

From the *Journal* Committee 2

Articles

Statewide Poverty Health Law Programs: Necessary to a Legal Aid Delivery System 3
By Miriam Hartz and Katy DeBriere, Florida Health Justice Project

Feature Articles

Crossword Puzzle — What Doesn't Kill You... 6

Fundraising: Missed Opportunity: Foundations and Support for Civil Legal Aid 7
By Lonnie A. Powers and Stephen P. Johnson

Technology: How Feedback and Collaboration Drive Innovation 11
By Russ Bloomquist, Maryland Legal Aid

Book Review: Bending the Arc Toward Justice, By Col Owens 14
Reviewed by Richard A. Cullison

New-to-You: Profile of a Recently Appointed Executive Director in Legal Aid: Audra Wilson 16

Special Feature: Transformation

“We’re Not Alright”: Creating Organizational Support for Pandemic-Related Impacts to Employee Well-Being 18
By Aimee Patras, MSW, Emily Hickman, MSW, and Elizabeth McLaren, MSW, Indiana Legal Services

Pandemic-Era Legal Aid Communications: What’s Working in Pennsylvania 22
By Brianna Bosak, Pennsylvania Legal Aid Network, Inc.; Erin Davison, Philadelphia Legal Assistance; and Marion Hoffman Fraley, Legal Aid of Southeastern Pennsylvania

Connecting with the Community during COVID-19 26
By Christine Miller, Esq., Legal Aid Center of Southern Nevada

Advocacy in the Age of COVID 29
By Michael Forton and Farah Majid, Legal Services Alabama

Remote Justice for Survivors: A Domestic Violence Hotline and a Remote Hearing Studio 32
By Julianna Lee, Legal Aid Foundation of Los Angeles

Pandemic Reflections 34
By Rowena Jones, Southeast Louisiana Legal Services

Adapting to the Challenge of the Pandemic and Building Community 35
By Kate Marr, Community Legal Aid SoCal

Pro Bono Lessons Learned and Transformation in the Time of COVID-19 38
By Kesha James, Legal Aid of Southeastern Pennsylvania, and Jayme Cassidy, Legal Services of Greater Miami, Inc.

Surviving COVID-19: How to Keep Going Even If You Cannot Get Out of Bed 41
By Kathleen M. Flaherty, Connecticut Legal Rights Project, Inc.

“If Not Now, When?” 43
By Tanya Pietrkowski, CARPLS

Securing and Transforming Social Safety Net Access during a Pandemic 45
Thoughts from Juliana Repp and Alex Doolittle; Compiled by Merf Ehman

Mission Possible: Practical Strategies for Changing Organizational Culture 49
By Jan Allen May



**SPECIAL FEATURE:
TRANSFORMATION**



STATEWIDE POVERTY HEALTH LAW PROGRAMS: NECESSARY TO A STATE'S LEGAL AID DELIVERY SYSTEM

By Miriam Harmatz, Advocacy Director, and Katy DeBriere, Legal Director¹
Florida Health Justice Project

Introduction

In the most recent Legal Services Corporation (LSC) survey measuring the unmet civil legal needs of low-income Americans, the top ranked civil legal problem was health.²



Miriam Harmatz (L); Katy DeBriere (R).

Notwithstanding that fact, in a number of states, few legal resources are available to residents who face systemic barriers to needed medical care. From the perspective of two poverty health lawyers in one such state, this article discusses why that “disconnect” exists and how a statewide health law program can mitigate the delivery system's challenges and help enforce the healthcare rights of low-income clients.

Why the Disconnect?

1. Health Law Is Complicated

It has been thirty years since the Supreme Court described Medicaid laws and regulations as a “morass of unparalleled complexity” that is “almost unintelligible to the uninitiated,” and Medicaid's complexity has only grown in the intervening years. *Schweiker v. Gray Panthers*, 453 U.S. 34, 43, 101 S.Ct. 2633, 69 L.Ed.2d 460 (1981)(citations omitted). More colorful descriptions have likened Medicaid law to a “Serbonian bog” and an “aggravated assault on the English language.” *Feld v. Berger*, 424 F. Supp. 1356, 1357 (S.D.N.Y. 1976); *Friedman v. Berger*, 408 F.Supp. 1225, 1225-26 (S.D.N.Y. 1976).

Obtaining Medicaid coverage is often only the first step to getting health care, particularly for those with

complex medical needs. Most state Medicaid programs now provide services to eligible clients through managed care companies, and Medicaid managed care contractors' cost control processes and provider network deficiencies can create insurmountable obstacles to accessing medically necessary services.

Additionally, in the twelve states that have not yet expanded Medicaid under the Affordable Care Act (ACA), the vast majority of adults who are eligible for legal services are in the “coverage gap” and must rely on local safety net providers for their care. A patchwork of federal, state and local authority provides some “legal handles” for addressing local safety net barriers and billing issues. However, identifying and applying applicable authority in order to secure access for individual clients and address systemic local barriers can be complicated, and safety net advocacy is an underutilized tool.

2. Most Legal Aid Programs Lack Experienced Poverty Health Lawyers

With notable exceptions,³ most legal services organizations do not have staff dedicated to securing their clients' health care rights through either Medicaid federal court actions, state court appeals, Medicaid hearings at the state administrative level,⁴ ACA marketplace appeals,⁵ or local indigent care system advocacy. This staffing issue is understandable as it is challenging for legal services programs to develop the in-house expertise needed for complex advocacy given the funding landscape.⁶

3. Local Programs Generally Do Not Address Statewide Systemic Medicaid Issues

As Medicaid is a statewide program, addressing a barrier for an individual client may require a systemwide corrective action. However, even among those programs that do engage in Medicaid litigation, (again with notable exceptions),⁷ most local

© STATEWIDE POVERTY HEALTH LAW PROGRAMS
Continued from page 3

programs, in contrast to statewide programs, do not approach individual cases through a lens of identifying and addressing underlying systemic statewide issues. And while LSC regulations do not prevent federally funded programs from addressing systemic Medicaid issues through injunctive and declaratory relief, most programs do not undertake necessary systemic challenges without significant support, including co-counseling, from state or national health law experts.⁸

Additionally, certain systemwide Medicaid issues which require enforcement action do not present through an individual client seeking assistance from a local program. In those instances, the advocacy needed to address the problem generally more clearly falls within the scope of a statewide program's mission as opposed to a local program's mission. *See, e.g. Wright v. AHCA*, (discussed below), challenging the state Medicaid Agency's refusal to publish final hearing orders.

4. Clients Don't Know They Have Rights and/or Don't Seek Legal Assistance

Completing the "disconnect" is the fact that most low-income clients who are either uninsured or who rely on Medicaid do not know that they have health law rights. If someone is served with an eviction notice, or denied eligibility for Social Security benefits, or their unemployment application is delayed, many know to seek assistance at their local legal aid program. By contrast, most people on Medicaid whose medically necessary services are denied, terminated or reduced, or who are uninsured and receive a bill from a local nonprofit hospital, often do not know that they may have enforceable legal rights.

Even when clients do pursue a Medicaid appeal, many do not request assistance at their local legal aid program. This includes some of the most vulnerable clients: children with complex medical conditions, pregnant women, and seniors with severe cognitive and physical disabilities. When their Medicaid-covered services are denied, terminated, or reduced (and after first exhausting their managed care plan's appeal process), individuals are entitled to an administrative hearing before the state Medicaid agency. The issues at stake are profoundly important, e.g., whether a child or senior can receive the home health services needed to remain out of an institution, or whether someone with a life threatening illness can get coverage of an expensive prescription drug. However, at least in Florida (and

with a few notable program exceptions), few seek and/or are provided representation by a legal aid lawyer.⁹

Additionally, the most vulnerable individuals in need of advocacy assistance, like those in nursing homes or at risk of institutionalization, are even less likely to access legal aid.

In sum, limited funding for health law advocacy in legal services, combined with clients' limited understanding of their health law rights creates a false narrative. The lack of "demand" by clients for health related legal services perpetuates the lack of lawyers "supplied" to provide these services. In reality, demand far outstrips supply. As noted, health law remains the number one unmet civil legal aid need.

How to Address the Disconnect?

As described above, the underlying reasons for not meeting the health needs of low-income Americans cannot simply be addressed by local legal services programs. Rather, it is also essential to include a program with in-house expertise in health law advocacy in state delivery systems.

For the last 50 years, poverty health lawyers across the country and millions of low-income Americans have benefited from services provided by the National Health Law Program (NHeLP).¹⁰ The residents of California have been particularly fortunate to have their own statewide NHeLP office.¹¹ Additionally, after 1996, a number of essential statewide poverty health law programs were founded.¹²

The remainder of this article will discuss how a relatively new statewide program, Florida Health Justice Project (FHJP), is helping to address unmet civil health law needs.¹³

1. Identifying and Addressing Systemic Barriers and Protecting Due Process

There will never be enough lawyers in a state's delivery system to represent every client with a meritorious health law case. And, because many individual cases are representative of systemwide issues in the state's Medicaid program, FHJP's approach, like all statewide programs, is to identify and address systemic issues. As a result of longstanding networks and ongoing referrals from providers, legal aid lawyers, medical legal partnerships and members of the private bar, FHJP is well positioned to identify and address systemic issues that violate the health law rights of vulnerable Floridians. For example, FHJP joined forces with a local legal aid program, a national program and the state's disability rights program in addressing the state's improper

termination of Medicaid for a class of beneficiaries.¹⁴

Much of FHJP's systemic Medicaid work is guided and supported by a Health Law Partnership (HLP) with NHeLP. As part of the HLP, enforcement strategies are developed to address identified systemic issues if administrative advocacy fails to achieve needed corrective actions. For example, the HLP recently filed litigation challenging the state Medicaid agency's refusal to publish final orders after administrative advocacy failed.¹⁵

2. Helping to Ensure Access to Justice

Among those individuals seeking judicial review of an adverse Medicaid hearing order are parents of minor children and parents/adult children of adults. Under state and federal law, these individuals are "real parties in interest," and thus have standing in their own right to appeal adverse Medicaid fair hearing decisions. Through work with the Florida Bar Elder Law Section's Medicaid Committee, FHJP became aware that the state Medicaid agency had requested that the Bar issue an affirmative opinion that "*parents/relatives of Medicaid beneficiaries assisting in the appeal of an adverse Medicaid fair hearing decision constitutes the unlicensed practice of law (UPL)*." Given the fact that so few legal services attorneys provide assistance in appeals and the enormous significance of the issues at stake, FHJP provided exhaustive template comments and organized state and national legal aid leaders in urging the Bar to answer the question in the negative. As the UPL issue remains unsettled, there is a need for continued advocacy to ensure that those wishing to appeal an adverse Medicaid fair hearing decision can do so. These tasks are uniquely suited to a statewide health practice.

3. Expanding the Capacity of Legal Aid Lawyers to Identify and Protect Clients' Health Care Rights by Providing Needed Tools and Trainings

In order to support legal services attorneys who are helping clients obtain Medicaid coverage and services, FHJP provides technical assistance, tools and trainings, e.g., the *Advocate's Guide to the Florida Medicaid Program*, the *Advocate's Guide to the Florida Long-Term Care Program*, and the Florida Elder Justice Conference. See, e.g., <https://www.floridahealthjustice.org/guide-to-long-term-care-medicare-waiver.html>; <https://www.floridahealthjustice.org/florida-elder-justice-conference.html>.

4. Providing Consumer Tools and Outreach Materials

As noted above, most clients do not know they

have health care rights. Thus, there is a tremendous need for creation and dissemination of *Know Your Rights* materials, including consumer friendly videos that explain critical and complex programs and issues, see e.g., video for low-income individuals requiring a nursing home level of care and needing home and community based services in order to avoid institutionalization, <https://www.floridahealthjustice.org/medicaid-hcbs.html>, and video explaining the coverage gap, <https://www.youtube.com/watch?v=ZxskwK36e40&t=7s>.

5. Providing Tools for Advocates and Consumers in Response to the Pandemic

As a statewide health law program, FHJP can also address the need for health law advocacy related to COVID, including training, outreach, analysis of policy options and creation of tools for advocates and consumers. See, <https://www.floridahealthjustice.org/covid-19.html>

Funding Approaches

It goes without saying that nothing can be accomplished without funding to staff and support the types of activities described above. In addition to foundation funding, statewide health law programs have generally been supported through two sources: grants from the state's Interest on Lawyers' Trust Accounts (IOLTA) programs and contracts from local programs to provide technical assistance and support.¹⁶ With regard to IOLTA, a critical funding source, state legal aid leaders and management should be aware of a current challenge to Florida's program which is referred to as Interest on Trust Accounts (IOTA). This challenge, if successful, would exclude the types of activities described above (e.g., outreach, education, training, and systemic enforcement strategies) from eligibility for Florida's IOTA funding.¹⁷

Conclusion

In sum, addressing the unmet civil legal health needs of low-income Americans requires funding and support for state health law experts who can develop and share tools, provide technical assistance, identify and address systemic issues, and collaborate effectively with local legal aid programs.

1 Miriam Harmatz served as Florida Health Justice Project (FHJP)'s first executive director for three years. She currently serves as Advocacy Director. Prior to FHJP,

© STATEWIDE POVERTY HEALTH LAW PROGRAMS
Continued from page 5

she worked as a legal services attorney for 35 years. This work included ten years as a Staff Attorney and Public Benefits Unit Co-Director at Legal Services of Greater Miami, Inc. and more than 20 years as a Senior Health Law Attorney at Florida Legal Services. She also worked for two rural legal services programs, Micronesian Legal Services and Appalachian Research and Defense Fund of Kentucky, Inc., where she handled high caseloads of individual direct service cases. As someone who has worked in both local and statewide programs, and as both a generalist and a specialist, Miriam is keenly aware of the need to support a delivery system that not only provides a large volume of direct representation, but also effectively shares expertise and institutional knowledge, and identifies and addresses systemic issues in complex areas of poverty law, including healthcare. Miriam may be reached at harmatz@floridahealthjustice.org.

Katy DeBriere is the Legal Director for the Florida Health Justice Project. Prior to her role at FHJP, Katy managed the Northeast Florida Medical Legal Partnership at Jacksonville Area Legal Aid, Inc. (JALA) where she secured external funding from the partner healthcare system for the first time in the project's 12 year history. Her time at JALA cemented a belief that health law plays a key role in the success of medical-legal partnerships: gains made for legal services' clients best demonstrate the direct return on investment to potential healthcare funders and, more importantly, the model uncovers systemic issues that may otherwise go unidentified. Katy began her career in 2008 as an Equal Justice Works fellow with a statewide program, Florida Institutional Legal Services, where she represented individuals with developmental disabilities involved in the criminal justice system, dedicating a significant portion of her time to advocating on behalf of Medicaid Home and Community Based Service waiver enrollment and services. Katy may be reached at debriere@floridahealthjustice.org.

Authors' note: while a number of the observations in this article apply nationally, the discussion is framed through the authors' extensive experience working within Florida's legal services' delivery system.

- 2 Legal Services Corporation, *The Justice Gap - Measuring the Unmet Civil Legal Needs of Low-income Americans*, June 2017: <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> at 23.
- 3 Notable exceptions include: Legal Services of Eastern Missouri, Legal Aid of Arkansas, Legal Services of New

Jersey, Southeastern Michigan Legal Services, Georgia Legal Services Program, Indiana Legal Services and Southeast Louisiana Legal Services.

- 4 E.g., in Florida, between April 2019 and 2020, the Medicaid agency issued over 3000 final fair hearing orders. The vast majority of beneficiaries in Medicaid fair hearings represented themselves; less than 1% were represented by a legal aid attorney as most Florida legal services programs do not represent clients in Medicaid appeals.
- 5 One Florida program, Coast to Coast Legal Aid of South Florida, Inc., has a staff member who handles complex ACA marketplace cases and appeals.
- 6 The public health crisis caused by COVID-19 and the renewed attention to health care inequality based on race could provide programs an opportunity to seek local funding for needed health rights' work. Statewide health law programs can be a valuable partner for legal aid programs in pursuing local foundation funding.
- 7 See, *supra* note 3.
- 8 See, e.g., *Hiltibran v. Levy*, 793 F. Supp. 2d 1108 (W.D. Mo. 2011)(Legal Services of Eastern Missouri and National Health Law Program (NHeLP)); *Rose v. Azar*, No. 1:19-cv-02848 (D.D.C.) (Indiana Legal Services and NHeLP); *Gresham v. Azar*, 950 F.3d 93 (D.C. Cir. 2020) (Legal Aid of Arkansas and NHeLP); *Crabtree v Goetz*, 2008 WL 5330506 (M.D. Tenn. 2008) (Legal Services of Middle Tennessee and NHeLP); *Smith v. Benson*, 703 F.Supp.2d 1262 (S.D. Fla. 2010) (Florida Legal Services and Legal Services of Greater Miami); *K.G. ex rel. Garrido v. Dudek*, 839 F. Supp.2d 1254 (S.D. Fla. 2011) (Florida Legal Services and Legal Services of Greater Miami).
- 9 See, *supra* note 4.
- 10 The National Health Law Program (NHeLP) is a 50-year-old legal organization that engages in litigation, administrative and legislative advocacy, and training and analysis at the federal and state levels. NHeLP partners with and provides guidance on Medicaid and other health care issues affecting low-income people to legal services, disability rights, and other public interest lawyers around the country. NHeLP has been counsel or advisor on most of the significant Medicaid cases brought in the U.S.
- 11 NHeLP's California office engages in litigation and administrative advocacy focusing on health issues that affect low-income people in California. It is part of the Health Consumer Alliance and provides assistance and training to local programs in the state. It has played an essential role in the state's efforts to expand and secure access to care.

12 Some examples of statewide programs include: Tennessee Justice Center, Northwest Health Law Advocates, Massachusetts Law Reform Institute, Legal Council for Health Justice, Pennsylvania Health Law Project, and Health Law Advocates.

A similarly effective model was also established that supported in-house health law experts in unrestricted programs, e.g., Charlotte Center for Legal Advocacy, New Haven Legal Assistance, South Carolina Appleseed Legal Justice Center, Virginia Poverty Law Center, Shriver Center on Poverty Law, Oregon Law Center, and a number of state protection and advocacy systems, such as Alaska, have assumed the role of a statewide health law program. Health law experts at these programs have been providing essential advocacy and services that have vastly improved their state's capacity in addressing and securing health care rights for clients.

- 13 Like other statewide health law programs, FHJP also leads and participates in coalition work focused on legislative and administrative advocacy, as well as story sharing, see www.floridahealthstories.org.
- 14 In *Harrell, et al. vs. Poppell, et al.*, FHJP filed a class action lawsuit on behalf of beneficiaries who were either adopted or have a disability and who were improperly terminated from Medicaid without the state having first examined their continued eligibility under all Medicaid categories (referred to as Medicaid's "ex parte review" requirement). A settlement was reached in February 2020, and in February 2021, FHJP confirmed that the state undertook all promised corrective action, reinstating over 32,000 Floridians to Medicaid, a crucial benefit for vulnerable individuals — especially during the ongoing pandemic. The agreement includes extensive staff training, redrafting of agency policies and notices, and investment in technology to automate eligibility reviews. See, https://www.floridahealthjustice.org/uploads/1/1/5/5/115598329/dkt_23-1__harrell_settlement_agreement.pdf.
- 15 This lawsuit, if successful, will provide access to precedent, thus improving the advocacy community's capacity for effective assistance. Currently, without the ability to review "precedent," the attorneys who provide Medicaid appeal assistance cannot fully understand the factual basis and policy reasons for agency and managed care plan actions. See, <https://wusf.org/advocates-sue-ahca-over-medicare-records/>
- 16 For example, in Washington State, Northwest Health Law Advocates contracts with the statewide legal services provider, Northwest Justice Project, to provide state support and permissible advocacy on low-income health care cases and issues using state legal services funds.

17 The Florida Supreme Court convened a Taskforce on the Distribution of IOTA Funds which proposed a new rule that would eliminate the availability of IOTA funds to support the types of activities outlined in this article. See, Case No.: SC20-1543, *In Re Amendments to Rule Regulating the Florida Bar 5-1.1(g)* at <http://onlinedocketssc.flcourts.org/DocketResults/CaseByYear?CaseNumber=1543&CaseYear=2020>. There has been considerable opposition to the proposed rule, including from the Pro Bono Legal Services' Committee of the Florida Bar, 34 Florida Bar Past Board Presidents, and the National Legal Aid & Defender Association. FHJP's comments can be found at <https://www.floridahealthjustice.org/publications--media/fhjp-comment-letter-to-task-force-on-distribution-of-iota-funds>.

☉ PANDEMIC-ERA LEGAL AID COMMUNICATIONS
Continued from page 25

pandemic on two local radio stations that are favored by our older clients.

What's Next for Legal Aid Communications?

As legal aid organizations emerge from the pandemic, most advocates anticipate a hybrid approach: keeping some virtual enhancements developed during COVID-19, while returning to some in-person service delivery models. Increased collaboration between legal advocates and communications staff have strengthened the service delivery model of our individual organizations and as a network. But just as the pandemic has reinforced social and economic inequalities, it has also amplified existing disparities in digital literacy and accessibility.

Individuals and families without reliable access to the internet, or who are not fluent in English, receive less information about available assistance programs and other legal support. Pennsylvanians with sensory impairments also face digital communications barriers. For instance, people with visual impairments, who use screen readers like Job Access With Speech (JAWS), often scroll past social media graphics detailing critical services that lack alternative captions. Communications and outreach professionals in our network are working to bridge these digital divides. For example, many PLAN programs increasingly utilize alt-text in Twitter and LinkedIn posts and also link to websites that provide accessible content for screen readers. Our programs also collaborate with bilingual staff and translation services to ensure that communications are readily available in a client's preferred language.

Nevertheless, some clients' information needs still go

Continued on page 55