ILLINOIS STATE BAR ASSOCIATION

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Employee Benefits

The newsletter of the Illinois State Bar Association's Section on Employee Benefits

Saving multi-employer pension plans

BY DOUGLAS A. DARCH

The looming crises due to the probable collapse of multi-employer pension plans due to underfunding of those plans is now an accepted fact. Given their central role in the financial well-being of working class Americans and Congressional oversight, one must wonder the root cause of the crises. The answer lies in two influential judicial decisions which in hind-sight prove the old adage as to where the road paved with good intentions leads.

Multi-employer pension plans developed in workplaces sharing several common characteristics. Their industry was comprised of many employers. Work was cyclical or seasonal, and employees moved from one employer to another with a high degree of frequency. The employees tended to be heavily unionized.

In 1947, Congress concerned by the influence of organized crime required that all employee benefit plans be jointly administered and thus was born so called Taft-Hartley Plans. Taft-Hartley, the statute, prohibited any payments

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ACA & ERISA update

BY WESLEY COVERT

IRS Expected To Begin Enforcing Affordable Care Act Penalties On Employers By Late 2017

On his first day in office, President Trump issued an Executive Order which directed federal agencies to exercise authority and discretion permitted to them by law to reduce the potential burden imposed by the Affordable Care Act (ACA). To date, the IRS has yet to issue an enforcement letter for the ACA's Employer Shared Responsibility Mandate (which penalizes large employers that do not offer certain qualifying health coverage to full-time employees). Arguably, the Executive Order, the political efforts to replace or repeal the ACA, and the lack of enforcement may have led employers to believe there would be no enforcement of the Employer Shared Responsibility Mandate. The IRS has dispelled that belief in recent informational letters. The IRS has taken the position that despite the

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***(Notice to librarians:** The following issues were published in Volume 35 of this newsletter during the fiscal year ending June 30, 2017: October, No. 1; December, No. 2; March, No. 3; June, No. 4).*

Saving multi-employer pension plans

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by an employer to a union with limited exceptions (e.g. union dues) unless the payment was to a plan jointly administered by an equal number of union and management representatives. Recognizing that these representatives might not agree, Taft-Harley also provided for the appointment of a neutral (arbitrator) to break any deadlock. ERISA and its various amendments brought two changes. First, it designated the Board of Trustees of a Taft-Hartley Plan as the "plan sponsor" and it imposed fiduciary status on Plan Trustees. The stage was now set for the two decisions which drove the train off the tracks.

In *Assoc. Contractors v. Laborers International*, 559 F.2d 222 (3rd Cir. 1977), the Third Circuit held that management trustees were permitted to and were expected to continue the collective bargaining process. This decision is perfectly logical given the requirement that plans be "jointly" administered and the existence of a neutral to break any deadlock amongst the trustees. The Supreme Court, however, saw matters differently, at least when the issue was framed as a question of the duty to bargain under the National Labor Relations Act. In *NLRB v. Amax Coal Co.*, 453 U.S. 322 (1981) during collective bargaining, the employer demanded the union agree to allow it to appoint its own management trustees. When the parties reached an impasse, the union filed an unfair labor practice charge with the National Labor Relations Board, which promptly declared the topic a permissive subject of bargaining and thus, held the employer had acted illegally. The issue proceeded to the Supreme Court which agreed with the NLRB.

Rather than deciding the issue on narrow grounds, the court provided a sweepingly broad explanation. It explained that the management trustees did not represent the employers. Rather, they owed a fiduciary duty to the plan participants.

In effect, the Court eliminated the purpose and the oversight management appointed trustees were to bring a jointly administered plan and the need for the neutral umpire. Paradoxically, in a series of subsequent decisions, the Court held that no fiduciary duty is owed to plan participants by the plan sponsor when it acts to change the plan or plan benefits. *See* e.g. *Lockheed v. Spink*, 517 U.S. 882 (1996). But the damage was done, moderation of benefit improvements was eliminated and funds to pay for those benefits were exhausted.

Into this environment of underfunded multi-employer plans, the Seventh Circuit en banc decided *Central States v. Gerber Trucking*, 870 F.2d 1148 (7th Cir. 1989) (en banc). The irony of Central States putting the nail in the coffin of responsible pension plan funding is too great to be ignored. First some background, the common perception of pension funding is that as an employee works, the employer makes annual contributions in an amount sufficient to pay the employee's pension after retirement. In other words, the employee's labor funds his or her own pension.

In *Gerber Trucking*, the Seventh Circuit bought the idea that a pension fund could be viable as a Ponzi scheme (although not characterized as such). The court en banc (over Judge Cudahy's and Wood's partial dissent) held a pension fund could refuse to exclude new hires from coverage because the contributions from the new hires could be diverted if needed to pay the pensions of the then current retirees. Left unaddressed in this optimistic view of the world is who paid the pensions of the last employees to enter the plan. No matter, buoyed by access to this new pool of funds and unrestrained by the management trustees, pension funds began enhancing benefits. The results were predictable. Google "multi-employer pension funds" and an itinerary of woe appears on the screen. Funds are collapsing, employers are withdrawing (UPS for example), the Pension Benefits Guarantee Board is broke and is raising premiums, and funds are adopting rehabilitation plans. Ironically, many rehabilitation plans shortchange the existing workforce to pay

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the unfunded pensions for the current retirees.

Multi-employer pension plans can be saved and deserve to be saved. Three steps are necessary. First, the role of management trustees as the voice of the employers should be restored when the trustees are performing plan sponsor functions. *Lockheed* suggests this is the law since no fiduciary duty is owed plan participants by plan sponsors. Saying "no" to benefit enhancements should be part and parcel of the role of the management trustees. Second, pension funding must stop being a Ponzi scheme, those who are current employees should be assured that the contributions made on their behalves will in fact be used to pay their pensions. Third, the anti-cutback rules should be restricted. Plan sponsors should have the ability to reduce or eliminate benefits being received by current retirees if the benefits were not funded by contributions during the employees' work life. Whether the courts can and will do this on their own or will await Congressional action remains to be seen. ■

ACA & ERISA update

CONTINUED FROM PAGE 1

Executive Order, the ACA is still the law of the land and the IRS has no discretion within the ACA to not enforce the law. As such, it is expected that the IRS will begin sending enforcement letters later this year to large employers. Below is a link[1] to IRS FAQs which outline the IRS' intention to begin enforcing the ACA Employer Shared Responsibility Mandate. Based on the IRS' representations, employers need to anticipate continued compliance with the ACA despite the Trump Administration's Executive Order.

Employer's Severance Agreement Process Did Not Create An ERISA-Covered Benefits Plan

Employers frequently enter into severance arrangements with terminating employees. However, some employees have challenged whether severance arrangements are subject to the Employee Retirement Income Security Act (ERISA). If ERISA applies, suddenly an employer's intended severance arrangement is now an ERISA-covered benefits plan which is subject to significant reporting and disclosure requirements. Courts have generally determined that severance arrangements will not be subject to ERISA unless the severance arrangement is part of an "ongoing administrative scheme." A recent case addressing this issue involved a company's "Voluntary Separation Agreement Process" which provided severance benefits on a discretionary basis to certain managerial employees. Through a set process, the company determined the amount and type of severance package available to particular employees. A terminated employee sued the company, alleging in part, that the company's severance process was subject to ERISA and that the company failed to provide her severance benefits.[2] The court stated that the evidence did not support an intent by the company to create an administrative scheme for its severance arrangements. For example, the arrangements were offered sporadically and in a variety of circumstances. The court held that a reasonable person could not determine the class of intended beneficiaries, the intended benefits, or the process to request benefits under the severance process. Based on this recent case, employers should review their severance arrangements in order to either comply with ERISA, or make changes to avoid ERISA requirements. ■

1. <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act>

2. *Mance v. Quest Diagnostics Inc. Voluntary Separation Agreement Plan et al,* Civil Action No. 12-7361, (D.N.J. 2017).

Bothered by unsolicited calls on your mobile phone?

BY DON MATEER

I have the app for you. It is called Hiya and it is free. Whenever you get an unsolicited call, you can find out who called you without answering the call. Let it ring and then enter the phone number into Hiya. It will tell you who called you and whether it is spam. If it is spam, the screen turns red and there are comments from people identifying the type of spam and the pitch. Then, you can proceed to block the number knowing it was spam. This proves helpful for all unknown numbers. I awoke one morning with a message that I received a call at 3:32am. I checked the number through Hiya and found out it was from the ER of a local hospital. No need to block that number; it was just dialed in error. On another occasion, I was about to block a number I did not recognize and then thought it would be best to check Hiya first. It turns out the number was from the pharmacy that fills my prescriptions. As you can see, this app is not only useful for identifying spam but also beneficial for identifying legitimate calls. ■

This article was originally published in the June 2017 issue of the ISBA's Senior Lawyers newsletter.

Illinois Secure Choice Savings Program Act

BY BERNARD G. PETER

Overview Illinois Secure Choice Savings Program Act

1. The Illinois Secure Choice Savings Program Act ("Act") [820 ILCS 80/1 through 80/95] was effective June 1, 2015.
2. The Act requires most employers in Illinois to offer a retirement program or provide employees a payroll deposit retirement savings arrangement provided for by the Act as of July 1, 2017, although as of July 21, 2017 the Act has not been implemented.
3. The Act applies to Illinois employers who:
   A. At no time during the previous calendar year employ fewer than 25 employees in Illinois.
   B. Have been in business for at least two (2) years.
   C. Have not offered to employees a qualified retirement plan, including but not limited to, a plan qualified under Internal Revenue Code ("Code") Sections 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or 457(b) in the previous two (2) years.
4. The retirement savings program is in the form of an automatic enrollment payroll deduction Roth IRA (Individual Retirement Account) under Code Section 408A known as the Illinois Secure Choice Savings Program ("Program") [Act Section 10].
5. The function of the employer will be limited to providing a payroll withholding option to allow the employee to contribute to the trust fund established under the Program.
6. The purpose of the Program is to promote "greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner" [Act Section 10].

Additional Information on Act

1. The employer cannot contribute to the Program on behalf of employees.
2. The Act does not require the employer to have a separate plan.
3. A "small employer" can participate in the Program if it notifies the Illinois Secure Choice Saving Board established under the Act ("Board") that it is interested in participating.
4. A "small employer" is a person or entity engaged in a business, industry, profession or trade, or other enterprise in Illinois whether for profit or not-for-profit which:
   A. Employed less than 25 employees at any one time in Illinois throughout the previous calendar year, or
   B. Has been in business less than two (2) years, or
   C. Has met the requirements of both A and B.
5. Under the Program the level of contribution of the employee would be 3% of compensation. However, employees can elect to participate at a different level or opt out of the Program.
6. The Illinois Secure Choice Savings Program Fund ("Fund") is established by the Act as a trust outside of the State of Illinois Treasury with the Board as its trustee.
7. The Fund shall include the individual retirement accounts of enrollees.
8. The Fund shall consist of moneys received from enrollees and participating employers pursuant to automatic payroll deductions and contributions to savings made under the Act.
9. Amounts deposited in the Fund shall not constitute property of the State of Illinois.

Management of the program

1. The Program shall be administered by the Board.
2. The Board is composed of the State Treasurer, State Controller and the Director of the Management and Budget Office of the Governor and four additional representatives appointed by the Governor.
3. The Board shall:
   A. Appoint a Trustee to the IRA Fund ("Fund") required under Code Section 408A.
   B. Explore and establish investment options.
   C. Make and enter into contracts necessary for the administration of the Program and Fund.
   D. Engage an Investment Manager.
   E. Conduct a review of the performance of any investment vendors every four (4) years.

Investment options

1. Employee contributions would be invested in a life-cycle fund with a target date based upon the age of the employee.
2. The Board may establish the following additional investment options:
   A. A conservative principal protection fund,
   B. A growth fund and
   C. A secure return fund whose primary objective is the preservation of the safety of principal and the provision of a stable and low-risk rate of return.

Potential Road Block to Implementation of the Program

1. The existence of the Program is contingent on the Program not being considered to be an employee benefit plan under the Employee Retirement Income Security Act of 1974, as amended (ERISA).
2. The U.S. Department of Labor (DOL) finalized regulations in the Fall of 2016 to provide a safe-harbor for State retirement plans; such as, the Program under which these plans would be exempt from ERISA.
3. However, the current Congress acting under the Congressional Review Act rescinded the DOL safe-harbor by resolution as part of their effort to remove regulations adopted in the last

year of the prior administration. The President signed into law the resolution adopted by Congress on May 13, 2017. On June 22, 2017, the DOL officially rescinded the 2016 DOL safe-harbor effective June 28, 2017.

4. Regardless of the removal of the DOL safe-harbor Illinois Treasurer Michael Frerichs has stated that Illinois intends to move forward with the implementation of the Program. This is consistent with the decisions of the other states (California, Connecticut, Maryland and Oregon), which have adopted legislation to establish a retirement program for the employees of private employers who do not offer a retirement plan. In fact, the Oregon program, which is very similar to the Program, started enrolling employees in its program from a pilot group of employers on July 1, 2017. Also, the Vermont legislature in May adopted legislation to establish a retirement program for private employees of private employers who do not offer a retirement plan.
5. Despite the removal of the 2016 safe-harbor, there still exists a 1975 DOL IRA safe-harbor which is basically the same as the 2016 safe-harbor under which the Program would not be considered to be an employee benefit plan subject to ERISA (29 CFR 2510.3-2(d)).
6. Furthermore, DOL Interpretative Bulletin 29 CFR 2509.99-1 which was published in the Federal Register on June 18, 1999 states that an employer who simply provides employees the opportunity for making contributions to an IRA through payroll deductions, as does the Program, does not establish a "pension plan" within the meaning of (3)(2)(A) of ERISA.
7. In view of the long existing DOL regulations it would appear that the Program is not subject to ERISA. The major threat to the Program would be litigation by an employer who does not wish to undertake the minimal task of making payroll deductions from the salaries of its employees and depositing them in the Program or potentially a participant or investment firm taking the position that the Program should be subject to ERISA. The one caveat is that it is impossible know what action, if any, the DOL under the current administration might take to stop the implementation of the Program and similar programs in other states.
8. Whether private litigation and/or any action by the DOL will develop to impede the implementation of the Program only time will tell.
9. The one thing that is certain is that there are close to 55 million Americans who lack retirement coverage. While the Program and similar programs that have been enacted in California, Connecticut, Maryland and Oregon (the Vermont program is somewhat different than the other five) may not be a perfect solution they are at least a start to solving a major retirement problem in the United States which gets worse every day. ■

US Department of Labor issues final disability claim procedure rules

BY STEVE FLORES AND MARISSA SIMS

The Department of Labor issued final regulations revising claims procedure rules under the Employee Retirement Income Security Act of 1974 ("ERISA") for employee benefit plans that provide disability benefits. The final rule adopts certain procedural protections and safeguards for disability benefit claims that are currently applicable to claims for health benefits under the Affordable Care Act. Employers who sponsor employee benefit plans that provide disability benefits will need to revisit policies and procedures, plan documents, summary plan descriptions and claim-related notices in light of the final rule. The final rule applies to claims for benefits made on or after January 1, 2018. The final rule will change current practice in several significant ways.

Prevention of Conflicts of Interest

Similar to conflict of interest policies in the Affordable Care Act, the final rule provides that plans providing disability benefits "must ensure that all claims and appeals for disability benefits are adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decision."[1] Thus, a plan cannot hire, compensate, retain, or terminate an individual because they are more likely to approve or deny a disability claim. The rule applies to vocational and consulting experts as well as third parties engaged by the plan with respect to claims.[2]

Improving Disclosure Requirements

The final rule requires that notices provided to participants be updated to include additional information. First, any adverse disability benefit determination must include a "discussion of the decision," including the basis for disagreeing with any disability determination by the Social Security Administration,[3] or the views of a health care professional that treated a claimant, if the claimant included such determination or views in their claim.[4] The adverse benefit determination must also discuss why the claim administrator disagreed with any views offered by medical or vocational experts whose advice was obtained by the plan to help with their determination, even if it was not ultimately relied upon for the final determination.[5] Where an adverse benefit determination is related to a denial based on medical necessity, experimental treatment, or similar exclusion, the determination must set forth an explanation of the scientific or clinical judgment upon which the plan has relied.[6]

Second, notices of adverse benefit determinations must contain the internal rules, guidelines, protocols, standards or other similar criteria of the plan that the plan used for its claim denial, or a statement that no such criteria exists.[7] This information cannot be withheld, even if a plan administrator believes it is proprietary or constitutes confidential business information.[8]

Third, just like notices of adverse benefit determinations at the review stage, a notice of adverse benefit determination at the initial claims stage must contain a statement that the claimant is entitled to receive, upon request, relevant documents.[9]

Right to Review and Respond to New Information Before A Final Decision

Claimants are permitted to review new information before a final decision is made and plans must provide claimants, free of charge, with new or additional evidence considered, relied upon, or generated by any individual making the benefit determination on review.[10] The same is true for an adverse benefit determination on review based on a new or additional rationale; the information must be provided as soon as possible to give the claimant a reasonable opportunity to respond before the determination date.[11]

Deemed Exhaustion of Claims and Appeals Processes

The final rule also provides that where a plan fails to follow all the requirements in the claims procedure regulation, the claimant will be deemed to have exhausted all of his or her administrative remedies.[12] The rule contains a limited exception where the violation was (i) *de minimis*; (ii) non-prejudicial; (iii) attributable to good cause or matters beyond the plan's control; (iv) in the context of an ongoing good-faith exchange of information; and (v) not reflective of a pattern or practice of noncompliance.[13]

Coverage Rescissions – Adverse Benefit Determinations

The final rule amends the definition of an adverse benefit determination to include a retroactive rescission of benefits, unless such rescission is due to a failure to timely pay premiums or contributions towards coverage.[14] Such retroactive rescission of benefits does not include an adjustment or suspension of benefits that reduces or eliminates a disability pension benefit under section 305 of ERISA. Conversely, a reduction or elimination of such benefits based on a finding that the claimant was never disabled under the plan would be a retroactive rescission.[15]

Culturally and Linguistically Appropriate Notices

The final rule requires that plans provide notices to claimants in a culturally and linguistically appropriate manner.[16] If the claimant's address is in a county where 10 or more percent of people are only literate in the same non-English language, notices must include a clear statement in such

language about how to access language services.[17] Plans must also provide a customer services number that will provide oral language services as well as written notices in non-English, upon request.[18]

Statute of Limitations

Plans often include a contractual limitation period within which a participant must initiate a civil action under ERISA following an adverse benefit determination on review. While some Federal courts have found that participants must be provided notice of such limitation in appeal denial notices, ERISA regulations do not explicitly require it. The final rule specifically requires that any notice of an adverse benefit determination on review include any applicable contractual limitations period that applies to a claimant's right to bring an action, including the calendar date on which the contractual limitations period expires for the claim.

Conclusion

Employers who sponsor employee benefit plans that provide disability benefits will need to revisit policies and procedures, plan documents, summary plan descriptions and claim-related notices in light of final regulations that apply to claims for disability benefits made on or after January 1, 2018. Employers and practitioners should act now to ensure compliance by that date. ■

This article was originally published in the September issue of the ISBA's Insurance Law newsletter.

1. 29 C.F.R. § 2560.503-1(b)(7).
2. Preamble to the Final Rule, 81 Fed. Reg. 92319 (December 19, 2016).
3. Preamble to the Final Rule, 81 Fed. Reg. 92322 (December 19, 2016)(discussing how courts reviewing whether a plan's adverse benefit determination was arbitrary and capricious have found an SSA determination to award benefits to be a factor that the plan fiduciary deciding a benefit should consider) and 29 C.F.R. § 2560.503-1(g)(1)(vii)(A), (j)(6)(i).
4. 29 C.F.R. § 2560.503-1(g)(1)(vii)(A), (j)(6)(i).
5. Preamble to the Final Rule, 81 Fed. Reg. 92321 (December 19, 2016) and 29 C.F.R. § 2560.503-1(g)(1)(vii)(A), (j)(6)(i).
6. 29 C.F.R. § 2560.503-1(g)(1)(vii)(B), (j)(6)(ii).
7. Preamble to the Final Rule, 81 Fed. Reg. 92323 (December 19, 2016) and 29 C.F.R. § 2560.503-1(g)(1)(vii)(B), (j)(6)(ii).
8. Preamble to the Final Rule, 81 Fed. Reg. 92324 (December 19, 2016).
9. 29 C.F.R. § 2560.503-1(g)(1)(vii)(C).
10. 29 C.F.R. § 2560.503-1(h)(4).
11. 29 C.F.R. § 2560.503-1(h)(4).
12. 29 C.F.R. § 2560.503-1(l)(1) and (2).
13. 29 C.F.R. § 2560.503-1(l)(1) and (2). Note that in footnote 24 of the Preamble to the Final Rule, the Department states that it believes the final rule, including the deemed exhaustion section, supersede any and all prior Departmental guidance, including that listed in FAQ F-2 in FAQS About the Benefit Claims Procedure Regulation. Preamble to the Final Rule, 81 Fed. Reg. 92328, Fn. 24 (December 19, 2016).
14. 29 C.F.R. § 2560.503-1(m)(4).
15. Preamble to the Final Rule, 81 Fed. Reg. 92328 (December 19, 2016). Essentially, if the claims adjudicator must make a determination as to whether someone has a disability in order to rule on a claim, the claim is a disability claim under ERISA § 503 regulations.
16. 29 C.F.R. § 2560.503-1(g)(1)(vii)(C), (j)(7), and (o).
17. Preamble to the Final Rule, 81 Fed. Reg. 92329 (December 19, 2016).
18. Preamble to the Final Rule, 81 Fed. Reg. 92329 (December 19, 2016).

Race, ethnicity affect kids' access To mental health care, study finds

BY SHEFALI LUTHRA, KAISER HEALTH NEWS

One in five Americans is estimated to have a mental health condition at any given time. But getting treatment remains difficult — and it's worse for children, especially those who identify as black or Hispanic.

That's the major finding in research published Friday in the International Journal of Health Services. The study examines how often young adults and children were able to get needed mental health services, based on whether they were black, Hispanic or white. Using a nationally representative sample of federally collected survey data compiled between 2006 and 2012, researchers sought to determine how often people reported poor mental health and either saw a specialist or had a general practitioner bill for mental health services.

"No one is necessarily bigoted — and yet we have a system that creates the kind of discrimination we see in the paper," said Steffie Woolhandler, a professor at City University of New York School of Public Health, and one of the study's authors. "Kids are getting half as much mental health treatment — and they have the same level of mental health problems."

Young people in general aren't likely to see mental health specialists. But the numbers fell further when racial and ethnic backgrounds were factored in. About 5.7 percent of white children and young adults were likely to see a mental health specialist in a given year, compared with about 2.3 percent for black or Hispanic young people.

Put another way: Even when controlling for someone's mental health status, insurance and income, black and Hispanic children saw someone for treatment far less often than did their white counterparts — about 130 fewer visits per thousand subjects. Black young adults visited a mental health specialist about 280 fewer visits per thousand; Hispanics had 244 fewer visits per thousand.

But the data indicate that mental illness incidence rates are generally consistent across racial groups, according to the study. Of adults between the ages of 18 and 34, between 4 and 5 percent indicated having fair or poor mental health, regardless of racial background. For children, white and black subjects were reported to need care at about the same rate — between 11 percent and 12 percent — compared with about 7 percent of Hispanic children.

The paper outlines a few possible reasons for this disconnect. Different communities may attach greater stigma about mental health care, or they may place less trust in the doctors available. Plus, there is a shortage of child psychiatrists across the country, and black and Hispanic families often live in the most underserved areas.

"There are problems of access all around," said Harold Pincus, vice chair of psychiatry at Columbia University's College of Physicians and Surgeons. "We have to change the way we do things."

The findings suggest that lawmakers have focused on trying to improve access to mental health care, but "we can't rest on our laurels," said Pincus, who wasn't affiliated with the study. He also noted that treating white children's level of access as the golden standard is probably unwise, since research suggests they also receive inadequate care.

One of the study's clear messages, argued Woolhandler, is that racial minorities received markedly less care — regardless of socioeconomic or health status. The gap suggests a targeted intervention is needed.

The study highlights a need to ensure doctors know how to counsel patients of different racial backgrounds and will do so, said Benjamin Le Cook, an assistant professor of psychiatry at Harvard Medical School, who was also not affiliated with the study. Ending racial and cultural disparities in access to care is a more pressing concern than erasing the stigmas about mental illness in minority communities, he said.

That's especially relevant given minorities are less likely to be treated by doctors of their ethnicity. In addition, research suggests that mental health specialists sometimes discriminate based on race when seeing patients.

"It has to do with experiences people in the community have had that haven't matched their expectations or aligned with problems they're having," LeCook said. "Cultural stigma is a factor, but not the main one."

Beyond better training, more funds are needed for resources like community health centers, which often serve black and Hispanic patients, Woolhandler said.

"I see these great people trying to work in community mental health, but they need more resources to do their job," she said.

But, the research doesn't account for other areas where minorities may access mental health services, Pincus noted. Churches and social service agencies, for instance, may be filling some of the void and wouldn't be accounted for by the survey data.

Researchers and policymakers should explore those sectors, he said, to see if they could be better leveraged to help people get connected to care they'll actually trust. As experts try to bolster the mental health system—both to improve access across the board and also to close race-based gaps—they need to use a multipronged approach, pulling in different kinds of caregivers than those who might normally treat mental illness.

"There's all kinds of ways by which the mental health system doesn't play a role in helping people," he said. "Family and community supports, social services — they're all part of the picture." ■

This article was originally published August 12, 2016 in Kaiser Health News, a national health policy news service that is part of the nonpartisan Henry J. Kaiser Family Foundation.

Overview of the healthcare landscape as it relates to Medicaid managed care

BY DARA M. BASS

The ISBA Mental Health Law Section Council welcomed Samantha Olds Frey to speak at the Council meeting on April 10, 2017. Ms. Olds Frey is the Executive Director of the Illinois Association of Medicaid Health Plans (IAMHP). She has a Master's Degree in Public Policy and Administration from Northwestern University. She previously served as Speaker Michael Madigan's Human Services & Medicaid budget analysist, wherein she helped negotiate and craft legislation for Medicaid in the state of Illinois.

Ms. Olds Frey discussed many of the specific challenges associated with Affordable Care Act (ACA) changes, including Medicaid expansion and the concept of Block Grant or Per Capita Caps. She described many of the challenges to healthcare in the state of Illinois due to the lack of a budget and a very large backlog of bills, as well as significant payment delays from the state to providers. In addition, Medicaid has not increased its fees to some providers for nearly two decades. In some parts of Illinois, Medicaid programs are not covered by any providers. Ironically, there is a decrease in mental health spending because providers are no longer providing services.

One innovation has been the "1115 waiver," which is a contract between the Federal and state governments that "waives" Federal and Medicaid requirements and gives the Federal government authority to approve experimental, pilot or demonstration projects. The goal of this project is to evaluate new policy approaches by Medicaid, including the creation of innovative service delivery systems that improve care, increase efficiency and reduce costs. There are a number of people who can be affected by the Medicaid changes including seniors, people with disabilities, low-income families, children with special needs and ACA adults. A Request for Proposals (RFP) has been issued to determine what the changes to Medicaid might be.

This RFP is likely to create a number of different changes in Medicaid for the state of Illinois. With the RFP, some likely outcomes include that there will be fewer plans in the Chicago region (though likely more plans in other regions in Illinois), and plans will operate statewide. Also, there may be new health plans in the market and a single formulary available, which means that patients will have access to fewer pharmaceuticals.

As a result of these changes, IAMHP is trying to take steps to improve this situation.

These include: finalizing a single roster for delegated credentialing, creating a more streamlined form for prior authorization requests, creating best practice guidelines for discharge planning, connecting health plans and providers to address existing concerns, working with HFD to better standardize the billing processes, and partnering with providers to collectively improve the Medicaid program. ■

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October

Wednesday, 10-04-17 LIVE Webcast— Issues to Recognize and Resolve When Dealing With Clients of Diminished Capacity. Presented by Business Advice and Financial Planning. 12-2 pm.

Thursday, 10-05-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday, 10-05-17 – Chicago, ISBA Regional Office—The New Bankruptcy Rules and Advanced Topics in Consumer Bankruptcy. Presented by Commercial Banking, Collections & Bankruptcy. 8:55am – 4pm.

Thursday, 10-05-17 – LIVE Webcast—The New Bankruptcy Rules and Advanced Topics in Consumer Bankruptcy. Presented by Commercial Banking, Collections & Bankruptcy. 8:55am – 4pm.

Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—Fall 2017 Beginner DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:45 pm.

Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—Fall 2017 Advanced DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:30 pm.

Friday, 10-06-17 – Chicago, ISBA Regional Office—Pathways to Becoming Corporate General Counsel and the Issues You Will Face. Presented by Corporate Law. Time: 9:00 am – 12:30 pm

Monday, 10-09-17 – Chicago, ISBA Regional Office—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Monday, 10-09-17 –Fairview Heights—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Tuesday, 10-10-17 – Webinar—Outlook for Mac. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 10-11-17 – LIVE Webcast—Enforcing Illinois' Eviction Laws: A Basic Guide to Landlord Remedies and Tenant Rights. Presented by Real Estate Law. 12-1 pm.

Wednesday, 10-11-17 – LIVE Webcast—Working Effectively with Interpreters. Presented by Delivery of Legal Services. 2-3:30 pm.

Thursday, 10-12-17 – Chicago, ISBA Regional Office—Illinois Medicaid Rules and Procedures Bootcamp. Presented by Elder Law. 8:15 am – 4:30 pm.

Thursday, 10-12-17 - Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Monday-Friday, 10-16 to 20, 2017 – Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training Master Series. Master Series. Monday, Wednesday, Thursday and Friday 8:30-5:45. Tuesday 8:30-6:30.

Tuesday, 10-17-17 – Chicago ISBA Regional Office (ISBA Mutual Classrooms)—Mediation Roundtable: The Discussion of Hot Topics in the Mediation of Disputes. Presented by Alternative Dispute Resolution. 12:15 – 1:15 (lunch served at noon).

Thursday, 10-19-17 - Webinar— Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday, 10-19-17 – Bloomington— Real Estate Law Update – Fall 2017. Presented by Real Estate.

Tuesday, 10-24-17 – Webinar—Law Firm Accounting 101. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 10-25-17 – Webinar— Working with Low Income Clients. Presented by Delivery of Legal Services. 12-1:30 pm.

Thursday, 10-26-17 – LIVE Webcast— Diversity and Inclusion in the Practice of Law. Presented by LOME. 12-1 pm.

Friday, 10-27-17 – Chicago, ISBA Regional Office—Solo and Small Firm Practice Institute. All Day.

Friday, 10-27-17 – LIVE Webcast—Solo and Small Firm Practice Institute. All Day.

November

Wednesday, 11-01-17 – ISBA Chicago Regional Office—Anatomy of a Medical Negligence Trial. Presented by Tort Law. All Day.

Thursday, 11-02-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 11-03-17 – NIU Naperville— Real Estate Law Update – Fall 2017. Presented by Real Estate.

Thursday, 11-09-17 - Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 11-10-17 – Chicago, ISBA Regional Office—Profession Under Pressure; Stress in the Legal Profession and Ways to Cope. Presented by Civil Practice and Procedure. 8:15 am-4:45 pm.

Tuesday, 11-14-17 – Webinar—Speech Recognition. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 11-15-17 – Chicago, ISBA Regional Office—Microsoft Word in the Law Office: ISBA's Tech Competency Series. Master Series with Barron Henley. All Day.

Thursday, 11-16, 2017 – Chicago, ISBA Regional Office—Microsoft Excel In the Law Office: ISBA's Technology Competency Series. Master Series with Barron Henley. Half Day.

Thursday, 11-16, 2017 – Chicago, ISBA Regional Office—Adobe Acrobat and PDF Files in the Law Office: ISBA's Technology Competency Series. Master Series with Barron Henley. Half Day.

Thursday, 11-16-17 - Webinar— Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 11-17-17 – Webcast—Obtaining and Using Social Media Evidence at Trial. Presented by Young Lawyers Division. 12:00-1:30 pm.

Tuesday, 11-28-17 - Webcast—Ethics Questions: Multi-Party Representation – Conflicts of Interest, Joint Representation and Privilege. Presented by Labor and Employment. 2:00-4:00 pm.

Tuesday, 11-28-17 – Webinar— Understanding Process Mapping. Practice Toolbox Series. 12:00 -1:00 p.m.

December

Wednesday, 12-06-17 - Webcast— Defense Strategies for Health Care Fraud Cases. Presented by Health Care. 12:00-1:30 pm.

Tuesday, 12-12-17 – Webinar—Driving Profitability in your Firm. Practice Toolbox Series. 12:00 -1:00 p.m.

Thursday, 12-14-17 – Chicago, ISBA Regional Office—Vulnerable Students: A Review of Student Rights. Presented by Education Law. 9:00 am – 12:30 pm.

Friday, 12-15-17 – Chicago, ISBA Regional Office—Guardianship Boot Camp. Presented by Trusts and Estates. 8:30 – 4:30.

Friday, 12-15-17 – LIVE Webcast— Guardianship Boot Camp. Presented by Trusts and Estates. 8:30 – 4:30.

January

Thursday, 01-11-18 – ISBA Chicago Regional Office—Six Months to GDPR – Ready or Not? Presented by Intellectual Property. 8:45 AM – 12:30 PM.

Thursday, 01-18-18 – ISBA Chicago Regional Office—Closely Held Business Owner Separations, Marital and Non-Marital. Presented by Business and Securities. 9AM - 12:30 PM.

Wednesday, 01-24-18 – ISBA Chicago Regional Office—Mentoring Luncheon.

Thursday, 01-25-18 – ISBA Chicago Regional Office—Starting Your Law Practice. Presented by General Practice. 8:50 AM – 4:45 PM.

February

Monday, 02-05 to Friday, 02-09—ISBA Chicago Regional Office—40 Hour Mediation/Arbitration Training. Master Series, presented by the ISBA—WILL NOT BE ARCHIVED. 8:30 -5:45 daily.

Feb 6 - Fred Lane's ISBA Trial Technique Institute.

March

Thursday, 03-08-18 – ISBA Chicago Regional Office—The Complete UCC. Master Series, Presented by the ISBA. 8:30-5:00.

Monday, 03-12 to Friday, 03-16— Pere Marquette Lodge, Grafton IL—40 Hour Mediation/Arbitration Training. Master Series, presented by the ISBA—WILL NOT BE ARCHIVED. 8:30 -5:45 daily.

Friday, 03-16-18 – Holiday Inn & Suites, Bloomington—Solo and Small Firm Practice Institute. All day.

Friday, 03-23-18 – ISBA Chicago Regional Office—Applied Evidence: Evidence in Employment Trials. Presented by Labor and Employment. 9:00 am – 5:00 pm.

Friday, 03-23-17 – LIVE Webcast— Applied Evidence: Evidence in Employment Trials. Presented by Labor and Employment. 9:00 am – 5:00 pm.

June

Friday, 06-01-18 – NIU Naperville, Naperville—Solo and Small Firm Practice Institute. All day. ■

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