LEGAL AND INSURANCE ISSUES TO CONSIDER
SPEAKERS

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ERIN’S STORY

• After college, Erin worked as an assistant at a large company for 3 years. At the age of 24, she was diagnosed with cancer.

• After talking with her healthcare team, she decided her best course of action was to take some time off work.

• Erin has heard about COBRA to keep her health insurance coverage, but she is concerned about how to get insurance coverage with a pre-existing condition, once her 18 months of COBRA is over.

• Erin is now 26 and is ready to get back into the workforce.

• She isn’t sure how to deal with the gap on her resume, and how to address it in an interview. Or if she even has to.

• Erin also has monthly medical appointments and has been experiencing chemo brain. She is worried this will keep her from getting a job.

• Erin wants to know about her options.
EMPLOYMENT RIGHTS
EMPLOYMENT LAWS

- Federal Americans with Disabilities Act (ADA)
  - Discrimination protections for patients and caregivers
  - Reasonable Accommodations for patients
- State Fair Employment Laws
  - Discrimination protections for patients and caregivers
  - Reasonable Accommodations for patients
- Employer Policies
  - Employee Manual
  - Employment Contract
  - Independent Contractor’s Contract
  - Union Contract
Eligibility

- Private employers with 15 or more employees
- Be a “qualified individual”
- Have a disability under the ADA’s definition:
  - “A physical or mental impairment that substantially limits one or more major life activities”
  - Major life activities: eating, breathing, walking, talking
  - ADA Amendments: concentrating, thinking, sleeping, operation of major bodily functions
AMERICANS WITH DISABILITIES ACT

- 3 ways to use the ADA:
  1) Currently
  2) History
  3) Regarded

- Benefits of the ADA:
  1) Protection from Discrimination
  2) Reasonable Accommodations
DISCLOSURE RIGHTS

- Generally, not required
  - Need to disclose to use ADA’s protections
  - Need to disclose to use reasonable accommodations
  - Need to disclose to use medical leave

- Medical Certification
  - Employers entitled to medical certification for RA’s & FMLA
  - But diagnosis may not be required!!!
  - ADA v. FMLA (be careful of forms and state laws)
REASONABLE ACCOMMODATIONS

- What are Reasonable Accommodations?
- When do you ask?
- How do you ask?
- Who do you ask?
- Is your request confidential?
- What is the interactive process?
REASONABLE ACCOMMODATIONS

- Adjusting your work space
- Changing your work schedule
  - Telecommuting
  - Rest breaks
  - Flexible schedule
  - An extended period of leave
- Use of technology
JOB APPLICANTS

- Disclosure
  - If, when, and how
  - Required for use of ADA protections
- Reasonable Accommodation Requests
  - If, when, and how
- Medical Exams
  - If, when, and how
STATE FAIR EMPLOYMENT LAWS

- Similar to ADA
- Can be more protective
  - Broader definition of disability
    - Ex: CA, IL, IA, NY, WA, WI
  - Specifically list cancer as a disability
    - Ex: CA, ME, OH, VT
  - Cover employers with fewer than 15 employees
    - Ex: MA (6), NY (4), CT (3), IL (1)
Federal Family & Medical Leave Act (FMLA)
- Up to 12 weeks of unpaid, job-protected, health insurance protected leave, per year
- For patients and caregivers
- Eligibility: 50+ employees (75 miles), 1250 hours, 12 months
- Can work with the ADA
- Employers can require use of PTO

State Paid Leave for Caregivers
- Ex: California & New Jersey
INCOME OPTIONS

- Disability Insurance
  - Private Disability Insurance
    - Purchase through employer
    - Purchase directly from company
  - State Disability Insurance
    - CA, NY, NJ, RI, HI, and PR
- Federal Disability Insurance
  - Social Security Disability Insurance (SSDI)
  - Supplemental Security Income (SSI)
FINANCIAL ASSISTANCE OPTIONS

- HIPP program
- IHSS (for caregivers)
- Private programs
  - Patient Services, Inc.
- Cancer organizations
  - Cancer Care
  - American Cancer Society
  - Leukemia and Lymphoma Society
  - The Pink Fund
HEALTH INSURANCE OPTIONS
EMPLOYER-SPONSORED HEALTH INSURANCE

- COBRA
  - Job-lock
  - Employer-sponsored health insurance
  - Employers with 20+ employees
  - Length depends on qualifying event
  - Cost up to 102% of applicable employee rate
- State COBRA
- Conversion
## WHEN TO USE COBRA

<table>
<thead>
<tr>
<th>Qualifying Event</th>
<th>Qualified Beneficiaries</th>
<th>Maximum Coverage</th>
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<tbody>
<tr>
<td>Termination of employment or reduction in hours</td>
<td>Employee, Spouse, Dependant Child</td>
<td>18 months</td>
</tr>
<tr>
<td>Employee enrollment in Medicare</td>
<td>Spouse, Dependant Child</td>
<td>36 months</td>
</tr>
<tr>
<td>Divorce or legal separation</td>
<td>Spouse, Dependant Child</td>
<td>36 months</td>
</tr>
<tr>
<td>Death of employee</td>
<td>Spouse, Dependant Child</td>
<td>36 months</td>
</tr>
<tr>
<td>Loss of dependant child status</td>
<td>Dependant Child</td>
<td>36 months</td>
</tr>
</tbody>
</table>
HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT (HIPAA)

- Reduces job-lock
- Prohibits discrimination based on pre-existing medical conditions
- Applies when moving from:
  - Group to group
  - COBRA to a HIPAA plan
- 63 DAYS
WHEN COBRA ENDS

1. HIPAA Plan
   - Federally Insured Plan or Guarantee Issue Plan
   - Every insurance company that writes individual policies in that state, must offer a HIPAA plan
     - OR some states may have conversion plans or provide a HIPAA option through the state’s high risk pool
   - Eligibility:
     - Exhaust COBRA or State COBRA plan
     - Be ineligible for a group plan, Medicare, or Medicaid
     - No gap more than 63 days
WHEN CHANGING INSURANCE PLANS

2. Pre-existing condition exclusion period (PECEP)
   - Denial of coverage for a period of time
   - Group plans can’t deny employees insurance, but they can impose a PECEP
   - PECEP = 12 months maximum
     - Some states less, for example: CA
       - 1-2 employees = up to 12 months
       - 3+ employees = up to 6 months
   - Look back = 6 months
   - PECEP runs concurrently w/ waiting period for benefits
REDUCING OR ELIMINATING PRE-EXISTING CONDITION EXCLUSIONS

3. Creditable Coverage:
   - Almost any type of comprehensive health insurance
     - Except some student health insurance plans
   - Goes with you from one health insurance plan to another
   - Reduces or eliminates a PECEP imposed by a new plan
   - Cannot have gap in coverage over 63 days
HOW TO USE CREDITABLE COVERAGE

Example #1:

Your patient had health insurance through his employer for 2 months while at a previous job. Your patient is changing jobs and the new employer group health plan is imposing a pre-existing condition exclusion period (PECEP) of 6 months.

6 month PECEP imposed by new group health plan –
2 months of prior creditable coverage =
only 4 months left of a PCEP

Therefore, your patient will only have a 4 month exclusion period.
HOW TO USE CREDITABLE COVERAGE

Example #2:
Your patient had health insurance through his employer for 8 months while at a previous job. Your patient is changing jobs and the new employer group health plan is imposing a pre-existing condition exclusion period (PECEP) of 12 months.

12 month PECEP imposed by new group health plan –
8 months of prior creditable coverage =
only 4 months left of a PCEP

Therefore, your patient will only have a 4 month exclusion period.
HIGH RISK INSURANCE POOLS

- AKA: Major risk insurance plans
- For people who are unable to get individual health insurance
- Not available in every state
- Plans are different in each state:
  - TX: Health Insurance Risk Pool
  - CA: Major Risk Medical Insurance Program
- Can be annual caps, lifetime maximums, & waiting lists
- To find plans in your state:
PRE-EXISTING CONDITION INSURANCE PLANS (PCIP)

- Patient Protection & Affordable Care Act (PPACA)
  - Health care reform
- Eligible:
  - U.S. Citizens or lawful resident
  - Have a pre-existing illness or condition
  - No creditable coverage for 6 months
- Premiums, deductibles, co-pays, etc. vary
- Annual out of pocket costs capped at $6,050 (in network)
- www.pcip.gov
PCIP IN EACH STATE

Select a State

Pre-Existing Condition Insurance Plan Run by the U.S. Department of Health and Human Services

Pre-Existing Condition Insurance Plan Run by Your State

United States Map

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EDUCATIONAL SERIES for HEALTHCARE PROFESSIONALS
PATIENT PROTECTION & AFFORDABLE CARE ACT (PPACA)

- Young Adults
- Children under 19
- Rescissions
- Lifetime and annual limits
- Free preventative services
- Medical Loss Ratio: 80%-85% (large groups)
- 2014: Adults!
ERIN’S STORY REVISITED

• After college, Erin worked as an assistant at a large company for 4 years. At the age of 25, she was diagnosed with cancer. After talking with her healthcare team, she decided her best course of action was to take some time off work.

• Erin heard about COBRA to keep her health insurance coverage, but she is concerned about how to get insurance coverage with a pre-existing condition, once her 18 months of COBRA is over. HIPAA, HIPP, High Risk, PCIP

• Erin is now 27 and is ready to get back into the workforce.

• She isn’t sure how to deal with the gap on her resume, and how to address it in an interview. Or if she even has to. ADA, State Law, Disclosure

• Erin also has monthly medical appointments and has been experiencing chemo brain. She is worried this will keep her from getting a job. ADA, State Law, Reasonable Accommodations
RESOURCES

- Legal Assistance:
  - National Cancer Legal Services Network [www.NCSLN.org](http://www.NCSLN.org)
  - LawHelp [www.lawhelp.org](http://www.lawhelp.org)

- Employment:
  - U.S. Department of Labor [www.dol.gov/ebsa](http://www.dol.gov/ebsa)
  - Workplace Fairness [www.workplacefairness.org](http://www.workplacefairness.org)

- Disability Insurance Options:
  - Social Security Administration: [www.SSA.gov](http://www.SSA.gov)

- Health Insurance Options:
  - [www.PCIP.gov](http://www.PCIP.gov)