

ECRI's *Strategic Insights for Ambulatory Care* newsletter is being offered to CAPIC insureds at no cost. If you are interested in visiting any of the links in this edition, please contact Brad Dunkin, Assistant Vice President, at BDunkin@CAPphysicians.com.



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Strategic Insights for Ambulatory Care is a biweekly service provided by ECRI and the Cooperative of American Physicians (CAP). We welcome your comments; please send them to AmbulatoryCareRM@ecri.org.



What's New?

- Shoulder Dystocia [read more](#)
- Shoulder Dystocia Fact Sheet [read more](#)

Spotlight on Care Coordination

No single provider can accommodate every patient's needs. Both within a hospital and across organizations, providers and teams must coordinate care to ensure the patient and their doctors, nurses, other healthcare providers, family, and caregivers all know who is responsible for different parts of the patient's care and what to expect from the patient's care plan. Use these resources to understand and evaluate care coordination across levels of care and among different organizations.

- [Reality Check: I Need to Work on My Communication???](#)
- [Care Coordination and Transitions](#)
- [Communicating Medication Orders](#)
- [Safe Patient Discharge from Ambulatory Care](#)



Resource Collection: Healthcare
Team Communication

Patient Safety & Relations

Syphilis Infections Reach Highest Volume since 1950, with Stark Increases in Congenital Infection

What's the news. Syphilis infection rates increased 17.3% from 2021 to 2022, representing the greatest number of reported infections since 1950, according to [data released January 30, 2024, by the Centers for Disease Control and Prevention](#) (CDC). Congenital syphilis increased at an even greater rate (30.6%) from 2021 to 2022 and was present in 102.5 cases per 100,000 live births, representing the highest reported rate since 1991. Specifically, syphilis rates among women ages 15 to 44 years increased 17.2% from 2021 to 2022. While increases were lower among men who have sex with men (4.0% from 2021 to 2022), this group continues to be disproportionately affected, accounting for 45.1% of all primary and secondary infections among men.

Why it matters. Syphilis is treatable when it is detected and medications are promptly initiated. According to a [November 2023 CDC statement](#), nearly 90% of infant syphilis cases in 2022 could have been prevented with timely testing and treatment during pregnancy.

How ECRI can help. Healthcare organizations can implement the strategies in [Taking Action: Strategies to Combat the Congenital Syphilis Epidemic](#) to address and combat this growing epidemic.

Obtaining Informed Consent for Individuals with an Intellectual Disability

What's the news. Strategies to help providers obtain informed consent for individuals with an intellectual disability include person-centered care and effective communication between providers and patients, according to an [article published January 30, 2024, in *BMJ Quality and Safety*](#). Barriers include providers'

attitudes and lack of education, inadequate provision of accessible health information, and systemic constraints (e.g., time restraints).

Why it matters. Providers must obtain informed consent for individuals with an intellectual disability and ensure they provide healthcare information in a format patients can understand. Organizations can educate providers on accessible communication and reasonable accommodations to help improve the informed consent process and improve health equity for those with an intellectual disability.

How ECRI can help. The guidance article [Informed Consent in Office-Based Care](#) discusses guidelines for obtaining and documenting informed consent; resources to support and improve the informed consent process; and relevant laws, regulations, and accreditation standards.

Legal & Regulatory

Hackers Targeting Patients with Ransomware Attacks

What's the news. An emerging cybersecurity attack, known as double ransomware, is targeting patients if hospital systems or healthcare organizations refuse to pay hackers, according to a [Jan. 30, 2024, article in the Association for Health Care Journalists](#). More than 489 million patient records have been compromised in the last 10 years, with an average recovery cost of more than \$9.48 million per breach, according to [a 2024 report](#) from Fortified Health Security, a healthcare cybersecurity provider.

Why it matters. Ransomware incidents and other cyberattacks can have devastating consequences for organizations' operations, finances, and reputations. All healthcare organizations should establish ransomware prevention strategies.

How ECRI can help. The [Essentials: Health Information Technology](#) collection provides action recommendations and resources for addressing cybersecurity and guarding against unauthorized access to facility clinical networks and systems.

DOJ Reportedly Investigating AI in Patient Records; Viewpoint Argues for Outcomes-Centric AI Regulation

What's the news. The U.S. Department of Justice (DOJ) is evaluating artificial intelligence (AI) tools embedded in patient records to see how they influence treatment decisions, according to a [January 29, 2024, Bloomberg Law article](#). The agency is reportedly looking into situations such as one that led to a 2020 settlement in a kickback scheme, in which marketers from a pharmaceutical manufacturer and an electronic-health-record vendor allegedly built clinical decision alerts that promoted the manufacturer's products; one of the investigators in that case notes that current AI technologies may be more insidious because their changes will be harder to detect. A [viewpoint article](#) published the same day in *JAMA* argues

that AI regulation must prioritize patient outcomes by "requiring companies to demonstrate that AI tools produce clinically important differences in patient outcomes."

Why it matters. AI systems are only as good as the algorithms they use and the data on which they are trained. Shortcomings in either area can lead to inappropriate responses. The lack of transparency on AI training data and methodologies makes it difficult for healthcare professionals to judge system performance for their specific patient population.

How ECRI can help. The number five item in this year's Top 10 Health Technology Hazards list, **[Insufficient Governance of AI Used in Medical Technologies Risks Inappropriate Care Decisions](#)**, provides recommendations for establishment of a robust AI governance program to assess the risks and establish a plan for assessing, implementing, and managing devices and systems that incorporate AI functionality.

Providers' Good Faith Report to DCF regarding Birth Mother's Alcohol Consumption Was Immune from Liability

A pregnant patient provided a urine sample that tested positive for alcohol at 23-weeks pregnant. She disclosed to her obstetrician-gynecologist (OB/GYN) that prior to becoming pregnant, she experienced binge drinking episodes and that during pregnancy, she would "occasionally enjoy wine on the weekends with dessert or certain foods." Urine tests conducted during two subsequent visits were negative for alcohol.

The full-term baby was delivered without signs of fetal alcohol syndrome. The birth mother's urine at the time of delivery tested negative for alcohol. She had, however, disclosed to a hospital attendant that she consumed approximately one glass of wine per week during her pregnancy. The birth mother's OB/GYN visited the patient in the early morning two days after she gave birth and discussed the delivery with the on-call delivering physician. After this visit, pediatric staff informed the patient that she would need to meet with a social worker and that her discharge with her new infant "was in jeopardy."

The plaintiff waited in the hospital for several hours before speaking with a hospital social worker, who had reviewed the medical record, including the notes about binge drinking episodes prior to pregnancy and alcohol use during pregnancy. After a discussion with the birth mother, the social worker was concerned that she was minimizing her alcohol use and was at risk of returning to binge drinking. It was noted that the birth mother was the primary caregiver of the infant.

The social worker referred the case to the Department of Children and Families (DCF) and informed the birth mother of her decision. The plaintiff was discharged later that day. Over the next 45 days, DCF conducted an investigation that consisted of home

visits and urine screens; DCF closed the case, determining that the allegations of alcohol misuse were unsubstantiated.

The plaintiff sued the OB/GYN, the OB/GYN's medical practice, and the hospital who employed the on-call delivering physician and the social worker for breach of physician-patient confidentiality and false imprisonment. The defendants filed special motions to dismiss pursuant to the Connecticut "anti-SLAPP" statute (Strategic Lawsuit Against Public Participation).

There is a two-part test that courts conduct to determine if the special motion to dismiss will be granted. First, a party "may file a special motion to dismiss when the opposing party's complaint is 'based on' the moving party's exercise of its right of free speech, right to petition the government, or right of association under" the US Constitution "in connection with a matter of public concern."

Second, in order to prevail, the complaint must set "forth with particularity the circumstances giving rise to the complaint" and demonstrate to the court that "there is probable cause, considering all valid defenses, that the party [plaintiff] will prevail on the merits of the complaint." Since the special motion occurs early in the lawsuit (e.g., before discovery), the court reviews pleadings and supporting and opposing party affidavits attesting to the facts upon which the liability or statutory defense is based.

Here, the Connecticut Superior Court found that the facts of the case fell within the anti-SLAPP statute, agreeing with the defendants' arguments that by notifying DCF in good faith, "they were petitioning the government on a matter of public concern" (e.g., protecting at risk children) and not a matter of "intimate private concern" as the plaintiff contended. The court cited cases that concluded that reporting the "risk of injury to a child's health through the act or omission of a parent is a matter of public concern within the meaning of the statute." The court held that the defendants satisfied part one of the test for granting the special motion to dismiss.

Next, the court analyzed whether the complaint was set forth with sufficient particularity that when considering whether there was "probable cause, considering all valid defenses, that the party [who brought the complaint] will prevail on the merits of the complaint." If the plaintiff would prevail, the court would deny the special motion to dismiss.

The court found that there was evidence to establish a reasonable belief that the child was at imminent risk of harm. The reporting statute does not require certainty or probable cause before a provider can report a concern, nor does the investigation need to substantiate the report in order for the reporters to be immune from liability. The court also found that the facts as asserted in the complaint were sufficiently particular to show that the plaintiff would not prevail. The court went on to mention that the social worker had a mandatory duty to report such concerns to DCF.

The court found that the defendants had a reasonable, good faith basis to file the report with DCF based on the evidence of prior alcohol misuse and therefore were immune from any liability pursuant to mandatory reporting requirements. The court also found that the plaintiff's second claim of false imprisonment was not sufficiently

supported in the facts described in the complaint. Therefore, the claim could not survive the second part of the SLAPP analysis (e.g., no specific information regarding the amount of time the birth mother was detained against her will, no evidence of the use of physical restraints, and no show of force). The plaintiff was unable to demonstrate that they would prevail on the merits of this claim.

The court granted defendants' motions for special dismissal; the court also awarded costs and attorneys' fees to be paid by the plaintiff in accordance with the statute. (*Rye N. v. Cortland*, No. HHD-CV-23-5077497-S, 2023 Conn Super. Ct. LEXIS 3169, 2023 WL 8446512 [Conn. Super. Ct. Nov. 30, 2023].)

ECRI Resources:

- [Child Abuse Reporting](#)
- [Mnemonic for Documenting Child Abuse](#)

ECRI Commentary: Child abuse is a form of adverse childhood event that is perpetrated by a parent or caregiver. Although not all injuries to children constitute child abuse, child abuse is a widespread public health problem. Every state has some form of reporting requirement, though specifics vary by state.

Certain people, such as those who engage with children on a daily basis and many healthcare providers, are required to report any incidents of suspected child abuse. These reporters may be mandated (required to report) or permissive (allowed to report and receive statutory protections). Additionally, reporters of child abuse often obtain qualified immunity from liability for any injury suffered by the alleged perpetrator as a result of the report, as long as the report was made in good faith without malice. Penalties or liability may be incurred for not reporting when abuse is reasonably suspected, but this varies considerably by state. Individuals and facilities who work with children must be familiar with the laws of their state to avoid adverse repercussions, both for children and for reporters.

Healthcare organizations and providers should be knowledgeable about the state mandatory reporting requirements applicable to their license.

This abstract is a summary of a recent court decision, verdict, settlement, or other action affecting healthcare organizations and their risk management programs. When reviewing this abstract, keep in mind that laws and court decisions vary among jurisdictions and that decisions of lower courts may be overturned on appeal. For specific legal guidance regarding the significance or applicability of this decision, contact legal counsel.

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