Hospice and CommunityCare INSURANCE SERVICES℠
A Division of Glatfelter Insurance Group

Update

Fall 2007
Volume 7, Number 3

Important news about insurance and risk management for hospices and home health care agencies.

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Staff Education Learning Principles

Barbara Stover Gingerich, RN MS FACHE CHCE

Home Health and Hospice staff must meet continuing education requirements established by federal, state, accreditation and licensing organizations. The number of hours of continuing education required for professional staff varies according to professional and state licensure bodies, but the paraprofessional must complete a minimum of 12 hours of continuing education per year. Organizational resources and the logistics required to support and meet this requirement are significant.

Learning Environment

It is important to establish a positive learning environment within the organization. This is an environment where trust is present and where individuals are secure in their acceptance. A positive learning environment allows ideas to be freely exchanged and explored, which is essential to learning. Within this environment, the personalities and learning styles of the instructor, as well as the participants are key. When learning activities are designed with personality and learning style in mind, the education will better meet the needs of the individual and improve the overall staff development plan resulting in a successful education program.

Continuing Education Approaches

In recent years, one continuing education approach has been self-learning modules that include objectives, pre-test, content and post-test. These self-learning modules are used in either a group setting, if paraprofessionals can be assembled together, or in independent/individual learning setting. Originally the self-learning module was only available in print copy, but as technology advanced, online modules became available. No matter the format certain principles must be followed. In addition to the learning principles being incorporated into the learning module, the learner must also possess a certain understanding before learning can occur.

Learner Criteria

It is important that the learners understand that they are required to complete the minimum hours of continuing education each year and that they are responsible to meet this requirement. While not all paraprofessionals will be able to attend structured education sessions, all can complete self-learning modules independently. The learner must also understand the relevance of the education topic to their work and role within the care setting. The learner's self-motivation and learning style are other important elements to the learning process.

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Staff Education Learning Principles

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Learning Principles

When structuring the education component of any staff development program, there are key learning principles to consider and include. One principle is to allow flexibility in the schedule. Although it is a good idea to have a planned approach to topics and schedule, the schedule needs to also have enough flexibility to allow for additions. Just in Time topics meet identified learning opportunities, address changes in health care delivery and modifications in the Centers for Medicare and Medicaid Services [CMS], and state and federal regulatory expectations that arise throughout the year. Another principle is linking requirements and topics to the day to day work of the staff member. This results in an increase in staff motivation and interest in learning.

Balancing teaching styles and strategies and using diverse approaches to instruction better addresses the needs of the adult learner. Teaching formats that use both hands on and lecture presentations, as well as small group activities provide variety and stimulate learning. All approaches should include time for questions and answers and follow a coaching for success approach to the learning environment and setting. In soliciting information from the learner relative to understanding of the content, a good approach is to use open-ended questions, which encourage dialogue. Another approach is to restate and clarify the response. These are some examples of the many diverse approaches that the instructor can use in the learning session.

When developing written materials for inservice education, it is recommended that the writing be at a fourth grade level of education. Also when using a self-learning approach to education, it is important to allow time for reflection and integration of the information into the individual's daily work. *The Aide Educator* is one example of a self-learning aide inservice module. The aide can participate in either a group inservice using *The Aide Educator*, or a similar self-learning module, or these modules can be completed independently. A sample of *The Aide Educator* is available at www.hccis.com under the "Resources" icon.

Organization Implementation

Effective continuing education programs require an organized approach and a professional design. Establishing a consistent approach to record keeping is a necessary component. Documentation is critical to meeting the requirements for mandatory education. It is important to document that inservice/continuing education sessions have been offered and requirements have been met. Using a similar form that includes consistent data, such as topic, learning objectives, format and attendance, for each inservice/education offering provides a basic record keeping foundation. These forms can be stored within a loose-leaf binder or three-ring notebook, for current and previous years, thus providing a tracking system for government and accreditation surveyors.

When testing individuals on the content, a passing score must be established and individual answer sheets scored against the establishing passing level. Individual test results can be stored either in the individual's files or in a group file.

The format for learning should also take into consideration the cultures and values of the participants, as well as the patients being cared for in order that cultural awareness is furthered and enhanced. By encouraging communication exchange and dialogue in the education session, the instructor is better able to determine the depth of the participants' understanding. As depth of understanding is assessed, the instructor can adjust the format and style of the presentation when needed. In addition by encouraging group activities and discussion, the learning of the individual can be enhanced and expanded by the shared input of more than one individual into the topic. When discussion occurs, there is an exchange of perspectives and individuals are exposed to the questions of others, resulting in challenging thinking and expanding one's perspective. This can also cause the individual to question his/her assumptions and further clarify his/her point of view.

Summary

Focusing on learning principles and learner needs in designing education offerings will create a plan that results in a win-win situation for all. Through an effective continuing education program, the organization is able to assure that staff remain competent and skilled in meeting the needs of patients and families. One five-level system of learning that educators have defined identifies system levels that are mirrored in the health care setting. These levels have been identified as:

1. The business, i.e. health care;
2. The organization, i.e. home health, hospice or private duty agency;
3. The team;
4. The personal attitudes; and
5. The professional competencies. [Rimanoczy, p.43]

Establishing an education program that takes each of these levels into consideration and that provides individual coaching and support to the learner strengthens the overall results. It is also important to include an evaluation component and to provide opportunities for feedback, both from learners and educators, throughout the year. The organization can use this feedback to develop future educational programs and integrate ongoing quality improvement initiatives into its educational program offerings.♥

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U.S. Supreme Court Speaks:

Overtime Wages Denied for In-Home Companionship Workers

Michael McCall, J.D.

On June 11, 2007, a unanimous United States Supreme Court ruled that health care workers who provide in-home companionship services for the elderly and infirm are not protected by federal minimum wage and overtime pay laws. *In Long Island Care at Home, Ltd. v. Coke*, the Supreme Court upheld a Department of Labor (DOL) regulation exempting certain home care workers employed by third-party agencies from the minimum wage and overtime protections of the federal Fair Labor Standards Act (FLSA). As a result, workers providing in-home companionship services are not eligible for overtime compensation under federal law.

This article examines this Supreme Court's *Coke* decision and corresponding implications for third-party employers of what are considered "companionship workers" by the DOL. Importantly, third-party home health providers must understand how the FLSA and DOL rules apply differently for "domestic service" employment and "companionship services" employees.

DOL Regulations Considered by the Court

Adopted in 1938, the FLSA regulates the important issues of minimum wage, overtime pay, equal pay, and corresponding documentation and record-keeping requirements. In 1974 Congress amended the FLSA to include many "domestic service" employees not previously subject to its minimum wage and maximum hour requirements. At the same time, Congress created an exemption that excluded from FLSA coverage certain subsets of workers "employed in domestic service employment," including companionship workers.

The DOL promulgated a set of regulations designed to clarify which domestic workers were exempt from the FLSA. The first, appearing in a section entitled, "General Regulations" defined the statutory term "domestic service employment" as "services of a household nature performed by an employee in or about a private home...of the person by whom he or she is employed."

The DOL's second regulation entitled "Interpretations" says that "companionship workers include those who are employed by an employer or agency other than the family or household using their services... whether or not such an employee is assigned to work more than one household or family in the same workweek." This regulation has become known as the "third-party" regulation. The DOL issued both regulations following a "notice and comment" period, a procedure in which Congress allows an administrative agency (DOL) to propose draft regulations and seek public comment prior to adopting final regulations.

Third-party home health providers must understand how the FLSA and DOL rules apply differently for "domestic service" employment and "companionship services" employees.

History of the *Coke* Litigation

In 2002, Evelyn Coke, a domestic worker who had cared for elderly and infirm people for two decades, sued her employer, Long Island Care at Home, for unpaid minimum wages and overtime pay allegedly owed to her. Ms. Coke sought unpaid wages under both the FLSA and a New York state statute. At the District Court level, Coke's lawsuit was dismissed because the Court held the DOL's third-party regulation regarding companionship workers was valid and controlling, thus denying Coke overtime and minimum wage protections.

On appeal, the Second Circuit reversed and set aside the District Court's judgment, finding the third-party regulation unenforceable. Long Island Care successfully petitioned the United States Supreme Court to review the appellate decision on two separate occasions. The first time, the Supreme Court vacated the Second Circuit's decision and remanded the case so that the Circuit could consider a 2005 DOL Advisory Memorandum explaining and defending the regulation. The Advisory Memorandum failed to convince the Second Circuit Court of Appeals, which again held the third-party regulation unenforceable. Long Island Care sought a second review by the Supreme Court, which was granted.

Supreme Court's Decision

The High Court determined the third-party regulation is valid and binding, thus reversing the Second Circuit's decision. The Court agreed with Long Island Care in holding that the DOL had the authority to extend the exemption for companionship services workers to those employed by home care agencies. Moreover, the DOL followed all the proper administrative procedures ("notice and comment" period) in promulgating the rules, consequently acting reasonably within the authority granted by Congress.

The FLSA explicitly leaves gaps as to the scope and definition of its "domestic service employment" and "companionship services" terms, and empowers the Labor Department to fill these gaps through regulations, the High Court held. As Justice Breyer points out in the *Coke* decision, on at least three separate occasions during the past 15 years, the DOL considered changing the regulation and narrowing the exemption in order to bring within the scope of the FLSA's wage and hour coverage companionship workers paid by third parties, but the DOL ultimately decided not to make any change.

Impact on Home Care Agencies

According to the DOL and under the FLSA, third-party home health care providers may utilize the companionship

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How to Control and Manage "Super Germs"

Barbara Stover Gingerich, RN MS FACHE CHCE

The Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2007 has been released by the Center for Disease Control and Prevention [CDC]. The last complete update of these guidelines was in 1996 and during the intervening time period there are new developments in the field of infection control and the prerequisites for isolation precautions.

These recently released guidelines address global pathogens that have arisen in recent years, including SARS-CoV associated with the severe acute respiratory syndrome [SARS], Avian influenza in humans and an increased concern for other pathogens that continue to prove problematic in treatment and resolution. Some of these pathogens are *Clostridium difficile* [C diff], noroviruses and community-associated MRSA [CA-MRSA].

New Additions, Issues and Factors

New additions to Standard Precautions recommendations are respiratory hygiene/cough etiquette, safe injection practices and expanded use of personal protective equipment, such as wearing a mask during certain high-risk, prolonged spinal canal procedures. Other issues and factors presented in these guidelines deal with environmental controls, staffing levels, safety, adherence to protocols and management support for infection control initiatives.

There is revised terminology in these guidelines, replacing the term nosocomial infection with a new term, healthcare-associated infections (HAIs). This new term reflects changes related to causes and sources of infections.

Healthcare-Associated Infections

There has been a continual increase in the infections caused by organisms that are resistant to multiple antibiotics. These multidrug-resistant organisms (MDROs) have expanded in incidence and scope and are increasing cause for concern within the healthcare setting.

MDROs raise concerns relative to preventing the transmission of these organisms, as well as how best to track and monitor the incidence and spread of these pathogens. Some examples of these resistant organisms are:

- Vancomycin - Resistant *Enterococci* (VRE)
- Methycillin / Oxacillin- Resistant *Staphylococcus Aureus* (MRSA)
- Extended-spectrum beta-lactamases [ESBLs] - cephalosporins and monobactams resistant
- Penicillin-resistant *Streptococcus pneumoniae* [PRSP]

VRE and MRSA

The most common MDROs in patients outside of the acute care setting are VRE and MRSA. While these antibiotic resistant organisms do not pose an infection risk to healthy individuals, including healthcare staff, staff can serve as the carrier of the organism and spread the antibiotic resistant organism to others.

Methicillin-Resistant Staphylococcus Aureus (MRSA)

This staph infection occurs most often in patients, with a weakened immune system, in an inpatient healthcare setting. They also occur in patients within the community and when there is an occurrence not linked with a recent inpatient stay, the term is Community Acquired [CA]-MRSA.

MRSA is most often manifested as a skin infection, a pimple, boil, and can be found in healthy persons. If an outbreak occurs within the community the state and local health departments must be notified and included in the care management of these individuals. While healthy people do not usually become infected by casual contact, shaking hands for example, anyone coming in contact with an individual with MRSA should wash their hands before and after contact. Gloves and gowns should also be worn if there is the possibility of contact with body fluids.

In caring for individuals with MRSA at home, the family or caregiver should be certain to follow basic hygiene principles. These principles include washing hands before and after contact, before leaving and upon returning to the home, using an antibacterial liquid soap and using either paper towels or a cloth towel only once for drying hands. Gloves and gowns should be worn if the caregiver has the

How to Control and Manage "Super Germs"

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potential to come in contact with any body fluids. In addition it is recommended that linens should be changed and washed frequently. The care environment should also be cleaned regularly and all health-care providers involved in the patient's care should be notified that the patient is infected with a multiple drug resistant organism.

In an acute care or inpatient setting, if a patient is infected with a multiple drug resistant organism, MRSA, a nasal swab of roommates should be obtained. In the case of VRE, stool cultures, and rectal swabs of roommates should be obtained. In the case where isolation is instituted, three negative test results must be obtained before ending the isolation care and treatment. When discharging the patient from the inpatient setting to the community, community health departments should always be involved and referral sources informed regarding this diagnosis.

For organization and individual use, an excellent patient teaching handout, "Have you been diagnosed with a *Staphylococcus aureus* or MRSA infection?" is available online through the CDC at www.cdc.gov.

What to Do to Reduce the Spread

Precautions for the prevention of organism transmission are a result of both research and evidenced-based practice. The Healthcare Infection Control Practices Advisory Committee [HICPAC] for the CDC, recently released guidelines that continue to emphasize that the key basic strategy in prevention is the use of standard precautions with all patients. The foundation for infection prevention and control is based upon this key strategy and recommends basic principles and concepts to follow in caring for every patient. These concepts include:

• ***Handwashing*** - Hands are to be washed with antimicrobial soap/antibacterial hand sanitizer before and during care. This includes at the start of care, after contact with any patient, articles or equipment used in the care of patients and when removing gloves. Hands should also be washed at the end of care.

• ***Personal Protective Equipment*** - Equipment used will vary with the patient's diagnosis. Gloves are used when providing direct patient care including bathing, transferring, changing linens, toileting, giving an injection, drawing blood, changing a dressing, or handling any body fluids. Gloves may need to be changed during care to avoid patient cross contamination. Gowns are to be worn when providing care or doing a treatment that results in the staff's clothing or skin coming in contact with the patient's blood/body fluids, secretions, or excretions. Masks/goggles are worn when the treatment or care provided might generate a splash or spray of a body fluid.

• ***Patient Care Equipment*** - In order to prevent organism transfer, it is important to handle equipment properly for all patients and to clean equipment with anti-bacterial wipe after use and then returning it immediately to a designated clean location. Included in the organization's Infection Control Program will be specific cleaning and equipment use policies, applicable to its patient population.

• ***Care Environment*** - It is the healthcare provider's responsibility to instruct patients, visitors and families about the spread of organisms and that they should wash their hands frequently. If a family member is providing care to the patient, gloves should be worn. In addition, cleaning of the care environment should be done every day wearing gloves using a household cleaning agent or diluted beach solution [1:10] and linens washed when soiled. Keep soiled linens separate and wash in hot water. Gloves should be discarded after one use and hands washed upon glove removal.

Track, Trend, Monitor, Treat, Evaluate

Surveillance to track, trend and monitor infections is conducted in a number of ways that could include clinical record audits, laboratory test results, assessments and reports from staff, patients, referring clinicians and caregivers. All infections are documented in the clinical record and those identified in the organization's Infection Control Program are tracked, trended and monitored in order to establish performance expectations and quality outcome measures. The infection indicators are reported based upon established guidelines according to the potential infection site, such as respiratory, urinary, gastrointestinal, systemic, fevers of unknown origin, skin rashes and reportable communicable diseases. A sample infection surveillance indicator is provided on the Hospice and Community Care Insurance Services website, www.hccis.com, on the resource page. Reports that summarize infection rates, incidence and outcomes are compiled monthly, quarterly and annually.

Summary

Maintaining vigilant surveillance and monitoring infection rates are key to successful prevention and quality care initiatives. Staff must be oriented to the organization's infection control program and expected care delivery standards at the time of hire, with ongoing reviews and emphasis on the importance to not only the patient's health, but also to the health of the individual staff member and his/her family and friends.

It is important for key leaders of the organization to remain aware of national, state and local multiple drug resistant organism occurrences and activities related to controlling the spread and transmission of these organisms in order to best prepare the organization to safely monitor and manage infections. ♥

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RISK CONTROL:

Spotlight on Abuse Prevention

Betty Norman, BSN, MBA

Hospice/home care employees and volunteers interact on a daily basis with very vulnerable patient populations. The National Center on Elder Abuse (NCEA) estimates that somewhere between one and two million Americans age 65 and older have been injured, exploited, or otherwise mistreated by someone whom they depended on for care or protection.

According to the non-profit organization ChildHelp, more than two and a half million cases of child abuse and neglect are reported each year. A statistical breakdown of those reports reveals that 35 percent of these cases involve physical abuse, 15 percent involve sexual abuse and 50 percent involve neglect. As you can see, multiple types of abuse can occur in a single reported event.

The NCEA has defined seven types of abuse:

Physical Abuse - Use of physical force that may result in bodily injury, physical pain or impairment

Sexual Abuse - Non-consensual sexual contact of any kind

Emotional Abuse - Infliction of anguish, pain, or distress through verbal or non-verbal acts

Financial Exploitation - Illegal or improper use of funds, property or assets

Neglect - Refusal, or failure, to fulfill any part of a person's obligations or duties to an individual

Abandonment - Desertion by an individual who has physical custody or who has assumed responsibility for providing care to a vulnerable person

Self-Neglect - Behaviors that threaten health or safety of an individual

Protecting the Vulnerable

Because there is such a significant incidence of abuse, it is important that each organization have detailed policies and procedures for identifying and reporting abuse. Staff should receive training on the different types of abuse and the signs and symptoms of each. Written policy should outline the procedures for documenting the signs of abuse that are identified. The policy should also address the appropriate steps to take to report the abuse within the organization, as well as to outside agencies such as Adult or Child Protective Services.

Protecting the Organization

In addition to protecting the vulnerable patient, the organization should also establish policies that will protect it against abuse situations involving its own employees and volunteers. One way that the organization can protect itself is through rigorous employee screening and background checks. Background checks should be thorough and well documented, including social security number and residency verification, personal and professional reference checks, professional license verification when applicable, review of local and state abuse registries, as well as criminal background checks.

It is also important to have documented evidence of ongoing monitoring and supervision of employees and volunteers as they interact with patients and their families. This can be done through direct observation, review of notes, and review of patient/family satisfaction surveys. Every employee and volunteer, not just supervisory staff, should understand their responsibility to report behavior that they feel is not in compliance with the organization's policies and may negatively impact a patient or their family.

Every healthcare organization should have a zero tolerance policy regarding abuse, and at the same time it should prohibit retaliation against any employee or volunteer who reports a good faith complaint of abuse or who participates in any related investigation.

Sexual Abuse Prevention Program

Glatfelter Insurance Group requires a distinct sexual abuse prevention program for those organizations requesting coverage for claims arising out of allegations of sexual abuse. The details of this program can be found on our web site, www.hccis.com, under the Resources tab.

Some highlights of program requirements include:

• All employees/volunteers who work directly with patients or children during normal operations or who work with children at bereavement camps must undergo a comprehensive background check. The various reports should verify that the employee/volunteer has "stability of

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character." A comprehensive background check includes:
– Social Security Number Verification.
– Residency Information (Residency is not verified by sending mail to address.)
– Present Employment and (2) Previous Employers Verification.
– Education and Professional Licensing Verification (Must be verified with educational institution or state licensing agency.)
– Drivers License Information (MVR).
– State criminal search for each employee/volunteer who has patient contact, or a county criminal search for each county where the employee/volunteer has resided within the past five years.

- A sexual abuse policy must be in place, consistently enforced, reviewed annually with each employee/volunteer and the employee/volunteer must sign off that they have read the policy, understand the policy, received the training and will adhere to the policy.
- The sexual abuse policy will include at a minimum: a zero tolerance by the organization for these actions; appropriate definitions of sexual abuse; reporting and investigation procedures; disciplinary procedures and retaliation warning.
- Definitions of sexual abuse is "inappropriate" sexual contact including interaction for gratification of the adult who is a caregiver and responsible for the patient or child's care or any inappropriate sexual contact of a criminal nature. Sexual abuse includes sexual molestation, sexual assault, sexual exploitation or sexual injury.
- Reporting procedures should include that there be at least two persons to report to internally, such as the President/CEO or Human Resource person. Also included should be the name and phone number of your local or state Adult Protective Services (APS) agency and your local or state Child Abuse Agency. Appropriate family members should be notified of alleged instances of sexual abuse.

Bereavement Camps

Because of the unique issues involved in day or overnight camps, the following procedures should be in place for bereavement camps:

- All counselors/leaders must undergo comprehensive background checks.
- One-on-one contact in isolation between adults and youth members is not permitted.
- Where one-on-one activities such as counseling must be performed in a private environment, the meeting must be in view of other adults and youths.
- Separate sleeping accommodations must be provided for adults and youth.
- Adult leaders must respect privacy of children and teenagers in situations such as changing clothes/showering.
- Appropriate attire is required for both adults and youth.
- Training in or review of the organization's sexual abuse policy with employee/volunteer sign-off is required before any employee/volunteer works at a bereavement camp.

New Abuse Prevention Training Video

In order to assist our clients with employee and volunteer training on this topic, Glatfelter Insurance Group has just finished producing a video on Abuse Prevention Risk Management. Please check out our web site, www.hccis.com, for more information on this important new resource.

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U.S. Supreme Court Speaks

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services worker exemption to exempt certain employees from minimum wage and overtime pay. Not all home care employees are covered by this companionship services exemption.

Companionship workers must meet certain criteria to be exempted from FLSA regulations. The DOL provides guidance to the home health care industry to help determine who qualifies as a companionship services worker. The essence of these exemption requirements includes:

★ The employee must provide companionship services, meaning services for the care, fellowship, and protection of persons who because of advanced age or physical or mental infirmity cannot care for themselves. Such household services include meal preparation, bed making, washing clothes, conversation, arranging appointments, and other similar personal services and fellowship-related functions.

★ Not more than 20% of the companion employee's time in a workweek may be spent performing general household work. Where this 20% limitation is exceeded, the employee must be paid for all hours in compliance with the minimum wage and overtime requirements of the FLSA.

★ Companionship services do not include services performed by trained personnel such as registered or licensed practical nurses.

★ Services must be provided in the patient/client's private home.

Many in the home health profession have been confused by media reports of the *Coke* decision. Many reporters have used loose or sloppy language indicating the Supreme Court decided that "home care workers" are not entitled to minimum wage and overtime pay. Of course the *Coke* FLSA exemption for minimum wage and overtime pay applies only to those providing companionship services, not all "home care workers."

Additionally, the *Coke* holding only pertains to federal law, but not to individual state laws. Contact your local labor and employment attorney to learn more about your state's wage and hour laws in regards to home health care workers.

Home health care providers are also encouraged to vigorously monitor how

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their employees allocate their time when serving patients/clients. Review personnel policies and job descriptions to ensure compliance with the FLSA. It is recommended that educational opportunities are provided to supervisory personnel as well as to all domestic service employees.

Conclusion

The *Coke* decision highlights the importance of minimum wage and overtime concerns under the FLSA and state law. If the Supreme Court would have sided with Evelyn Coke, there would have been a substantial financial impact across the country on those businesses providing home care companionship services. However, the Service Employees International Union, which financially backed Ms. Coke, and other groups have pledged to make a renewed push for changes in wage and hour laws at state and federal levels to guarantee minimum wage and overtime protections for companionship workers. It will be particularly interesting to watch the 2008 presidential election to determine the long-term fate of the *Coke* decision.

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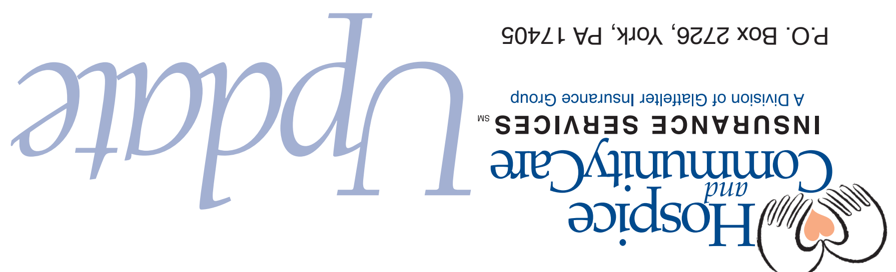

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