has passed constitutional muster, the ACA is likely to become a social fixture and, as such, every American should become familiar with its requirements.

The government's website for the ACA has a great deal of easy to read and understand information on specific sections of the law. For more information be sure to visit http://www.dol.gov/ebsa/healthreform

Ronald V. McGuckin and Associates Announces:

Wednesday Webinar Series

$29.00 per webinar

Join us on the first and third Wednesday every month from 1:00 p.m. until 2:00 p.m. for a live Webinar Professional Development Session. Each session is just $29.00/person. Professional Development Participation Certificates will arrive in the mail to you within one week of the session. Live Webinar platform allows for discussion with the presenter as well as instant messaging questions and comments. Webcam link also allows you to see the presenter on your computer screen or you may participate by phoning in and listening to the discussion. For more details please call Dawn Martini (215) 785-3400 or email dkgt0409@aol.com.

______July 18, 2012: Kindergarten Readiness

______August 1, 2012: Your Contract for Service/Fee Agreement

______Aug 15, 2012: Mandated Reporting/Child Abuse & Neglect (SPECIAL 2 hrs. 1pm to 3pm EST)

______September 5, 2012: Custody Orders and the Release of Children

______September 19, 2012: Confidentiality in the ECE Setting

______October 3, 2012: Social Networking and Maintaining Professionalism

______October 17, 2012: Defending against Unemployment Compensation Claims

______November 7, 2012: Harmony in the Workplace

______December 19, 2012: Evaluating Employee Performance

______January 16, 2013: Tattoos, Piercings and Thongs...Dress Codes

______Feb. 6, 2013: Mandated Reporting/Child Abuse & Neglect (SPECIAL 2 hrs. 1pm to 3pm EST)

______February 20, 2013: Parent and Grandparent Involvement

______March 6, 2013: Leave Policies: PTO, Sick, Unpaid, FMLA, Maternity Leave

No. of Sessions: __________

x $29.00

Total Due: __________

REGISTRATION AND PAYMENT INFORMATION

Name:______________________________________email:____________________________

Agency Name: ______________________________phone:____________________________

Address:___________________________________fax:______________________________

City:_____________________________State:__________Zip Code:_______________

Please select payment option:

______Visa/MC/Discover:_________________________Exp:_______Sec Code:________

______Check payable to RONALD V. MCGUCKIN AND ASSOC is enclosed.

Mail payment to: Post Office Box 2126, Bristol, PA 19007 or fax registration with credit card payment information to (215) 785-3401. One registrant per form please. Login information will be emailed the Monday prior to your session(s) and again the morning of the session(s).

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child's name and picture is then added or removed from that bulletin board when he or she arrives at or leaves from the classroom, so that the list is an accurate reflection of the present attendance within that classroom. If a child is moved to another classroom, that child's name will be removed from the first classroom's bulletin board and placed on the second classroom's bulletin board, so that the child will be appropriately counted in the new classroom's ratio.

As an alternative to the bulletin board system, you can implement a system whereby staff uses a spiral keychain that is carried at all times. A child's name and picture is laminated on an index card that is hole-punched and clipped onto a keychain. Staff shall, upon the child's sign-in, clip the child's index card onto the staff person's keychain, thus representing that staff person's "primary care" grouping. When a child is transferred to another staff person's care, that child's index card will be switched to the other staff person's keychain. Staff will carry his or her own keychain at all times. (This keychain system should not be used in the infant room, because having the keychain on a staff person's wrist or arm can disrupt personal interaction with the infant.)

Children should be accounted for frequently and at regular intervals throughout the day. Regular accounting for children cannot be stressed enough as it immediately alerts staff if a child is not with the group. It is especially important to account for all children at times of transition, when you leave one place and go to another, accounting for children prior to leaving the first area and again at arrival at the destination (and, if necessary, times in between). Special attention should be paid to accounting for children when things are more hectic in the center, for example at drop off and pick up times or if sponsoring a parent day, etc.

Whenever you take children off the center premises, whether to a local park or on a more adventurous field trip, extreme care needs to be taken regarding accounting for all children. An unfamiliar environment accompanied by the excitement of the off premises excursion can add to confusion and the possibility of a child wandering away from the group. You might want to consider having the children wear the same colored shirt identifying the name and phone number of the program. (Children should never wear name tags). Another option is to take the program's digital camera and take a waist-up snapshot of each child as he or she boards the bus or van, thus enabling you to immediately provide authorities with a photograph if a child should go missing. When exiting the bus or van, care should be taken to again account for all children. A staff member should walk to the back of the bus, and again to the front, doing a full visual sweep of the bus to ensure that all children have exited as directed.

Staff should be trained on the importance of supervision upon hire, and at the very least, on a yearly basis. Frequent "supervision" reminders to staff throughout the year can also reinforce the significance of good supervision. Management staff should take immediate disciplinary action should a staff member fail to provide adequate supervision to children in his or her care. At no time should staff become complacent when it involves caring for children. It is only through directors and staff working together, fully understanding the importance of active supervision and taking the appropriate related steps that children can be kept safe and programs can continue to provide an important service to their community.

Most Frequent Legal Mistakes Owners and Directors Make

Recently we were asked by a colleague to compile a list of the most common legal mistake we see our Early Care and Education Directors and Owner make. As with most things in the world, the mistakes that are made and the legal issues we are defending or helping folks work through change with the season and seem to trend hot and cold.

The following list represent the mistakes that have effected our clients the most in this past year.

- Not reducing interactions and conversations to written form. Everything should be followed up on in writing!

- Asking employees if they can or want to do something when you really mean to tell them, especially related to changes of assignment, OT etc. If you ask and they say no...where does that leave you? It's not insubordination if they say no when you ask! If you need them to do something then simply tell them to do it. Be direct. Be specific. If they say no then they are being insubordinate and you should take disciplinary action.

- Being lenient with employees you "like" and being a stickler on policies and details with other employees. Policies apply to everyone equally as written in the manual. Unequal application of written policies can lead you to claims of illegal discrimination.

- Not dealing with an issue in a timely manner. Ignoring the issue will not make it go away and it is likely to be even bigger and more pervasive when you finally "can't stand it anymore!"

- Not calling the insurance company as soon as a potential claim is presented to the agency. This delay often leads to the denial of a claim that may have otherwise been covered by the policy.

- Not calling the attorney as soon as a potential claim, documents from court or an administrative agency are presented to them. Even if you think you know how to respond or what is required it is always better to check before making an incurable mistake. Appeals, answers and general court filings require a specific response, in a specific timeframe. Your attorney will be able to guide you accordingly, but only if you give them the information as soon as you receive it.

- NOT being organized. For each legal issue start a file and keep copies of all documentation sent and received in the file. Be sure your attorney receives a copy of everything you receive and have related to the issue. Not being able to find a piece of documentation or the delay created by having to find something may make a difference in mounting an effective defense.

- NOT developing a Field Trip Plan, including staffing, documentation, chaperones and transportation. NOT reviewing Field Trip/ Transportation Procedures before every trip with staff. We have seen more violations and licensing removals in the last two years as a result of children being left on vans, buses and at field trip locations. You can never review this information too much! LOSE A CHILD...LOSE YOUR LICENSE!

- Failure to develop and implement primary care group tracking. Children and ratios should be tracked and documented throughout the day. It is crucial to account for every child at least hourly and before and after each major transition, like going in and out of the building, changing rooms or going on or off a bus/van.

- Not paying non-exempt employees for all hours worked including training hours and not paying OT according to DOL/Wage and Hour Regulations.

- Withholding or making deductions from a final paycheck as a consequence for not returning agency property, not giving notice or other reason.

If you need assistance with any of these issues please contact us at (215) 785-3400.

HealthCare.gov

Small Businesses and the Affordable Care Act

You know the value of providing health insurance to your employees. But it can be a real challenge for small businesses. On average, small businesses pay about 18% more than large firms for the same health insurance policy. And small businesses lack the purchasing power that larger employers have. The health care law provides tax credits and soon - the ability to shop for insurance in Exchanges that help close this gap.

Top Things to Know for Small Businesses

Watch this video to learn how small businesses now have more affordable options for health coverage.

- If you have up to 25 employees, pay average annual wages below $50,000, and provide health insurance, you may qualify for a small business tax credit of up to 35% (up to 25% for non-profits) to offset the cost of your insurance. This will bring down the cost of providing insurance.
- Under the health care law, employer-based plans that provide health insurance to retirees ages 55-64 can now get financial help through the Early Retiree Reinsurance Program. This program is designed to lower the cost of premiums for all employees and reduce employer health costs.
- Starting in 2014, the small business tax credit goes up to 50% (up to 35% for non-profits) for qualifying businesses. This will make the cost of providing insurance even lower.
- In 2014, small businesses with generally fewer than 100 employees can shop in an Affordable Insurance Exchange, which gives you power similar to what large businesses have to get better choices and lower prices. An Exchange is a new marketplace where individuals and small businesses can buy affordable health benefit plans.
- Exchanges will offer a choice of plans that meet certain benefits and cost standards. Starting in 2014, members of Congress will be getting their health care insurance through Exchanges, and you will be able to buy your insurance through Exchanges, too.
- Employers with fewer than 50 employees are exempt from new employer responsibility policies. They don't have to pay an assessment if their employees get tax credits through an Exchange.

Resources for Small Businesses

Use these resources to learn more about important features of the health care law:

- Learn more about the Early Retiree Reinsurance Program at www.errp.gov.
- See if you qualify for the small business tax credit at www.irs.gov.

Use these resources to get the most out of your insurance:

- Find and compare health plans for your employees.
- Find answers to frequently asked questions for small business, large business, and the self-employed.

Please find this form at http://www.healthcare.gov/news/factsheets/2011/08/sm-bus-aff-care-act.pdf

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 Dawn Martini at (215) 785-3400, dkgt0409@aol.com to see if we can visit your program when we are in town.

Dec 1 - 5: NHSA Annual Parent Conference, Dallas, Texas For information go to www.nhsa.org

Dec 4 and 5: Director's Boot Camp: Administrators Professional Development Retreat Austin, Texas Contact Dawn Martini for registration information: dkgt0409@aol.com

Dec 11 and 12: Director's Boot Camp: Administrators Professional Development Retreat Hamilton, New Jersey Contact Dawn Martini for registration information: dkgt0409@aol.com

Jan 29 and 30: Director's Boot Camp: Administrators Professional Development Retreat Pittsburgh, PA Contact Dawn Martini for registration information: dkgt0409@aol.com

Jan 29 and 30: Director's Boot Camp: Administrators Professional Development Retreat Houston, TX Contact Dawn Martini for registration information: dkgt0409@aol.com

Feb 14 to 16: Virginia Assocation for Early Childhood Education Annual Conference, Reston, VA. For information go to www.vaece.org

March 1 and 2: NJ CITE Conference, Iselin, NJ. For information go to www.njcite.org

March 16: Lebanon Valley AEYC Annual Conference, Jonestown, PA. For information go to www.lvaeyc.org

April 4 to 8: Early Care and Education's Spring Training Cruise from Galveston, TX to Cozumel. For information go to www.tymthetrainer.com

April 10 and 11: Pennsylvania Head Start Spring Conference, Gettysburg, PA. For information go to www.paheadstart.org

April 11 to 13: Indiana AEYC Annual Conference, Indianapolis, IN. For information go to www.iaeyc.org

April 24 to 26: Academy for Early Learning Leaders (Formerly NACCP) Annual Conference, Nashville, TN. For information go to www.naccp.org

June 9 to 12: NAEYC Institute for Early Childhood Professional Development Conference, San Francisco, CA. For information go to www.naeyc.org

Aug 15 to 18: RVM and Associates Professional Development Cruise: NYC to Halifax and Nova Scotia. For information email Dawn Martini at dkgt0409@aol.com

We are always adding Conference Events to our schedule. If you would like us to submit an RFP to your local, state or regional professional development event please contact Jan at janice91455@aol.com