

Outsmarting Brain Tumors:
A Free Community Conference on Adult and Pediatric Brain Tumors
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Cancer and the Law: What you need to Know

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Cancer Legal Resource Center

- Established in 1997 as a joint program of Western Law Center for Disability Rights & Loyola Law School
 - CRLP, LRP, DMC, Education and Outreach
- Provides information on cancer-related legal issues to cancer patients, their families, caregivers, health care professionals and others impacted by cancer
- Education model, not a litigation model
- Telephone assistance – Almost 3000 in 2003
 - Over 250 calls so far this year
 - Staffed primarily by law school students
- 70-80 outreach programs per year
- Pro Bono panel of volunteer attorneys and other professionals

Laws That You Need to Know

- Americans with Disabilities Act [ADA]
- CA Fair Employment & Housing Act [FEHA]
- Family & Medical Leave Act [FMLA]
- Family Temporary Disability Insurance [FTDI]
- COBRA
- Cal-COBRA & Senior COBRA
- Health Insurance Portability & Accountability Act [HIPAA]
- SDI, SSDI & SSI
- Health Insurance Laws

The Americans with Disabilities Act

- Applies to all phases of employment process
- Applies to employers with 15+ employees
 - no longer applies to state governments for monetary damages
 - Injunctive relief
 - Still applies to local governments [Garrett]
- Must be disabled [defined on next slide]
- Must be a “qualified individual”
 - an individual **who can perform the essential functions of the job with or without a reasonable accommodation**

Definition of a Disability

- Physical or mental impairment that substantially impacts a major life function
 - walking, talking, breathing, caring for oneself, working, tasks of daily living
- A history of an impairment
- Being regarded as having an impairment

- Look at disability in corrected [mitigated] state

Reasonable Accommodations

- Employer has to provide as long as it is not an undue hardship to the employer
- Reasonable accommodations can include:
 - reassignment to a vacant position, light duty, flexible hours, **possibly** an extended period of leave time.
- Employee generally has to initiate request for a reasonable accommodation
- All requests to be kept confidential

California Fair Employment & Housing Act

- Employers with 5+ employees
- Definition of disability broader than under ADA
 - Need a limitation in a major life function
 - **Does not** need to be substantial
- Mitigating [Corrective] Measures are not considered unless the mitigating measure itself limits a major life activity.
- “Medical Condition” means any health impairment related to or associated with a diagnosis of cancer or a record of a history of cancer.

ADA v. FEHA

- | | |
|--|---|
| <ul style="list-style-type: none">▪ Look at mitigating [corrective] measures▪ Substantial impact in a major life function▪ If working, precluded from performing a broad range of jobs, not just the job in question | <ul style="list-style-type: none">▪ Mitigating measures not considered▪ Does not require substantial limitation▪ Some CA cases have based a finding of disability on the individual being precluded from performing the <u>single</u> job in question |
|--|---|

Is someone looking for a new job?

- Employee doesn't need to disclose medical condition unless needs a reasonable accommodation.
- Employer can't ask about your medical condition
 - The employer can only ask if employee can perform the essential functions of the job with or without a reasonable accommodation
- Employer can make a conditional offer based on passing a medical exam only if required of all employees entering that position
- Can rescind offer only if exam shows the person can't perform essential functions of the job with or without a reasonable accommodation



Family and Medical Leave Act

- Enforced by U.S. Dept. of Labor
- Up to 12 weeks of unpaid (but job & benefit protected) medical leave in a year to care for a seriously ill spouse, parent, child, or for employee's serious medical condition
- Employers with 50+ employees within 75 miles of that site
- Employees who have been employed 1 year and worked a minimum of 1,250 hours in that year
- Leave time can be taken all at once or at intervals
- May be eligible for 12 weeks under FMLA and possibly additional medical leave as a reasonable accommodation under the ADA or FEHA or as part of an employer's medical leave policy



California State Disability Insurance (SDI)

- Short-term disability that lasts up to 1 year
- Unable to perform regular/ customary work & have a loss of wages
- Be disabled at least 8 calendar days
- File claim within 49 days of disability date
- Employed or actively seeking employment when disability begins
- Earned at least \$300 from which SDI taxes were withheld during previous 12-months



California Family Temporary Disability Insurance (FTDI)

- CA law provides 6 weeks of wage replacement benefits to employees who take time off to care for seriously ill child, spouse, parent, domestic partner
- Only 6 weeks of leave per any 12 months
- FMLA & FTDI must be taken concurrently
- Employer may require employee to take up to 2 weeks of unused vacation prior to receipt of FTDI
- Can apply for leave as of March 1, 2004 for leaves after July 1, 2004
- Does NOT provide:
 - Job protection during leave OR
 - Continuation of health benefits, UNLESS employee meets FMLA or CFRA requirement



COBRA

- A way to keep group health insurance coverage when you would normally lose it
- Applies to employers with 20+ employees
- Generally lasts for 18 months
- Cost can be up to 102% of applicable employee rate

Cal-COBRA

- Similar to COBRA
- Applies to employers with 2-19 employees
- Generally lasts for 18 months
- Cost can be up to 110% of applicable employee rate



Senior COBRA

- For a person on COBRA or Cal-COBRA
- Employed at least 5 years
- 60 years old or more when elects COBRA or Cal-COBRA
- Can keep COBRA or Cal-COBRA until age 65 and eligible for Medicare
- Employee's spouse also eligible [up to 5 years from date continuation coverage was to end for spouse]
- N/A to individual who are eligible for continuation coverage after 1/1/05
 - HIPAA plan should be available



Health Insurance Portability and Accountability Act of 1996

To end "job lock"

HIPAA did three main things:

1. Receive credit for the time you have had health insurance
 - "Creditable coverage" goes with you from one employer's group health insurance to another
2. Pre-existing condition exclusion
 - 12 months maximum
 - Usually 6 months
 - Some plans have none



HIPAA [cont.]

3. "Look back" = 6 months
 - Generally, once you have had group health insurance for at least one year, and maintain continuous group coverage, you should not have to meet another pre-existing exclusion period
 - If the new employer offers group health insurance, and there is a waiting period, a person can use COBRA or Cal-COBRA to maintain group health insurance during the waiting period.



HIPAA Guarantee Issue Plan

- Going from group to individual without going through medical underwriting
- You have to [among other things]:
 - Exhaust COBRA or Cal-COBRA
 - Be ineligible for Medi-Cal or Medicare
 - Not be eligible for other group coverage
 - Apply no later than 63 days after the loss of coverage
- There are limits to premium amount, but expensive



Social Security Disability Insurance (SSDI)

- Apply at Social Security Administration (SSA)
- Provides long-term (1 year+) disability benefits
- Based on prior work history & inability to continue working
- Must be qualified as disabled by SSA and have paid into Social Security System
- Benefits not paid until 6th full month after the date your disability began
- Eligible for Medicare after 2 years on SSDI



Supplemental Security Income (SSI)

- Similar to SSDI, BUT . . .
- Based on assets and income, not work history
- Usually also eligible for Medi-Cal [Medicaid outside CA] & food stamps
- Benefits not paid until 1st full month after the claim is filed, or, if later, the date on which he or she becomes eligible for SSI



Medicare

- Federal health care program for US residents ages 65 or older or who have long-term disabilities.
- No income eligibility criteria
- Covers 100 days of short-term nursing home care, home health, & hospice
- Standard Medicare
 - Part A; Part B
- Medicare Advantage [HMO]



Medi-Cal

- CA's Medicaid program
- Joint federal and state health care program for low-income families & aged, blind, or disabled individuals of all ages
- Benefits can vary from state to state
- Often tied to SSI



Health Insurance Premium Payment Program [HIPP]

- If you have health insurance coverage
- Can't afford the premiums
- Are eligible for Medi-Cal

- HIPP pays your insurance premiums to keep your private health insurance



Major Risk Medical Insurance Plan (MRMIP)

- Offers limited health insurance to CA residents who are unable to get individual health insurance
- Ineligible for COBRA, Cal-COBRA, & HIPAA
- Qualified participants pay part of the premium, which can be costly
- Coverage limited to 36 months, then people can move to HIPAA's guarantee issue plan



Recent Health Care Legislation

- **Provide greater protections for consumers**
- For example:
 - **CA added coverage for routine patient costs involved in cancer clinical trials**
 - Enrollee's physician must recommend
 - All four phases of clinical trials
 - Generally, clinical trial must be approved by NIH, FDA, DoD, or VA



External Review

- **CA expanded availability of external review to**
 - Cover ALL decisions to deny, modify or delay treatment **BASED ON LACK OF MEDICAL NECESSITY**
 - Availability of external review and how to access it **MUST** be disclosed in the health plan's literature
- Enrollee Must
 - Exhaust Plan's Internal Grievance Process
 - Filed a formal grievance
 - Decision has been upheld or
 - Grievance remains unresolved after 30 days
 - or 3 days for cases involving an imminent or serious threat to the patient's health

External Review Process [cont.]

- Then can pursue outside review through Department of Managed Health Care [DMHC]
- Some different rules for investigational or experimental denials [do not need to exhaust plan's grievance process first]

Second Medical Opinions

- Requires health care service plans to provide a second medical opinion upon request by patient or treating physician
 - Generally from another qualified doctor in the same medical group
- If none is available, a doctor outside the network will be called in at the plan's expense
- Patient responsible only for applicable co-payment
- "Imminent or serious threat" = 72 hours

California Dept. of Managed Health Care

- **Oversees HMOs, Blue Cross, Blue Shield**
- Assist with complaints
- Provide independent, external review
- Make recommendations on consumer issues
- www.hmohelp.ca.gov; 1.888.HMO.2219
- **Dept. of Insurance oversees other health plans**
 - **1.800.927.4357; www.insurance.ca.gov**

California Office of the Patient Advocate

- **Works with DMHC to make sure Californians receive quality health care**
- Provides educational guides: California's HMO Guide & HMO Report Card
- Ensures HMO Help Center provides quality care
- 1.866.466.8900; www.opa.ca.gov

What This Means:

- Greater protections for consumers
- Practical ways to try to avoid problems in the first place - we encourage our callers to
 - Communicate with health care providers
 - Ask the doctor to explain reasons for recommendations he/she is making for patient's care
 - Bring in written list of questions - write down the answers
 - Schedule appointment for longer period of time
 - Bring a family member or friend
 - Bring a tape recorder if health care provider agrees
 - Maintain copies of medical records/vacation

What This Means For You [cont.]

- Communications with health plan
 - Written log
 - Certified mail, return receipt requested
 - FAX - receipt confirmation
 - Enlist doctor AND STAFF as an ally
 - Communicate with claims manager
 - try to establish relationship
 - Review plan for grievance/appeal process
 - Persistence, persistence, persistence

Cancer Legal Resource Center

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