Recent Litigation Challenging Implementation of State Medicaid Cuts Protects Medicaid for Tens of Thousands

Introduction. States continue to target Medicaid programs for huge cuts as they struggle to deal with record budget shortfalls. According to a recent analysis by the Center on Budget and Policy Priorities, proposed or enacted cuts for the current fiscal year eliminate or threaten the Medicaid, State Child Health Insurance Program (SCHIP) or other public health insurance for some 1.7 million people. (The CBPP report is available on the web at www.cbpp.org.) Low-income working families and children and lawful immigrants are among the vulnerable groups who have lost or are at risk of losing essential health care coverage. Advocates, community groups, low-income groups and their allies continue to argue that these cuts are bad public policy as they fight to preserve critical health coverage for low-income families and individuals.

So far, in at least five states, low-income individuals have turned to the courts to protect their access to Medicaid as states implement sweeping cutbacks. To date, these lawsuits have resulted in orders protecting Medicaid for tens of thousands of low-income individuals. This article reviews developments as of mid-July.

Despite efforts to preserve Medicaid access, significant cuts have been adopted, and others loom on the horizon. The recent federal tax bill provides $20 billion in temporary Medicaid and general fiscal relief to the states, but does not solve the states’ fiscal problems. Unfortunately, the ongoing budget crisis means that advocates will have to continue to fight state Medicaid cuts in the coming months. At the same time, advocates will continue efforts at the national level to preserve and improve the current structure of the federal Medicaid program in the face of proposals to block grant the program. The current program, with federal standards and responsive open-ended funding based on the health care services received by eligible individuals, contributes to the important national goal of promoting access to health coverage. Proposals to block grant the program threaten to erode this national commitment and reduce the federal funding necessary to sustain it.

Overview of the litigation response. State Medicaid cuts and their implementation may raise serious legal issues, and litigation may be necessary to protect low-income individuals’ Medicaid eligibility. Advocates continue to examine whether new laws or policies imposing cuts and their implementation comply with federal Medicaid requirements, constitutional equal protection and due process guarantees, and state law requirements. The effort to enforce federal Medicaid standards through litigation demonstrates the importance of these federal standards in ensuring access to health coverage and the critical role of the courts in protecting vulnerable low-income individuals’ access to Medicaid.

So far litigation challenging various Medicaid cutbacks has been brought in at least five states - Missouri, Nebraska, Michigan, Connecticut, and Colorado. As of mid-July, all have succeeded in protecting plaintiffs’ Medicaid. The Michigan and Missouri cases have been finally resolved for plaintiffs. In the other cases, courts have required that Medicaid continue until the legal claims are resolved.

These cases have raised a variety of arguments, including claims that the denial of Medicaid to lawful immigrants violates equal protection, that a state’s implementation of cuts improperly denies federally-mandated Transitional Medicaid Assistance to eligible individuals, and that implementation violates procedural due process and federal Medicaid requirements requiring an ex parte review of eligibility before individuals can be terminated. There have been two favorable decisions on Transitional Medicaid claims. One adverse decision is now on appeal, but the appellate court has granted an injunction pending the appeal. A decision is pending in the Tenth Circuit...
The litigation successes so far have made a real difference in the lives of low-income families. For example, the named plaintiff in the Missouri case, who needs ongoing access to medical care to maintain her health and ability to work, was able to continue her employment. Similarly, thousands of other individuals in Missouri, Connecticut, Michigan, and Nebraska have had their access to desperately needed health care protected. The court order delaying Colorado’s elimination of Medicaid for lawfully present immigrants has preserved essential home care services, nursing home care, and prescription drugs for elderly and chronically ill individuals, many of whom will face life-threatening health crises if they lose Medicaid.

The Welfare Law Center is co-counsel in two of the cases discussed below, White v. Martin (Missouri) and Soskin v. Reinherton (Colorado) and has provided assistance in others. We are available to work with advocates in other states to assist in determining the appropriate response to state Medicaid cuts and if litigation is warranted, to participate as co-counsel. The Center can provide the full range of litigation services, including drafting papers, interviewing clients, engaging in discovery, and participating in court hearings and oral arguments. WLC has provided and can continue to provide on-site staffing resources, as necessary. Contact Marc Cohan, Director of Litigation at cohan@welfarelaw.org.

The following reviews the recent litigation developments.

Successful Challenge to Missouri’s Unlawful Implementation of Medicaid Cuts Restores Medicaid for 17,000 Individuals. In July 2002 in response to its budget crisis, the Missouri legislature reduced the income limit for custodial parents and relatives receiving Section 1931 Medicaid from 100% of the federal poverty level to 77% of the federal poverty level. Generally, Section 1931 of the Social Security Act, enacted in 1996 as part of the federal welfare law, requires states to provide Medicaid to low-income families who meet the 1996 AFDC income and resource standards. Section 1931 also gives states the option to expand Medicaid eligibility by adopting less restrictive income and resource standards than those in their AFDC programs.

In implementing the new income eligibility restriction, the state welfare agency rejected advice from Legal Services of Eastern Missouri (LSM) that federal Medicaid law required the state to provide Transitional Medicaid Assistance (TMA) to families with earnings whose Medicaid was terminated because their income exceeded the new eligibility standard, that is, 77% of the federal poverty level. Federal Medicaid law guarantees at least six months of TMA to families whose Section 1931 Medicaid is terminated due to income from employment, as long as they had received Medicaid in three of the six months before their Medicaid ended.

Since neither LSM nor any other legal services program in the state could bring a class action to enforce the federal Medicaid law, the Welfare Law Center, the National Health Law Project, and a private attorney filed a federal class action, White v. Martin, claiming that the state was denying individuals their right to TMA and was not complying with federal Medicaid ex parte review requirements. Under this ex parte review requirement, in order to avoid interruptions in health coverage of eligible individuals, a state must determine whether a Medicaid recipient is eligible for Medicaid on another basis before terminating coverage under Section 1931.

On July 26, 2002 the federal district court certified a class and granted a class-wide temporary restraining order mandating the restoration of Medicaid. After expedited discovery and a preliminary injunction hearing, the district court issued a bench ruling on August 16, 2002 mandating the continuation of Medicaid. The district court’s October 6, 2002 written order, among other things, concluded that the federal Medicaid law requires that TMA be provided to families with earnings who lose eligibility because state income eligibility rules change, even if their earnings have not increased. It ordered defendant to provide TMA to class members and continue TMA for those to whom it was provided under prior orders and ordered that the state agency has an affirmative duty to conduct an ex parte review to ensure that all entitled to TMA receive it. The defendant then appealed to the Eighth Circuit, but following the parties’ submission of briefs, withdrew its appeal.

As a result of the White litigation, some 17,000 individuals had their Medicaid restored. WLC served as lead counsel, and among other things, conducted on-site depositions, helped identify local counsel, assumed major responsibility for drafting the papers, and represented plaintiffs in the court hearings.

For a more extended article on White v. Martin see October 2002 Welfare News.

Federal Appellate Court Rules for Nebraska Low-Income Caretaker Relatives in Case Claiming Unlawful Denial of TMA When State Implemented Medicaid Cuts. On July 10, 2003 the Eighth Circuit Court of Appeals, reversing the federal district court, found that working low-income caretaker relatives in Nebraska were likely to succeed on the merits of their claim that the state illegally denied them Transitional Medicaid Assistance (TMA). It directed the federal district court to continue plaintiffs’ Medicaid while the case proceeds. Working low-income caretaker relatives in Nebraska had been denied Transitional Medicaid Assistance (TMA) when, in October 2002, the state implemented a new state law changing the method for determining the income eligibility of caretaker relatives in its medically needy program. The new law eliminated the old income counting method, called the “stacking” methodology. As a result, some 10,000 low-income caretaker relatives with earnings lost Medicaid, and the state agency refused to provide TMA to them. In early 2003 these low-income caretakers filed a federal class action, Kai v. Ross, claiming that the state violated the federal law by denying TMA.

On March 4, 2003, the district court denied plaintiffs’ request to stop the cuts, finding, among other things, that the plaintiffs had not shown a likelihood of success on the merits of their claim. The court concluded that the plaintiffs are not entitled to TMA because they are not covered by Section 1931 of the Social Security Act, and TMA is only available to those who lose Section 1931 Medicaid eligibility. In reaching this conclusion, the district court rejected the plaintiffs’ argument that they are within the Section 1931 group because if the state’s 1996 stacking methodology were applied, they would have met the 1996 AFDC income eligibility standard.

Plaintiffs appealed to the Eighth Circuit, which expedited the appeal. On July 10, 2003 the Court of Appeals ruled that plaintiffs had shown a substantial likelihood of success on the merits of their claim. Kai v. Ross, 2003 U.S. App. LEXIS
The appellate court found plaintiffs eligible for TMA under the plain language of Section 1931. It reasoned that plaintiffs are within the group covered by Section 1931, because they had been beneficiaries of an income methodology (the “stacking” methodology) that is less restrictive than the methodology used under Nebraska’s AFDC plan on July 16, 1996. While the state may eliminate this “stacking” methodology, it must do so subject to the Section 1925 requirement to provide TMA. The Court of Appeals declined to give deference to a letter from a regional official of the federal Medicaid agency suggesting that plaintiffs were not within the Section 1931 group. It also concluded that plaintiffs had satisfied the other requirements for preliminary relief and directed the district court to grant a preliminary injunction and proceed to make a final decision in the case.

Plaintiffs are represented by Rebecca Gould and Milo Mumgaard of Nebraska Appleseed in the Public Interest (mmumgaard@NeAppleseed.org); Steve Hitov of the National Health Law Program (hitov@healthlaw.org), who argued the case in the Eighth Circuit; and a private firm. Papers in the case are available on the Nebraska Appleseed website, www.neappleseed.org.

Michigan Litigation Protects Medicaid Eligibility of Over 20,000 Low-Income Caretaker Relatives. As part of a budget cutting initiative that began in December 2002, the state took steps to eliminate Medicaid eligibility for low-income caretaker relatives, effective March 1, 2003. In implementing the new policy eliminating this eligibility group, the state agency indicated that, with respect to most affected caretaker relatives, it would not conduct the federally required *ex parte* review to determine whether the individual was eligible for Medicaid on another basis before terminating the individual’s Medicaid. The state agency also indicated that the termination notices to be sent to affected individuals would tell them that they did not have a right to a hearing because the termination was a result of a change in state law.

In February 2003, a federal class action lawsuit, *Markva v. Olszewski*, was filed on behalf of over 20,000 caretaker relatives to challenge the implementation of the new policy. Plaintiffs claimed that the state’s failure to do an *ex parte* review of individuals’ case files and to identify and request information necessary to evaluate their eligibility for Medicaid under other eligibility categories violates federal Medicaid law. They also claimed that the state agency’s failure to provide meaningful pre-termination notice and opportunity for a hearing violated federal Medicaid law and due process. They asked the district court to bar the state from terminating Medicaid until it complied with federal law and due process.

On February 20, 2003 the district court certified a class and granted a preliminary injunction ordering the state agency not to terminate Medicaid until it complied with the following procedures. First, Medicaid must continue until the recipient is found ineligible. Second, the defendants must review the recipients’ case files and do an “*ex parte* review based on available information in the case file and databases to determine if the recipient eligible for Medicaid” under another category. Third, if an eligibility determination cannot be made based on the *ex parte* review, defendants must notify the recipient in accord with 42 C.F.R. 210. The district court also ordered defendants to take reasonable steps to notify recipients of their right to Medicaid coverage. The court’s order slowed down the state’s implementation of the new policy, and in the meantime, plaintiffs won a state court action challenging the elimination of caretaker relative eligibility on state law grounds.

Federal Appellate Court Delays Implementation of Connecticut Medicaid Cuts for 19,000 Working Parents Until Appeal on Their TMA Claim is Decided. In late June the Second Circuit Court of Appeals ordered Connecticut to continue Medicaid for some 19,000 working parents until the court decides their appeal from an unfavorable federal district court decision. The Court of Appeals set an expedited appeal schedule and will hear arguments in the case, *Rabin v. Wilson-Coker*, in early August.

In early 2003, as part of legislation to reduce the state’s budget deficit, the Connecticut legislature enacted two Medicaid cost-saving measures. It lowered the income eligibility standards for families in the Section 1931 Medicaid eligibility group from 150% of the federal poverty level to 100% of the federal poverty level, thereby eliminating eligibility for some 23,000 parents and other caretaker relatives. It also eliminated continuous coverage eligibility for children, ending coverage under this category for some 7,000 children.

In early March the state agency sent notices informing recipients that as a result of the changes their Medicaid eligibility would end as of April 1st and that they had to request a hearing within ten days in order for Medicaid to continue. Low-income individuals then filed a federal class action lawsuit, *Rabin v. Wilson-Coker*, claiming that they are entitled to Transitional Medicaid Assistance, that federal law bars termination until the state determines that the individual is not eligible for Medicaid on another basis, and that the termination notice was defective because, among other things, it failed to provide adequate information about hearing rights. The district court granted a temporary restraining order (TRO) preventing the state from implementing the cuts on the basis of the termination notice until the state issued a proper termination notice. In concluding that plaintiffs satisfied the standard for granting a TRO, the district court noted that there was no dispute that the notice was defective because it failed to inform individuals that they could request a hearing up until the termination date and receive continued Medicaid. According to the court: “Because states are required to provide legally valid notice before terminating benefits, plaintiffs are likely to prevail on that basis alone.” *Rabin v. Wilson-Coker*, 2003 U.S. Dist. LEXIS 5167, 5 (March 31, 2003).

Plaintiffs then sought a preliminary injunction. On May 29th, based on developments that had occurred since the case was filed and its analysis of the law, the district court denied plaintiffs’ request and dismissed the case. The court noted that after the TRO was granted, several events had occurred. First, the state took some limited steps to identify individuals affected by the new changes who might qualify for Medicaid on another basis. Second, the state agreed to issue new notices, informing beneficiaries of their rights to a hearing and continued benefits if they requested a hearing. The notices will tell people that they might be eligible for Medicaid under another category, describe the categories, and tell the recipient to contact the caseworker if they think they remain eligible. Third,
the agency extended the termination date until July 1.

In analyzing plaintiffs’ legal claims, the district court concluded that the federal TMA statute only applies to individuals who lose eligibility for Section 1931 eligibility because of an increase in earnings and not to individuals with earnings who lose eligibility because the income eligibility standard changes. This conclusion was contrary to that reached by the federal district court in the Missouri case, White v. Martin.

The district court also rejected the plaintiffs’ claim that federal law bars termination of Medicaid until the state agency determines after an individualized review that the individual is not eligible on another basis and found that the defendant’s procedures are adequate. According to the court, plaintiffs contended that the agency is required to review of an individual’s file to determine if another basis for eligibility exists, and if more information is required, to contact the individual directly for the information. During this process, benefits are to continue in accord with federal law. Plaintiffs argued that the state’s general notice telling people they might continue to be eligible and to contact the agency if they believe they are eligible is impermissible. They argued that people who had previously provided information would be confused and would not provide the information again, leading to their loss of Medicaid. The court disagreed, pointing out that the notices tell people that the agency does not have the required information to find them eligible and that federal law requires the agency to have procedures to ensure timely and accurate reporting by individuals. The court was clearly concerned that the individualized file review sought by plaintiffs would require at least 15,000 hours of staff time.

Plaintiffs then sought an injunction pending their appeal on the denial of Transitional Medicaid Assistance, which the Second Circuit Court of Appeals granted on June 26, 2003. Plaintiffs’ counsel reports that of the 23,000 adults affected by the lowering of the income eligibility standard, some 19,000 have earnings and thus should be eligible for TMA. In addition, the state’s review of children whose eligibility under the continuous eligibility category led to it to conclude that many were eligible for Medicaid on another basis.

Plaintiffs are represented by attorneys from New Haven Legal Assistance, Connecticut Legal Services, and Greater Hartford Legal Aid. Shelley White of New Haven Legal Assistance (swhite@nhlegal.org) argued the case before the Second Circuit.

Colorado’s Elimination of Medicaid for Lawful Immigrants is Enjoined Pending Federal Appellate Court Review. In early March 2003, as part of budget cutting legislation, Colorado eliminated Medicaid coverage for lawful legal immigrants, with very limited exceptions. The cuts, set to take effect on April 1, affect some 3,500 current Medicaid recipients.

In late March Medicaid recipients slated for termination under the new law filed a federal class action lawsuit, Soskin v. Reinertson, claiming that the state’s denial of Medicaid based solely on an individual’s immigration status violates federal equal protection guarantees. They also claim that in the rush to implement the terminations, the state failed to do a full review to determine whether a recipient remained eligible on another basis before terminating Medicaid as required by federal law and to provide legally adequate termination notices and hearing rights.

The federal district court granted a TRO on April 1st barring the state from implementing the new law. Following a preliminary injunction hearing on April 11, 2003 during which it received evidence, the court dissolved the TRO and denied plaintiffs’ request for a preliminary injunction. In finding that plaintiffs had not met the standard for preliminary relief, the court decided that they had not shown that they were likely to succeed on the merits of their claims. The district court rejected plaintiffs’ arguments that strict scrutiny applies to the state’s decision to deny Medicaid to lawful immigrants. It concluded that the lenient rational review test applies because the state was exercising what the court described as the limited option granted by Congress in the 1996 welfare law to deny benefits to certain lawful immigrants. The district court found that the state’s fiscal considerations provide a rational basis for the denial of Medicaid to lawful immigrants. It also decided that plaintiffs were not likely to prevail on their procedural claims, finding that the defendant’s procedures were adequate and that there was no evidence of systemic failure to comply with federal requirements and due process.

When the district court did not respond to plaintiffs’ request that it stay implementation of the new law pending appeal, plaintiffs sought and obtained an injunction pending appeal from the Tenth Circuit Court of Appeals. The Court of Appeals expedited the appeal and held oral argument in early May. After oral argument, the court directed that the United States Attorney General be notified that the case calls into question the constitutionality of the federal law, even though neither party had taken this position. The United States subsequently intervened in the matter. It argues that the 1996 federal welfare law which provides that certain immigrants are ineligible for benefits, others are eligible, and a third group are eligible or ineligible at state option, is constitutional under the rational basis test. It further argues that since the Colorado statute is authorized by the federal law and implements a federal policy with respect to immigrants, it is constitutional. The Tenth Circuit is considering the matter.

Plaintiffs are represented by the Welfare Law Center, the National Immigration Law Center, the American Civil Liberties Union Immigrants Rights Project, the ACLU of Colorado, Holland and Hart, and the National Health Law Program. The Welfare Law Center staff have taken a major role, along with co-counsel, in drafting papers. Marc Cohan of the Center presented the case on the procedural claims during the preliminary injunction hearing and argued these claims in the Tenth Circuit.

Conclusion: While several cases have not been finally resolved, courts have played a critical role in preserving Medicaid eligibility for tens of thousands of vulnerable low-income individuals who have been victims of state budget cuts. The Welfare Law Center is available to work with advocates in other states to consider whether litigation is an appropriate response to state implementation of Medicaid cuts.

Gina Mannix
Miami Workers Center and Its Allies Win Comprehensive Grievance Policy for Welfare Recipients and WIA Participants in Florida's Privatized Service Delivery System

by Sushma Sheth, Policy Director, Miami Workers Center

After over two years of grassroots organizing and policy advocacy the Miami Workers Center and its allies succeeded in winning a comprehensive grievance procedure for participants of the welfare-to-work program, the Workforce Investment Act (WIA), and other programs, to contest abuse and failures within service delivery system. Miami Worker Center is a resource and strategy center for low-income communities and initiates grassroots-led organizations like LIFFT (Low Income Families Fighting Together).

Welfare reform in Florida is being implemented through a state welfare system that has recently been completely privatized. State legislation enacted in 2002 created Workforce Florida, a nonprofit, non-governmental entity responsible for all state workforce policy and for chartering regional workforce boards to administer work programs in local communities. Regional workforce boards contract with private providers to deliver various services at One-Stop Centers. The Agency for Workforce Innovation, a state agency, is the fiscal agent for receiving federal TANF work and WIA funds.

Privatization of the system has resulted in chronic failure in the delivery of services, arbitrary and non-uniform policies, and the wrongful denial of benefits to welfare clients. For example, a client requesting transportation assistance will be told no funding is available or a client requesting training for a specific occupation will be told training is not provided for and that they should seek volunteer non-paid work instead. Until now, participants in this system, including welfare recipients and WIA, have had no means of contesting abuse within the system including failures or denials of delivery of services.

Between August 2002 and February 2003, the Miami Workers Center intensified its welfare organizing campaign to make the welfare system accountable to the recipients it serves in Southern Florida. The Center used a combination of grassroots organizing and legal advocacy strategies to advocate for a grievance procedure for welfare recipients who are denied benefits and services. To accomplish these goals, we engaged in outreach to educate welfare recipients and low-wage workers about the rights and remedies they have under the current system, provided leadership development and strategic education to influence policy making, and collaborated with Florida Legal Services and Legal Services of Greater Miami to initiate appropriate legal appeals and litigation to build public accountability into the newly privatized institutions charged with providing public assistance and workforce development services.

Outreach to recipients at regional One-Stop Centers and related litigation through the Legal Services of Greater Miami yielded a settlement in September 2002 forcing South Florida Workforce (SFW) to create a grievance policy. Once SFW produced an initial draft for the policy, Legal Services of Greater Miami (LSGMI), Florida Legal Services (FLS) and the Miami Workers Center (MWC) collectively reviewed and identified needed modifications to the policy. Both LSGMI and FLS compared the draft to state Agency for Workforce Innovation complaint and grievance rules as well as the Florida Department of Children and Families grievance procedures for TANF. The Miami Workers Center pushed for stronger provisions within the policy to adequately serve clients, specifically to allow a streamlined process, a wider range of issues subject to the grievance process, and a right to on-site hearings at the One-Stop Centers.

After considering these comments, SFW brought a proposed grievance policy before its Executive Board meeting on December 11, 2002. However, this proposal still remained exclusive and cumbersome, allowing grievances for only a narrow range of concerns with considerable paperwork and other barriers for recipients. As a result, both LSGMI, MWC and members of the grassroots organization LIFFT appeared at the SFW Executive Board meeting to testify. We highlighted the need for a grievance procedure based on the personal experience of LIFFT members with the system and documentation of ineffective service delivery. We raised specific issues around non-compliance with AWI and state standards, as well as around the general weakness and ineffectiveness of the proposal. This pushed the Board to table the proposal and continue to negotiate with us on a stronger and more effective procedure.

This January, the Center and LIFFT (including a number of current and former welfare recipients) were granted meetings with SFW’s lawyer and later SFW’s Executive Director. This was an important opportunity to address our concerns with the grievance policy, as well as engage in a direct and open discussion around the shortcomings of SFW and its accountability to low-income families and low-wage workers. Following these meetings, a second draft of the grievance policy came before the SFW Program Committee on February 14th. The policy was modified but remained exclusive, required more than one form, and still provided no right to on-site hearings. Once again, LSGMI, MWC, and LIFFT attended the SFW meeting to comment on the draft policy. Before they could comment publicly, SFW lawyers convened a negotiation meeting with the LSGMI and MWC. This meeting resulted in SFW approving all of our demands.

This process successfully resulted in creation of a robust and accessible grievance procedure. Miami-Dade’s low-income families and low-wage workers now have a grievance policy to protect their access to necessary income support services like child care, bus passes, gas cards, education, job training, etc. The final policy approved by the SFW Executive Board on February 26th adopts a

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Supporting All Our Children: Conference Report on License-Exempt Child Care in Illinois (Nov. 2002)

by Dan Lesser, National Center on Poverty Law; Barbara Coccorelli Carlson, Welfare Law Center; Sujatha Jagadeesh Branch, Child Care Law Center; and Sherry Leiwant, NOW Legal Defense and Education Fund

Executive Summary

Editor’s note: The following is the Executive Summary of a Report of a statewide conference organized by the National Center on Poverty Law, together with the Welfare Law Center, the Child Care Law Center, and NOW Legal Defense and Education Fund (partners in the Child Care Collaborative). The report was well received and resulted in the Illinois Department of Human Services’ Child Care Advisory Committee including many of the report’s recommendations in their transition document to the new governor earlier this year. In addition, the Governor’s Task Force on child care and early education recommended a tiered reimbursement rate for child care providers based on the finding of our report, and concluded that recommendations similar to those in our report should be forwarded to the legislature for authorization. If passed, our recommendation that reimbursement rates be increased to reflect quality enhancement in license-exempt care would be enacted in Illinois, reflecting a dual success of both raising the reimbursement rate for license-exempt caregivers and providing incentives to improve the quality of care.

For a copy of the full report visit the Welfare Law Center’s website, www.welfarelaw.org. For a report on the Child Care Collaborative, a project of the Welfare Law Center, the Child Care Law Center, and the NOW Legal Defense and Education Fund, see The TANF Child Care Collaborative: Responding to a Changed Environment for Subsidized Child Care in the May-June 2003 issue of Clearinghouse Review.

Introduction

There is a broadening consensus that children’s earliest learning experiences are critical to their future success. Nevertheless, attention has been paid to the 100,000 children from low-income families in Illinois -- over half of the children who receive child care subsidies -- being cared for by relatives, friends, neighbors and others exempt from state licensing requirements. These providers are reimbursed $9.48 per day for up to 12 hours of care and remain largely disconnected from the community and program supports they need to provide quality child care. If we are truly serious about leaving no child behind, we should identify and provide the full range of support these license-exempt home caregivers need and give every child in Illinois the opportunity to get off to a good start.

To this end, a statewide conference of 35 decision-makers and persons with direct experience working with or studying license-exempt home child care providers was convened earlier this year. The conference was convened by the National Center on Poverty Law in Chicago and a national child care collaborative that consists of the Child Care Law Center, based in California, and the NOW Legal Defense and Education Fund and the Welfare Law Center, both based in New York. The Day Care Action Council of Illinois hosted the conference.

The following executive summary of the conference report describes the primary issues that surfaced at the conference and offers the conveners’ recommendations, based on the conference discussions, for improving Illinois' public policy in this area.

Why Do Families Rely On License-Exempt Home Child Care?

Among the reasons low-income parents choose license-exempt child care providers are:

• trust in a known caregiver
• shared values and culture
• flexibility and convenience, especially where parents work non-traditional hours
• financial considerations
• willingness to enter into a barter agreement or waive parental co-payments
pressure to find child care quickly to participate in a welfare-to-work activity
lack of available licensed child care.

The heavy reliance of low-income parents on license-exempt home child care is unlikely to change -- federal law protects parents' right to choose this type of care and there is general reluctance to impose stringent regulations on family members providing child care in an informal, non-business setting.

How Can the Quality of License-Exempt Home Child Care Be Improved?

As with other forms of care, there is a wide range of quality among license-exempt providers. Many provide safe, secure, and loving care, but in general, less is known about license-exempt than licensed care. Illinois does impose higher standards on license-exempt home providers who receive a child care subsidy than on other license-exempt child care providers. They are disqualified if they have an indicated finding of child abuse or neglect and must self-certify to meeting several health and safety standards.

License-exempt providers often have powerful and long-lasting bonds to the children they are caring for and their families, a strong basis upon which to build. Conference participants delineated four distinct forms of support license-exempt providers need to improve the well-being of the children in their care:

• emotional and personal support to address the long hours, hard work and isolation
• informational support about nutrition, health and safety, and child development
• an adequate level of financial support material resources, including books, toys, and equipment

In designing training and support programs for license-exempt providers, it is essential to recognize that license-exempt providers are more aptly described as extensions of parental care rather than child care professionals. Community-based, family support models are often more effective for license-exempt home care providers than more traditional professional training programs.

Subsidy rates in Illinois for license-exempt providers are $9.48 per day for full-time care -- among the lowest rates in the country. The reimbursement rate for license-exempt home providers in other Midwestern states is typically around $15/day. An across the board increase is a critical first step in improving the well-being of children in license-exempt home child care.

In addition, use of a reimbursement scale that increases payments to license-exempt providers for specific quality enhancements is a potential strategy for encouraging providers to upgrade facilities or attend training sessions. It is also a potential way to encourage providers to fill unmet child care needs -- such as providing care during nontraditional hours or caring for children with disabilities.

It is important to remember that quality enhancement is not synonymous with licensing. Providers who desire licenses should be assisted in obtaining them, but strategies aimed at encouraging activities that increase quality of care without requiring licensing are more realistic for many license-exempt providers.

Major Recommendations

The following recommendations developed by the conference conveners based on the conference discussions provide a framework for improving the well-being of thousands of low-income Illinois children.

1) Fund a mix of programs that address license-exempt home caregivers' needs for emotional, educational and material support, and allow all license-exempt providers the opportunity to participate in existing and future state quality improvement initiatives;

2) Increase rates for license-exempt home child care providers, including an across-the-board increase, tiered reimbursement strategies that link higher rates to meeting specific quality measures, and encouraging the provision of types of care for which there are shortages;

3) Promote part-day enrollment in Head Start, State Pre-Kindergarten and other early education programs by families using license-exempt home providers with financial incentives and transportation assistance;

4) Provide resources needed to address barriers to becoming licensed;

5) Support healthy outcomes for children in license-exempt care with effective health and safety standards and linkages to early intervention, public health and nutrition programs;

6) Establish a task force on license-exempt home child care to implement reforms and explore further improvements.
Welfare Law Center Honors Leaders at Benefit Dinner and Welcomes New Board Members and New LINC Circuit Riders

Barbara Ehrenreich, Stephen L. Kass, Megan McLaughlin and Shirley S. Peoples honored at Welfare Law Center Dinner.

Almost 400 persons gathered on May 5 at a Welfare Law Center dinner to honor these four leaders:

Barbara Ehrenreich, one of our most recognized and original social commentators and the acclaimed author of *Nickel and Dimed* – honored for bringing to wide public attention the issues and hardships confronting low wage workers.

Stephen L. Kass, of Carter Ledyard & Milburn LLP – honored for extraordinary leadership to the Welfare Law Center during his tenure as Board Chair and as a life-long crusader for environmental, human rights, and anti-poverty causes. His thoughtful remarks have been posted on the Center’s web page.

Dr. Megan E. McLaughlin – honored for her 17 years at the helm of the Federation of Protestant Welfare Agencies where she created a powerful, unified voice for the poor through the creation of the Welfare Reform Network.

Shirley Peoples, a community activist from Columbus, Ohio – honored as a leader on the Center’s Board of Directors for a quarter of a century, and as a pioneer in organizing low-income communities to seek economic justice.

Bschorr, Dunne and Kroman Join Center Board of Directors

The Center is pleased to welcome its three newest Board members:

Paul Bschorr, a partner at Dewey Ballantine LLP, has co-counseled with Center attorneys in major welfare impact litigation.

Carey Dunne, a partner at Davis Polk & Wardwell, has served on the Board of Directors of the Legal Aid Society in New York City.

Jennifer Kroman, a partner at Cleary Gottlieb, provided pro bono counsel in class action litigation which won $816,000 in back wages for homeless persons working for a business improvement district at far less than the legal minimum wage.

LINC Project Welcomes Two New Circuit Riders

The Center also welcomes two new Circuit Riders to its Low Income Networking and Communications (LINC) Project:

Amanda Hickman came on board in early 2003. She has a broad background in technology and web design and has taught a course on Digital Activism at NYU's Gallatin School. She teaches HTML and maintains servers with the InterActivist Network, an activist technology skills share, media and communication project housed at ABC no Rio. Her current technology interests include using open source software, especially GNU/Linux with welfare rights organizers and integrating databases into organizing work. Amanda is also a writer, artist, community gardener and environmentalist. She is currently helping design and build a rainwater catchment system, which will supply her community garden with water year round.

Askia Foreman joined us in late June. In addition to his extensive technology experience, he brings to the LINC Project a background of work to bridge the Digital Divide and to bring technology to underserved communities. Askia has served as a Community Technology Center manager in municipal housing community centers where he engaged in community outreach and provided technology training to residents and as a Steering Committee Member of CTCNet (Community Technology Center Network). Askia was a Managing Director at Playing2Win, a Harlem-based non-profit, which was the first community technology center in the country. At Playing2Win, he helped develop programs to provide participating teens and adults with technology skills training and technology internships and jobs with local businesses and community organizations. He also developed an initiative to provide technology assistance to local schools, staffed by Playing2 Win trainees. As a consultant with MOUSE (Making Opportunities for Upgrading School and Education), Askia worked with schools throughout New York City with students and staff to create and support technology help desks.
About The Welfare Law Center

The Welfare Law Center is a national legal and policy organization that works with and on behalf of poor people to ensure that adequate income support is available when necessary to meet basic needs and foster healthy individual and family development. The Center achieves its goals through legal and policy analysis, legal representation, public education, training, and aid and support to advocates. Contributions to the Center are tax deductible.

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With the loss of federal funding, the Center relies upon contributions and publications sales to support its work. Tax-deductible contributions may be made by check or credit card (MasterCard, Visa, American Express - information can be faxed to the Center). Monthly or quarterly contributions can be scheduled. Bequests have been left to the Center in wills, and we would be pleased to discuss possible arrangements. For information about any of these options, contact Kay Khan at the Center.

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About Welfare News and Welfare Bulletin

Welfare News is a periodic publication of the Welfare Law Center, 275 Seventh Avenue, Suite 1205, New York, NY 10001-6708, tel. 212-633-6967; fax: 212-633-6371; e-mail: wlc@welfarelaw.org; web pages: www.welfarelaw.org and www.lincproject.org. Welfare Bulletin, issued with Welfare News, reports on recent court decisions, noteworthy publications, and federal policy issuances on income support programs.

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