Academy for Health Equity Advocacy and Leadership

Seminar Three | Connecticut State Government, State Legislature and Courts

May 19-20, 2017

PRE-READ MATERIAL

Health Equity Advocacy in the Nutmeg State:
Understanding the Roles and Influences of Connecticut
State Government, Legislature, and Politics on Policymaking

Judith Blei, Judith Blei Government Relations
Alison Johnson, Johnson Public Policy Consulting

Friday, May 19th | 9:30am

Understanding the Roles and Influences of Connecticut State Government, Legislature, and Politics on Policymaking - *Case Study: The Budget Process*

1. **The Governor Malloy's Budget Address - 2/8/17**

   http://www.ctn.state.ct.us/ctnplayer.asp?odID=13728

   Listen to any two minutes from this address

2. **OPM Secretary Ben Barnes Briefing to Appropriations Committee - 2/10/17**

   http://www.ctn.state.ct.us/ctnplayer.asp?odID=13740

   Listen to any two minutes from the first hour

3. **Appropriations Committee Health Subcommittee Meeting with State Agencies on the Governor's Proposed Budget - 2/23/201**

   http://www.ctn.state.ct.us/ctnplayer.asp?odID=13776

   Listen to as much of segment from 02:30 to 32:00 as possible – 30 minute testimony by and exchange with Department of Public Health Commissioner

4. **Appropriations Committee Public Hearing on the Governor's Budget for State Health Agencies - 2/23/2017**

   http://ct-n.com/ctnplayer.asp?odID=13779

   Listen to a few people, ideally segments from:
   - Charisse Lewis-William - hour 4:05 to 4:08 (3 minutes)
   - Amber Richkowski, client, School Based Health Center - hour 3:52-3:53 (2 minutes)
   - Jessie White Fresse, School Based Health Centers - hour 4:15 - 4: 18 (3 minutes)

5. **Appropriations Committee Meeting - 4/25/17**

   http://www.ctn.state.ct.us/ctnplayer.asp?odID=13989

   Listen to meeting - entire meeting is 3 minutes

Optional Exercise

Browse Testimony from Feb. 23 Appropriations Committee Hearing

- Go to the legislative website - https://www.cga.ct.gov/
- Choose Committees (at the top)
- Choose Appropriations (on the left)
- Choose Public hearings (on the right-hand side)
- Choose Testimony
- Choose 2/23/17 – notice volume of testimony
- Browse testimony, especially relating to School Based Health Centers (scroll down to find)

Under the Dome: Update from Washington DC

Licy Do Canto
President, The Do Canto Group, LLC

Friday, May 19th | 11:45am

Obamacare Repeal Bill Squeaks by in House
President Donald Trump and Speaker Paul Ryan notch a huge win, though the measure faces an uncertain fate in the Senate.

Diagnosing the Connecticut State Budget: What's at Stake for Health Equity and the Underserved in the Nutmeg State?

Keith Phaneuf
The Connecticut Mirror

Friday, May 19th | 2:00pm

CT's tax revenue plunge bottoms out at $1.5B
Connecticut's latest budget nightmare became reality Monday

Malloy, CT lawmakers to begin closing $5B in red ink
When Gov. Dannel P. Malloy and legislative leaders return Monday to the Capitol, they will begin a daunting task.

Malloy plan hands poorest municipalities a life preserver and an anchor
Gov. Dannel P. Malloy wants to help Hartford and Connecticut's poorest communities stabilize their local budgets.

Towns ask why CT officials won't touch teachers' pensions
State officials are considering shifting hundreds of millions of dollars in skyrocketing teacher pension costs onto municipalities — but not providing options to reduce those costs.

The Legal Side of Health Equity: Using Litigation and Advocacy to Ensure Health Equity

Bonnie Roswig, Center for Children's Advocacy
Kristen Noelle Hatcher, Connecticut Legal Services
Giovanna Shay, Greater Hartford Legal Aid

Moderator: Licy Do Canto, The Do Canto Group

Friday, May 19th | 11:45am

Please See the Pages that Follow

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Health Policy Litigation & Intervention: Shaping the Healthcare Landscape for Connecticut's Children

By Attorneys Jay E. Sicklick and Bonnie Roswig

CCA Mission: The mission of the Center for Children's Advocacy is to promote and protect the legal rights and interests of poor children who are dependent upon the judicial, child welfare, health and mental health, education, and juvenile justice systems for their care.

Medical Legal Partnership Mission: *It is the mission of the Center for Children's Advocacy's Medical Legal Partnership Project ("MLPP") to improve low income children's health outcomes through interdisciplinary medical-legal collaboration in the health care/clinical setting.*

<u>Achieving Policy Goals Thru Legal Intervention</u>

Legal Intervention Model: Our integrated work with clients in the health and education systems provides for education, screening and individual legal advocacy which allows CCA to develop strategies for policy and systemic change thru legal intervention.

I. Behavioral Health Screenings: The *Rosie D.* Model[1]

The Issue: Developmental and Behavioral Screenings of children under twenty-one insured thru the state's Medicaid/HUSKY A program.

How it arose: Providers with whom the MLP works frequently consulting with MLP attorneys about behavioral health access and early intervention strategies for Medicaid/HUSKY insured children in their practices.

Legal Strategies: Investigation of the state's Behavioral Health Partnership and its data regarding developmental and behavioral health screenings required by federal Medicaid law (the "Early Periodic Screening Diagnosis and Treatment" [EPSDT] program under 42 U.S.C. §1396d, *et seq.*)

Data results: Connecticut's rate of reported screenings under EPSDT was abysmally low, as reported by the state Department of Social Services.

[1] <u>See</u> Exhibit A in packet.

Action Plan: CCA proposed legislation in January 2012 requiring DSS to convene task force to study early screening measures and looking at behavioral health system's capacity to meet the needs of children with behavioral challenges.

Legal Strategy: Threat of impact litigation mirroring the *Rosie D. v. Romney* case filed in Massachusetts. See www.rosied.org/. *Rosie D.* required the Commonwealth of Massachusetts to initiate a required behavioral health screening program and to revamp the entire behavioral health infrastructure for children insured under Medicaid.

The Result: DSS agreed to work with CCA and invite broad range of stakeholders to meet, investigate and create and action plan to increase developmental and behavioral health screenings to children insured thru Medicaid/HUSKY.

Participants: CCA, DSS, Departments of Children and Families, Developmental Services (Birth to Three), Education, Office of Policy and Management, CT Behavioral Health Partnership, Conn. Association of School Based Health Centers, Community Health Network of Conn., Child Health & Development Institute of Connecticut, Conn. Chapter of the Academy of Pediatrics & Child and Adolescent Psychiatrists …

The Result: Working Group recommendations issued March 19, 2013 summarizing the issue, meetings and information collected and presenting eight recommendations, including but not limited to:

1. Requiring primary care providers who are authorized to receive payments under the state's Medicaid/HUSKY program to preform annual behavioral health screens using a validated screening instrument.
2. Providers to receive payment for implementing screens in the amount of $18 per screen annually.
3. Data collection and semi-annual task force meetings to assess data and provide feedback and follow up.
4. DSS participate in the formation of a child psychiatry access program as enacted by the Conn. General Assembly.

II. Non-Emergency Medical Transportation[2]

The Issue: DSS Oversight and Accountability for ensuring Non-Emergency Medical Transportation (NEMT) for Medicaid/HUSKY recipients in the state of Connecticut. The State, thru DSS, contracts with a third-party vendor (Logisticare) to provide NEMT for the Medicaid program.

[2] See Exhibit B in packet

How it Arose: Repeated complaints from medical providers, partner healthcare institutions and patient/clients regarding the unreliability of NEMT *and* repeated violations of physician requests for particular services (e.g. "no shared rides" orders).

Legal Strategies: DSS, as oversight agency responsible for implementation and oversight of NEMT legally obligated to provide transportation in a non-discriminatory fashion. Legal strategy employed invoked statutory and constitutional framework alleging DSS's repeated violations of:

a. Federal and state Medicaid laws
b. The Americans with Disabilities Act (ADA)
c. Federal and state constitutions (notice and opportunity to be heard – Due Process)

The Result: Ongoing advocacy, threat of litigation and Special Act 16-8, **An Act Concerning Nonemergency Medical Transportation for Medicaid Patients.** Bill passed by the Connecticut General Assembly (CGA), vetoed by governor Malloy, and overridden unanimously by the CGA. Act requires DSS to issue RFP and implement "new service delivery model" for NEMT. RPF to be issued on or before November 1, 2016.

The Aftermath: DSS extends contract with Logisticare thru December 31, 2017 despite requirement that RFP required new contract to commence on April 1, 2017. See www.courant.com/news/connecticut/hc-logisticare-medical-rides-contract-extended-0422-20170421-story.html.

III. Expulsion Litigation – Ensuring Educational Access for At-Risk Youth[3]

The Issue: Expelled students in Connecticut – those most at risk for juvenile delinquency and recidivistic behavior – not provided with a constitutionally guaranteed educational opportunity as required by the Connecticut state constitution.

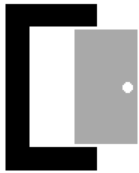
How it arose: Educational disparity in the state for the most at-risk students who are expelled from regular education setting. Students identified as special education are guaranteed that their Individualized Education Plans (IEP's) are honored after expulsion, but the differences in educational opportunities for expelled students varied tremendously amongst school districts, having the greatest disparate impact in districts where the majority of students of persons of color.

[3] See Exhibit C in packet

The Legal Strategies: Allegations that particular school districts and the state of Connecticut (thru the Department of Education) violated students' fundamental right to an education as guaranteed by the state Constitution, and fundamental right to equal protection under that state and United States Constitutions.

Action Taken: Three plaintiffs filed a complaint in state court alleging these violations in December 2015, *Alicia B., et al v. Malloy, et al*.

The Result: Litigation actively pursued by plaintiffs and vigorously defended by the state of Connecticut. The three cities brought as party defendants, Hartford, Manchester and Bloomfield, settled with the plaintiffs by March 1, 2017. The settlements included policy changes to the Boards of Education provisions for expelled students and notice to students about the educational rights of expelled students. The plaintiffs are still in negotiation with the state – with oral argument heard on the Motion to Dismiss set to be heard September 8, 2017. In addition – the General Assembly enacted legislation in 2016 establishing an expelled student's right to an education. See Public Act 16-147, An Act Concerning the Recommendations of the Juvenile Justice Policy and Oversight Committee. www.cga.ct.gov/2016/ACT/pa/2016PA-00147-R00HB-05642-PA.htm. Pending workgroup has convened to discuss the practical enactment in PA 16-147.



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Due Process and Notice Rights for Medicaid Enrollees
Presented by Kristen Noelle Hatcher[i]

This purpose of this handout is to provide you with some general information about the Medicaid program and the legal requirements if care is reduced or denied. This will be helpful information when we discuss two cases during the presentation that involve denials without proper notice.

Medicaid

The Medicaid program was established in 1965 to provide Medical care to low income people. The program provides financial assistance to states that incur the cost of medical care for low-income individuals. A state electing to participate in Medicaid must submit a plan to the Center for Medicare and Medicaid Services (CMS). This plan is an agreement between the state and the federal government that details how the program will be administered in compliance with federal rules. A state will receive matching funds for covered services from the federal government. There are certain benchmark services that must be provided if a state choses to offer Medicaid. States can obtain waivers to offer more or less, these waivers must be approved by CMS and in CT they must also be approved by our legislature. If a doctor deems a service medically necessary, then the service must be provided under the medical necessity doctrine.

Quick facts

- Nearly 750,000 CT residents covered by Medicaid
- Single Adults without children in the household under the age of 65 up to 138% FPL
- Parents up to 155% FPL
- Children up to 201%FPL (CHIP 201-323% FPL)
- Pregnant Women 263% FPL
- Over 65, Disabled- SSI or SSDI below poverty threshold asset below $1600 or $2400 couple
- 20% of children have special healthcare needs and 44% of those children are cover under Medicaid

Although Medicaid is available to children and families in Connecticut up to 201% of the federal poverty level, many have incomes far below that guideline. Thus, with rare exceptions, Medicaid beneficiaries lack the resources to pay upfront at the drug store to obtain a prescribed drug denied at the pharmacy or for a visit to the doctor- even a nominal copay.

Medicaid clients are generally sicker than the general population, with a significantly higher incidence of chronic disease. *See Schweiker*, 457 U.S. 569, 590 (1982); *Vargas v. Trainer*, 508 F.2d 485, 489 (7th Cir. 1974). Since Medicaid patients tend to

be less healthy than the rest of the population, given their poverty and disproportionate representation of individuals with chronic disease, they are more dependent on prescription drugs. Difficulty navigating a prior authorization system and eligibility system leads to increased emergency mental health services and increased institutionalization (often irreversible), both increases incurred at state expense. Somerai, *Effects of Limiting Medicaid Drug-Reimbursement*; Stephen B. Somerai, *et al.*, *Effects of Medicaid Drug- Payment Limits on Admission to Hospitals and Nursing Homes*, New Eng. J. Med., 1991; 325:1072-1077.

If they receive accurate oral information from their pharmacist and providers about the eligibility process, and *if* they understand this information despite cultural, linguistic, education level or other barriers, and *if* their illnesses and other stressors allow them to make obtaining the treatment a priority, Medicaid recipients are much more likely to lack the other resources needed to take affirmative steps to negotiate a complicated eligibility process after a denial at the pharmacy or to see a provider occurs, such as easy access to their doctors. *See Goldberg v. Kelly*, 397 U.S. 254, 264 (1970); *Vargas,* 508 F.2d at 489-90; *Ortiz v. Eichler*, 616 F. Supp. 1046, 1062 (D. Del. 1985), *aff'd* 794 F.2d 889 (3d Cir. 1986). A written notice explaining that a service has been denied or reduced and how to contest the denial or reduction is essential to help to increase the chances that steps will be taken to prevent harm from the ongoing obstruction to medical access.

State and Federal Medicaid law require that an individual receive adequate notice if the state takes action to "suspend, terminate *or reduce* services,", and require that detailed notice be given when any such actions are taken. 42 C.F.R. §§ 431.200(a) and (b), 431.201, 431.206(c)(2), 431.220(a)(1) and (2)(emphasis added).

In addition, the same notice provision derives from the state regulation which provides" 1570.05.B.1., and whenever a Medicaid recipient "feels that the Department has either failed to take a required action or has taken an erroneous action," including "taking any other action affecting the receipt of benefits, such as computing the amount of benefits," 1570.05. B.3. These state regulations also provide that the Department must notify a Medicaid enrollee in writing "at the time of *any action affecting the assistance unit's benefits* ." 1570.05.G.2 (emphasis added).

The fundamental purpose behind the due process notice requirement is the provision of an opportunity for a Medicaid recipient to request a hearing where an error might have been made. S*ee Goldberg*, 397 U.S. at 266.

In addition, the constitutionally required written notice can serve the important practical purpose of fully informing the affected Medicaid enrollee of the specific steps which he or she can take to get access to medical care.

In plain English, Medicaid is an entitlement program. People have a right to Medicaid if they are eligible. If they are eligible, they have a right to receive the services it offers. Before those services can be taken away, a person must receive notice that they are being taken away and an opportunity to be heard- this is called due process. It is a right guaranteed by the U.S. Constitution and a key tool to ensuring healthcare access and ultimately a major component in achieving healthcare equity.

CASES that will be discussed or referenced

Karen L.
Ladd v. Thomas
Goldberg v. Kelly
Raymond v. Rowland

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[i] Portions of presentation adapted from writings of Randi Faith Mezzy, retired attorney, Connecticut Legal Services, Inc.