

William E. Morris Institute for Justice

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MAY 2011 NEWSLETTER

For friends and supporters of the Institute, here is an update on some of our recent activities, as we celebrate our 15th year.

Litigation

Challenge to Heightened and Mandatory AHCCCS Copayments

Newton-Nations v. Rodgers – This case challenges the heightened and mandatory copayments the Arizona Health Care Cost Containment System (“AHCCCS”) imposed on 100,000 persons in 2003 for prescription medications and office visits. These persons were added to the state Medicaid program by Proposition 204 (persons with incomes up to 100% of the federal poverty level) and the state law allowing coverage for persons who “spend down” their medical expenses so their income is 40% of the federal poverty level. Over the last 7 years, the class has grown to approximately 300,000 persons.

Plaintiffs claim the federal government’s approval of the challenged copayments violated the Medicaid Act, the Human Participants Protections provision, the Administrative Procedures Act, and the demonstration project waiver provision. We also claim AHCCCS’ notices violated the federal constitution and the Medicaid Act.

For over 6 years, there was a statewide

injunction that prohibited AHCCCS from imposing the copayments on the certified class. The injunction saved poor persons several million dollars per month and ensured access to medical services necessary to maintain the class’ health and well-being.

In March 2010, Judge Carroll ruled against plaintiffs and we filed an appeal to the Ninth Circuit Court of Appeals. Judge Carroll and the Ninth Circuit denied our requests for a stay. Oral argument will be in May.

Litigation if State Terminates or Freezes Enrollment of Proposition 204 Persons from AHCCCS

In 2000, Arizonans voted by initiative (Proposition 204) to include all persons up to 100% of the federal poverty level in AHCCCS, our state Medicaid program. The legislative budget for 2012 reduced AHCCCS funding by about 540 million dollars from 2011. It also gave AHCCCS discretion on how to manage this funding cut and operate the system with “available” funds.

On March 31, 2011, the Governor submitted to the Centers for Medicare and Medicaid Services (“CMS”) an amended request for the State’s

demonstration waiver that included many cuts in services and reductions in eligibility. The federal government’s approval is needed for these changes. The proposals to freeze enrollment for childless adults on July 1, 2011, and on parents with incomes between 75-100% of the federal poverty level on October 1, 2011, violate Proposition 204 and affects about 300,000 persons.

In April, AHCCCS published a proposed administrative rule that allows it complete discretion to provide AHCCCS to childless adults depending on its monthly review of revenues. Thus, AHCCCS intends to freeze enrollment or terminate or reduce AHCCCS coverage for Proposition 204 persons. This will violate Arizona state law and the Constitution. The Institute, the Arizona Center for Law in the Public Interest and the Arizona Center for Disability Law will file a lawsuit challenging these changes.

Administrative Advocacy with Federal Agencies

The Institute often addresses state agency issues with the federal government. Because of our work in the public benefits area, we are in a unique position to raise the legal and policy concerns of low-income Arizonans.

Objections to Amended AHCCCS Demonstration Waiver Request

On March 31, 2011, the Governor submitted a request to CMS to amend the State’s September 2010, demonstration waiver request. This amended request includes the following proposals:

1. Freeze enrollment for childless adults on July 1;

2. \$50 annual penalty for adult smokers;
3. \$50 annual penalty for the obese and persons with chronic medical conditions who do not adhere to a care plan;
4. Six month redeterminations, instead of 12 months, for all childless adults and for parents between 75-100% of the federal poverty level (“FPL”);
5. Eliminate EPSDT services for older youth ages 19-20 without children;
6. Freeze enrollment for parents between 75-100% of FPL on October 1, 2011;
7. Eliminate emergency medical services for immigrants;
8. Mandatory copayments for all adults except long term care recipients;
9. Mandatory copayments for children who do not meet well exam requirements; do not follow obesity care plan; or do not manage their chronic diseases;
10. Penalty for all missed appointments; and
11. Eliminate non-emergency transportation for non-disabled adults in Pima and Maricopa Counties. All other non-disabled adults would pay a transportation copayment.

The Institute submitted detailed objections and comments to CMS for all the requests listed above on behalf of the Institute, the Arizona Center for Law in the Public Interest and the National Center for Law and Economic Justice. We also testified against the waiver request at a public meeting. Subsequently, we submitted a separate letter to CMS objecting to Arizona’s continued demonstration project and how that may affect health care reform requirements in Arizona. In addition to the groups above, the National Health Law Program joined in this letter.

Objections to AHCCCS Request to Eliminate Medical Expense Deduction Program

On March 16, 2011, the Governor sent a proposal to the federal government to eliminate the Medical Expense Deduction (“MED”) population by imposing a freeze on applications as of May 1, 2011, and eliminating the program September 30. These are persons who “spend down” their medical bills so their incomes are below 40% of the federal poverty level. These persons are class members in the copay case. They are covered by Arizona law, are not in the state plan and are not part of Proposition 204.

On April 18, 2011, the Institute submitted objections to the phase out plan to CMS and to AHCCCS.

Objections to Immigration Regulation

SALA staff contacted the Institute because they were concerned a recent federal regulation would adversely impact their work. The regulation requires an attorney to submit a notice of appearance in the immigration administrative process whenever an attorney assists a person to fill out paperwork or provides legal assistance beyond advice.

The University of Arizona law school clinic and the Florence Immigrant Project also are concerned about the regulation. Florence staff routinely assist persons to fill out forms and if they had to file notices of appearances in each case, these programs would either be forced to change their systems or assist fewer persons.

The Institute submitted objections to the U. S. Department of Homeland Security concerning this interim regulation.

Civil Rights Complaint: Verification and Reporting Law

As part of the budget bills passed in 2009, the legislature passed HB 2008, Sections 1 and 2, that “to the extent allowed by federal law” required persons applying for state and federal public benefit programs to present a document from an arbitrary list of 12 documents to establish citizenship or immigration status. No federal law allows the use of this limited group of documents. The law requires government employees to report persons who are violating “federal immigration law” and the law has criminal sanctions for local and state employees who do not follow the law. The law caused confusion and fear and deterred persons from applying for public benefits and services.

Both AHCCCS and the Arizona Department of Economic Security (“DES”) implemented policies in response to HB 2008. The Institute commented on these policies and sought to ensure the rights of immigrant applicants and recipients were protected. Unfortunately, either HB 2008 or the agencies’ implementation of the law, violated federal law.

The Institute, working with the ACLU of Arizona and the National Immigration Law Center, filed a Civil Rights Complaint against DES and AHCCCS with the Office for Civil Rights/U. S. Department of Health and Human Services (“DHHS”). We claimed the law and the agencies’ policies and practices violated various federal laws including Title VI of the Civil Rights Act of 1964, by using a restrictive group of acceptable documents to show citizenship or immigration status, and the reporting requirements conflicted with federal law and guidance. We claimed DES and AHCCCS policies did not take sufficient steps

to protect immigrants’ rights to apply for benefits without the threat of the agencies reporting persons to the federal government; relied improperly on SAVE responses for reporting; violated the confidentiality requirements in federal law; and improperly allowed immigration-related questions to be asked in interviews and on the online multi-program application, One-e Application. DHHS began but has not completed its investigation.

Advocacy – Access to Courts

The Institute has a major focus on eliminating barriers to access to justice and access to the courts.

TurboCourt

The Arizona Supreme Court is moving toward a statewide electronic filing system referred to as “TurboCourt.” The Institute, on its own behalf and on behalf of legal services, sent a letter to the Arizona Supreme Court regarding our concerns about TurboCourt, including that there is no fee waiver or deferral for the additional TurboCourt fees; any fees must be paid with a credit card; the TurboCourt pleadings and instructions are not in Spanish; and there is no suppression of fees for legal services programs. We are concerned TurboCourt may be a barrier to access to the courts and will monitor TurboCourt’s implementation and expansion.

Limited English Proficiency Services

The Institute sent a letter to the Administrative Office of the Courts concerning courts in Arizona that do not provide language assistance to non-English speakers as required by Title VI of the Civil Rights Act. Under Title VI, courts

must provide qualified translators, translation of vital documents, website accessibility and other translation services. We requested that the courts develop Limited English Proficiency plans. We will monitor this process.

Administrative Advocacy With State Agencies

The Institute works with legal services staff and community groups to improve the programs poor persons rely upon. Legal services staff often identify policies and practices that violate federal and state laws, but because of their funding restrictions, they cannot file class actions. In those cases, they often seek the assistance of the Institute. Recently, we have addressed the following policy and procedural matters with DES and AHCCCS:

AHCCCS Proposed Rules on the MED and Proposition 204 Populations

The Institute submitted objections to AHCCCS’ proposed administrative rule to eliminate the MED population from the AHCCCS program.

We will submit objections and comments for AHCCCS’ proposed rule on the freeze on enrollment and/or termination of the Proposition 204 childless adult group from the AHCCCS program.

One-e Online Application

DES and AHCCCS started to use a joint online application last year. The application did not comply with federal requirements in several respects. A major concern was that the application required every person using the application to designate themselves as a “citizen” or “legal resident.” Under federal law it is unlawful for the application to ask these

questions of non-applicants and persons applying for benefits where immigration status is not relevant. The application failed to give a person the option to not apply for themselves until after the person answered the citizenship and immigration questions. The questionnaire also required a person to answer the questions even if they were applying for a program, such as emergency medical services, where a certain immigration status is not required.

The Institute sent DES written comments and discussed this matter with DES staff. DES agreed to work on making the application compliant with federal law. DES and AHCCCS convened a work group to fix the application. With the new state verification law (HB 2008), this project took on urgency. Given the fear in the immigrant community, it was imperative that DES and AHCCCS remove any barriers to persons applying for public benefits and the Institute sent a letter to AHCCCS summarizing our concerns.

Initial changes were made to the application so that a person can identify themselves and others as a “citizen” or “immigrant status” with a “drop down” menu of choices including a category of “other.” DES and AHCCCS agreed to remedy the other violations but these changes require vendor involvement. Because of the delay in action, we included this matter in the Civil Rights Complaint described above.

Child Care Assistance Restriction

Arizona uses federal Child Care and Development Funds (“CCDF”) to provide child care assistance to low-income families. Under federal law, only the immigration status of the child is relevant for eligibility. State law unlawfully limits child care assistance to parents and guardians lawfully in the country

and DES implements this restriction. The Institute sent a letter to DES concerning its policy. We intend to submit objections and comments to the federal government when DES files its renewal of its CCDF state plan later this year.

Americans with Disabilities Act Enforcement at DES

Legal services staff informed us that DES was not providing reasonable accommodations and auxiliary services, such as sign language interpreters, to clients, in violation of the Americans with Disabilities Act (“ADA”). We reviewed DES’ policies and wrote a letter to DES requesting that it develop effective ADA policies. DES agreed. We obtained the services of a national ADA expert, Cary La Cheen with the National Center for Law and Economic Justice in New York, to assist DES. DES completed its ADA policy that applies to all DES programs and contractors and started to train all staff on the policy. Ms. LaCheen and the Institute are monitoring DES’ implementation of the policy.

Monitoring

The Institute receives weekly or monthly reports from DES concerning its timeliness in processing unemployment claims and public benefits claims. We also receive monthly reports on persons affected by DES’ drug testing policy.

Legislative Advocacy Update

Susan Cannata continued as the Institute’s lobbyist for the 2011 Arizona Legislative Session. This was Susan’s fifth year as our lobbyist. Susan lobbied for the interests of low-income Arizonans with a focus on the budget,

as well as legislation concerning issues related to housing, consumer affairs, public benefits and domestic relations.

The Institute provides hearing testimony and informational handouts to legislators on key bills and works with advocacy groups. We lobbied on the budget and specifically for programs like Temporary Assistance to Needy Families (“TANF”) that poor Arizonans rely upon. It was a very difficult session for poor Arizonans. The TANF program was reduced from 36 to 24 months and AHCCCS’ budget was reduced by \$540 million.

We opposed bills that were bad for poor Arizonans. Here is a sampling of our activities:

HB 2675: This bill would have required a person using an electronic benefits transfer (“EBT”) card for food stamps to show identification that the person using the card was the person whose name was on the card. This bill would have denied use of food stamp cards to persons authorized to use the card such as caretakers for the elderly or disabled, family members or even spouses. The Institute prepared a handout explaining how the bill violated federal law. Prior to the committee hearing, these provisions were deleted from the bill.

SB 1306: This bill added a new section to the Arizona Residential Landlord and Tenant Act that pertained only to “bedbugs.” The purpose of the bill was to shift bedbug mitigation costs to tenants. The Institute opposed the bill, prepared a handout explaining the ways the bill would undercut tenant rights and testified against the bill. We negotiated with the landlords’ lobbyist. The bill was drastically curtailed and we became neutral on the bill.

SB 1083: This bill would have allowed the non-custodial parent to object to any move by the custodial parent. We were very concerned this bill would make it harder for victims of domestic violence to move and give abusers another tool to maintain control. Although this bill passed the Senate, after meetings with stakeholders, including the Institute and legal services staff, the sponsor pulled the bill. Over the summer, the domestic relations committee will address the issue.

SB 1499: Two times in the last six years the guardianship statute was changed and courts interpreted the changes to restrict which immigrant minors could get guardianships. Part of this bill addressed this problem and clarified that the restrictive guardianship provision only applied to immigrant adults. We will monitor this change to ensure immigrant children can get guardianships when needed.

SB 1045: This bill allows DES to send documents by e-mail. We objected to and testified against this bill. Although DES made some changes to the bill, we continued to have concerns primarily because DES has no way of knowing if an e-mail was received, yet the bill restricts the challenges a person can raise that the document was not received. Over our objections, the Governor signed this bill. We will monitor how this bill is implemented.

SB 1474: This bill initially eliminated the requirement that landlords maintain rental housing in a “fit and habitable” condition. We testified against the bill and prepared a memo. Although the fit and habitable requirement was put back into the bill, the bill was amended to change the minor repair provision, making it harder for tenants to make minor repairs. Over our objections, the Governor signed the bill.

Other bills we worked against include: a bill that increased the statute of limitations for credit card collections from 3 to 6 years; a small loan bill to allow companies to charge more than the 36% APR for loans; a bill to make it harder to find a parent in contempt for child support arrearages; bills to impose cost sharing on AHCCCS recipients and reduce services; and several anti-immigrant bills including SB 1222 that would have required public housing authorities to violate federal law and evict mixed immigrant status families from public housing and report them to federal authorities.

Unemployment Insurance Guide

The Institute prepared an unemployment insurance guide for claimants and advocates to use. If you would like a copy, please contact us.

2011 Legal Services Directory

The May 2011 Legal Services Directory is available on the MIJ website, morrisinstituteforjustice.org, or by calling the Institute.

CLE

On June 10, 2011, the Institute will sponsor a CLE on the Americans with Disabilities Act (“ADA”) and rights of persons with disabilities to benefits and services by state and local agencies under Title II of the ADA. The presenter will be Cary LaCheen, a national expert on the ADA who works for the National Center for Law and Economic Justice. If you would like to attend, please contact the Institute.

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Tami Johnson joined the Institute in January 2011 as our staff attorney. Tami brings many years of public interest legal experience to the Institute and will add significantly to our advocacy efforts.

Tucson Fundraiser

The Institute’s annual Tucson fundraiser will be on May 26, 2011, from 5:30 to 7:00 pm at the Shanty, 401 East 9th Street, Tucson, Arizona 85705-8521. Paul Eckerstrom will speak on the efforts to create a new state, Baja Arizona.

Donations

Your support is needed to continue the many projects we have undertaken on behalf of low-income persons in Arizona. Please send your donations to the William E. Morris Institute for Justice, 202 East McDowell Road, Suite 257, Phoenix, Arizona 85004-4536.

Westlaw

A special thanks to Bryan Cave for providing the Institute with Westlaw.