

Clearinghouse REVIEW

March–April 2011
Volume 44, Numbers 11–12

Journal of
Poverty Law
and Policy



SNAP
FOR COLLEGE STUDENTS

Reasonable Accommodations in Assisted Living

Negotiated Rulemaking

Medical-Legal Partnerships

Welfare Privatization

Child Welfare Financing Reform

LGBT Elders' Economic Security and Health Care



Sargent Shriver National Center on Poverty Law



Perspectives on Health Care Reform

Shriver Center Interviews with Advocates Whose Careers Have Contributed to the Expansion of Low-Income Clients' Access to Health Care

Cindy Mann

Cindy Mann has served as the director of the Center for Medicaid, CHIP [Children's Health Insurance Program] and Survey & Certification (CMCS) within the Centers for Medicare & Medicaid Services (CMS) since June 2009. As CMS deputy administrator and director of CMCS, Mann is responsible for the development and implementation of national policies governing Medicaid, CHIP, the agency's provider survey, and certification activities. CMCS also serves as the focal point for all CMS interactions with state and local governments and the territories. Before returning to CMS in 2009, Mann served as a research professor at the Georgetown University Health Policy Institute and was the executive director of its Center for

Children and Families. Her work at Georgetown focused on health coverage, financing, and access issues affecting low-income populations and states. From 1999 to 2001 Mann served as director of the Family and Children's Health Programs Group in the CMS (formerly the Health Care Financing Administration (HCFA)) Center for Medicaid and State Operations (CMSO), where she played a key role in implementing the State Children's Health Insurance Program and led the CMSO's broader work on Medicaid policies affecting children and families. Before joining HCFA in 1999, Mann directed the Center on Budget and Policy Priorities' federal and state health policy work. She also has extensive state-level experience, having worked on health care, welfare, and public finance issues in Massachusetts, Rhode Island, and New York. Mann holds a law degree from the New York University School of Law. Mann was interviewed last November.

We'd like to begin by asking you about your health care advocacy and policy background. How long have you been working toward health care reform?

I've been working on health care issues for a little over twenty years. I've been doing related work for longer than that, but really focusing on health care since the mid-1980s. At the time when I really started focusing on health care work I was working in Massachusetts, and I had done some work on Medicaid issues prior to that in Rhode Island. In 1994 I relocated to Washington, D.C., and continued to work on health care more on the federal level.

It must have been a poignant moment for you when the legislation passed. How did you celebrate the health care reform passage?

That's a good question—I think there were many levels of that celebration. I was actually lucky enough to be at the postsigning ceremony that the president and vice president attended on March 23, [2010], on the day of enactment. We had quite an overwhelmingly poignant afternoon, really. The president spoke, and the vice president spoke. With the president that day were some individuals who had really had a terrible time accessing health care that they needed and for whom the new law would really make a big change in their lives. It was very moving to be part of that event. And then I think each of us who have been working in this area for many years celebrated that moment and had the reality of it continue to evidence itself over time that finally in this nation health care for everybody is the law of the land.

What parts of the law are you most excited about?

I certainly work and focus on the low-income aspects, so those are the ones that I am particularly connected to, but I think that the real story of this health care reform legislation is that virtually everybody has coverage. There is a place that everybody can go to assure that they have affordable, quality health care coverage. That allows us as a nation to be able to really focus on assuring that everybody has better care,

better health, and we can at the same time assure that we're getting better value for the dollars spent. So there are lots of different components of the law that I'm very fond of, but I really think that in any kind of major reform the whole is more than the sum of its parts. I do think the most important and exciting thing about health care reform really is the different parts and how they hang together and then therefore really advance our ability to provide better health and better health care for people.

What do you think reform will mean for lower-income individuals and specifically individuals who are covered under Medicaid?

Lower-income individuals have much to gain under the law. They are, not surprisingly, the group of people who are most disadvantaged by the current system. About two-thirds of the people who are uninsured going into enactment are people who have low incomes. Cost is a big reason why people don't have coverage. So the Medicaid changes in particular and the availability of the exchanges and the subsidies available to people on the exchanges will have an enormous impact on the lives of low-income people. It's pretty extraordinary that today you can be a parent whose children have grown up and left the home or somebody who has not had children at all, and, regardless of how low your income is, you may not qualify for Medicaid simply because of the historic categorical limitations. The Medicaid changes that really make everybody eligible based on income and no longer rely on those outdated categories are sweeping and benefit low-income people.

How has the passage of health care reform changed your daily work?

That's a funny question because my daily work is about administering the Medicaid program at the federal level of Medicaid and CHIP, and so it's changed my daily life enormously. We are of course continuing to administer the Medicaid program and CHIP. At the same time though, we are in a mad dash to assure that we are being timely, thoughtful, and collaborative as we move forward to implement the provisions that are effective right away as well as to lay the groundwork for the provisions that are effective beginning in 2014.

What is your vision for how the reform is going to play out in both the short and the long term?

In the short term there are many discrete improvements that are part of the new law. For example, even under the Medicaid eligibility changes, which for the most part become effective in 2014, there are, for the states, still options available that became effective right after enactment to cover so-called childless adults, and we already have had Connecticut and the District of Columbia take up those options. We've had new coverage available for young adults up to age 26 to be able to go on their parents' policy. That's already in effect. We've had a couple of changes with respect to people who have not been able to get health care coverage because of preexisting conditions; those exclusions are now prohibited in private insurance for children, and there is a new federal and state health plan available for people who otherwise can't get insurance because of preexisting-conditions exclusions. Many provisions like that in the law have already come into effect, and many more will continue to come into effect almost every month between now and 2014.

Update: "Fostering Connections to Success: Extending a Social Safety Net for Youths Facing Homelessness and Poverty"

The Administration on Children, Youth and Families has issued guidance (program instruction) on implementing the Fostering Connections to Success and Increasing Adoptions Act of 2008 (U.S. Department of Health and Human Services, No. ACYF-CB-PI-10-11, Guidance on Fostering Connections to Success and Increasing Adoptions Act of

2008 (July 9, 2010), <http://bit.ly/et7rvf>). The Act, an omnibus child welfare law, allows states to continue federal Title IV-E foster care benefits (Social Security Act tit. IV-E, 42 U.S.C. §§ 670-679) until a youth turns 21; the Act gives states other tools to increase permanency for older youths in foster care (Pub. L. No. 110-351, 122 Stat. 3949 (amending subsections of 42 U.S.C. §§ 24, 152, 622, 671, 672, 673, 673b, 674, 675; adding 42 U.S.C. § 627 & 679B)). The program instruction clarifies some issues that were unresolved as of the publication of *Fostering Connections to Success: Extending a Social*

Safety Net for Youths Facing Homelessness and Poverty, 43 CLEARINGHOUSE REVIEW 139 (July–Aug. 2009). Below are highlights of provisions most relevant to adolescents and young adults (i.e., youths 14 to 21). Additional information about the Act is at www.fosteringconnections.org.

Criteria for Extending Benefits Past 18

The program instruction allows states some flexibility in extending foster care benefits past the age of 18 but sets the following parameters:

- The Administration on Children, Youth and Families encourages states to extend eligibility for foster care benefits to the broadest population of eligible youths, but states may select one or more of the Act's education and employment requirements (see 42 U.S.C § 675(8)(B)).
- If a state extends benefits to youths who are 19 or 20 rather than 21, it must give a programmatic or practice rationale for selecting the lower age.
- If a state extends foster care benefits to youths older than 18, it also must extend adoption assistance and guardianship assistance (if applicable) to youths of the same age.

Compliance with Title IV-E Requirements for Youths Past 18

The program instruction describes the ways in which states may meet the Title IV-E requirements for foster care youths who are older than 18, specifically:

- States may meet the “removal from home” requirement (see 42 U.S.C § 672(a)(2)(A)) through continued agency responsibility of a youth for whom there was a court-ordered removal or voluntary placement agreement before age 18, court-ordered removal or voluntary placement of a youth over 18 if permitted by state law, or trial independence that does not require a new Title IV-E determination (see below).
- States may meet the “placement and care responsibility” requirement (see 42 U.S.C § 672(a)(2)(B)) through written authorization by the youth before age 18 or a court order or voluntary placement agreement after age 18 if permitted by state law.

Maintaining Title IV-E Eligibility for Reentry and Trial Independence

The program instruction sets forth the ways in which states may maintain Title IV-E eligibility for youths who return to foster care after a period

of trial independence. These youths may remain eligible for Title IV-E benefits if the circumstances meet current regulatory criteria for a “trial home visit” (see 45 C.F.R. § 1356.22(e) (2008)):

- Court jurisdiction would be retained, but the youth may or may not be under the care and responsibility of the child welfare agency during the trial period.
- The youth returns to the care and responsibility of the agency within six months or a length of time specified by court order.

Supervised Setting in Which the Individual Is Living Independently

The Act added a new setting in which youths are eligible for Title IV-E reimbursement: “supervised setting in which the individual is living independently” (see 42 U.S.C. § 672(c)(2)). The Administration on Children, Youth and Families will not issue regulations on this new Title IV-E eligible setting, but the program instruction gives the following guidance to help states meet the Title IV-E criteria in these new settings:

- States have discretion to develop a range of settings that will qualify for Title IV-E funding.
- States have flexibility to determine whether settings need to be licensed and develop any necessary safety protocols.
- Examples of a “supervised setting in which the individual is living independently” that are listed in the program instruction indicate that states should consider a broad array of settings in designing these potentially Title IV-E reimbursable living arrangements; settings include host homes, college dorms, shared housing, and semisupervised settings.
- States may make foster care maintenance payments directly to youths who are living in these settings.

Court Review and Case Planning Requirements for Youths Who Remain in Foster Care Past 18

The program instruction describes how states should design court review and case planning procedures that are appropriate for young adults (see 42 U.S.C § 675(1), (5)):

- Periodic and permanency court and administrative review procedures for youths over 18 should be consistent with current law (see 42 U.S.C § 675(5)), but such procedures should be adapted for adolescents and young adults.

- States are encouraged to use developmentally appropriate court reviews that actively engage youths.
- States are encouraged to begin transition planning well before ninety days before discharge and to connect the transition plan with earlier independent living and permanency planning.

The program instruction gives states not only guidance to meet the requirements of federal law but also the flexibility to design policies to meet the needs of youths who would otherwise age out of foster care. Only a small number of states have passed legislation to take advantage of this opportunity to support foster youths who would otherwise be left on their own. Advocates should work with child welfare stakeholders and policymakers in their states to implement the extension of care and permanency subsidies to youths past 18 so that they receive enhanced and improved services as they transition to adulthood.

Jennifer Pokempner
Supervising Attorney

Juvenile Law Center
1315 Walnut St. 4th Floor
Philadelphia, PA 19107
215.625.0551
JPokempner@jlc.org

Jennifer Rodriguez
Staff Attorney

Alice Bussiere
Staff Attorney

Youth Law Center
200 Pine St. Suite 300
San Francisco, CA 94104
415.543.3379 ext. 3922
jrodriguez@ylc.org
415.543.3379 ext. 3903
abussiere@ylc.org

Mamie Bone's Way

The City of Chicago, on February 18, dedicated a street to a longtime public housing leader, Mamie Bone, who passed away at 81 on January 20 after a long illness. In 1955 Bone was one of the first residents to move into the Henry Horner public housing development on Chicago's Near West Side and was a tenant leader there. She chaired the citywide tenant Central Advisory Council for three terms and was a mayoral appointee to the Board of the Chicago Housing Authority (CHA) as a tenant representative.

The Sargent Shriver National Center on Poverty Law represented Bone for twenty years in a class action against CHA on the revitalization of the Horner development. As president of the Horner Residents Committee, Bone led Horner residents in dealings with CHA on redevelopment issues. Due to their efforts, the revitalization of Horner is widely consid-

ered one of the most successful redevelopments of public housing in the country.

The honorary street, named "Mamie Bone's Way," is located along Washington Boulevard at Damen Avenue, which passes by the seven-story Horner midrise building where Bone resided for fifty years. During that time she worked tirelessly to ensure the well-being of the Horner residents, even if that meant she would be one of the last Horner residents to receive replacement housing under the decree. Unfortunately her health began to fail her soon after she moved into her new apartment.—WILLIAM WILEN

Shriver Center's Online 2010 Poverty Scorecard

To hold U.S. senators and representatives accountable for their actions or lack thereof in fighting poverty, the Sargent Shriver National Center on Poverty Law's annual scorecard grades members of Congress based on their voting record on the most important poverty measures in the calendar year. The Shriver Center released its 2010 Poverty Scorecard in early February. The laws on which Congress members were scored are, among others, the Patient Protection and Affordable Care Act, the reauthorization of the federal child nutrition program, a series of extensions in unemployment benefits, job stimulation bills, and a package of fiscal relief to states. The scorecard summarizes each bill and explains its significance. In frequent instances the scorecard shows a negative correlation between a state's poverty rate and the antipoverty voting record of its congressional delegation. At <http://povertyscorecard.org> users may view votes by bill or by Congress member and the interactive maps showing the correlation between the performance of a state's congressional delegation in fighting poverty and the poverty rate in that state.

CLEARINGHOUSE REVIEW Reader Survey on Ethics

Just over half of respondents in a CLEARINGHOUSE REVIEW survey, conducted from December 2010 to early February 2011, on readers' opinions on ethics indicated that the Rules of Professional Responsibility did not address the ethical questions that arose in their practice. According to the respondents, the Rules of Professional Responsibility do not take into account issues particular to civil legal aid programs, such as high-volume, limited-scope representation. Resolving conflicts of interest is of

particular concern since legal aid programs are often the only “game in town” for low-income people. This is particularly true in handling family law cases. Many found it troubling that hotlines and online forms could be counted as client representation for conflict-of-interest purposes. The Rules were found lacking if a client had mental health issues or was not considered competent to make decisions, particularly when family members also sought to make decisions for that client. Most ethical questions arose in family law and housing, with family law, domestic violence, and housing cases often overlapping. The REVIEW appreciates readership participation in the survey and will keep readers informed regarding next steps.

Shriver Center’s Webinars on Asset Building

Two Sargent Shriver National Center on Poverty Law webinars in February concerned asset building. *The Next Frontier in Public Benefits: Electronic Benefit Cards*, http://bit.ly/sc_ebens_webinar, discussed the differences among benefit payment methods and investigated the implications of the trend toward electronic payment cards—prepaid Visa- or MasterCard-branded cards for low-income families. *Accessible Assets, Part 2: Asset Development Strategies for People with Disabilities*, http://bit.ly/sc_assets-2_webinar, cohosted by the Abilities Fund, examined policies and programs aimed at breaking the inextricable link between people with disabilities and poverty and offered strategies and innovative programs that promote asset building and independence for individuals with disabilities. See also *Part 1: Asset Building and the Disability Community* (Nov. 2009), <http://bit.ly/1OGIS5>.

Census Bureau’s Supplemental Poverty Measure

The Census Bureau plans to introduce a supplemental poverty measure (SPM) in the fall. The SPM will not replace the official poverty measure used to determine eligibility for government programs; it will offer a new indicator of poverty that presents a broader picture of poverty. While the traditional poverty measures gauge a household’s pretax income against the cost of feeding itself, the SPM will include a broader measure of income and costs. In determining expenses, the SPM will include the cost of food, clothing, shelter, and utilities. In measuring ability to pay those costs, the SPM will take into account cash income, government benefits, and out-of-pocket medical costs, among others.

The bureau, which has published a variety of experimental poverty measures since 1979, posted key findings from its initial research using the SPM. The bureau’s preliminary findings show that the poverty rate and poverty threshold are higher under the SPM than under the official measure of poverty. In particular, poverty rates among seniors were higher, due in large part to out-of-pocket medical costs. See <http://1.usa.gov/gMFun4>, including Kathleen S. Short, U.S. Census Bureau, *Who Is Poor? A New Look with the Supplemental Poverty Measure* (Jan. 31, 2011), <http://1.usa.gov/i82HcZ>. See also Karen Harris, *Poverty by Any Other Name Is Still Poverty*, SHRIVER BRIEF (Jan. 13, 2011), <http://bit.ly/hFCqk4> (Harris is supervising attorney, Asset Opportunity Unit, Shriver Center).

National Health Law Program’s Analysis and Resources on Health Care Reform

The National Health Law Program’s analysis of the Patient Protection and Affordable Care Act focuses on how implementation will affect Medicaid and the Children’s Health Insurance Program, implications in civil rights, reproductive health and justice, and empowering low-income beneficiaries and their advocates. The program’s website analyzes health care reform litigation, contains case documents, and tracks the Act’s implementation, such as ballot initiatives and legislation. Some titles on the program’s health care reform advocacy webinar series are “Overview of [the Patient Protection and Affordable Care Act’s] Medicaid, Basic Health, and Exchange Provisions,” “PPACA and Children,” and “PPACA and Reproductive Health” (see http://bit.ly/nhelp_webinars; see also the National Health Law Program’s website, www.healthlaw.org, for other information).

GAO’s Findings on Child Support Enforcement and Recent Economic Conditions

The U.S. Government Accountability Office (GAO) recently reported on the effects of changes in federal funding of the Child Support Enforcement program resulting from the Deficit Reduction Act of 2005 and the American Recovery and Reinvestment Act of 2009. For information on changes in Child Support Enforcement collections and case-loads in recent years and states’ responses to federal funding changes and the Deficit Reduction Act’s “family first” policy options, see U.S. GOVERNMENT

ACCOUNTABILITY OFFICE, GAO-11-196, CHILD SUPPORT ENFORCEMENT: DEPARTURES FROM LONG-TERM TRENDS IN SOURCES OF COLLECTIONS AND CASELOADS REFLECT RECENT ECONOMIC CONDITIONS (Jan. 2011), http://bit.ly/gao_child_supp.

EPA's National Bedbug Summit and Resource Page

The U.S. Environmental Protection Agency (EPA) second annual National Bedbug Summit, in February, dealt with such topics as identifying knowledge gaps and barriers to effective communitywide bedbug control, and reaching key populations and bedbug control programs in public housing (http://bit.ly/usepa_bedbugs). EPA's resource page containing everything you need to know about bedbugs, <http://www.epa.gov/bedbugs/>, has links to other resources, such as the National Pest Management's "bedbug hub," a guide to multifamily pest management, and other integrated pest management guides.

GAO on Elder Abuse

In its recently released "Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse," the U.S. Government Accountability Office (GAO) calls for more federal support and leadership with regard to elder abuse. It examines the extent of elder abuse, the factors increasing the likelihood of elder abuse, state Adult Protective Services' coping with increased case loads, and the level of federal support and leadership in this area. Elders with low social support are more likely to become victims of elder abuse, GAO found. Many state programs are underfunded and understaffed and cannot adequately collect, maintain, and report data that would allow them to track outcomes. GAO recommends that the U.S. Department of Health and Human Services be mandated to implement the tools to track elder abuse over time and that, in coordination with states, a uniform data collection and dissemination system and a national resource center aimed at helping state programs be established. See http://bit.ly/gao_elderjustice.

EEOC on the Treatment of Unemployed Job Seekers

The Equal Employment Opportunity Commission (EEOC) held a public meeting, in February, to examine the impact of employers eliminating the unemployed from their applicant pools. The National Employment Law Project, the National Women's Law Center, and the Economic Policy Institute were among the participants. The impact of hiring policies that exclude the unemployed falls more heavily on minorities, older people, and people with disabilities, according to those who testified. Testimony and a summary of the meeting are at http://bit.ly/eec_unemp. More information on the unemployed and the meeting is at the National Employment Law Project's unemployedworkers.org.

Human Rights Principles Applied in State Courts

More legal advocates in the past decade have begun to incorporate human rights arguments into their work. The Opportunity Agenda in its 2008 report examined the ways in which state courts have considered and interpreted international human rights law. Part I of the report identifies strategies for and hurdles to the development of a human rights jurisprudence at the state level; Part II summarizes state court experiences with human rights; and Part III proposes a strategy for further development of a jurisprudence of human rights in state courts. The report notes that because states are responsible for regulating criminal and family and social welfare law, state court incorporation of human rights principles is crucial. See Opportunity Agenda, Human Rights in State Courts: An Overview and Recommendations for Legal Advocacy (2008), http://bit.ly/opp_agenda_08; see also Opportunity Agenda, Human Rights in State Courts (2007), http://bit.ly/opp_agenda_07.



Subscribe to CLEARINGHOUSE REVIEW!

CLEARINGHOUSE REVIEW: JOURNAL OF POVERTY LAW AND POLICY is the advocate's premier resource for analysis of legal developments, innovative strategies, and best practices in representing low-income clients. Each issue of the REVIEW features in-depth, analytical articles, written by experts in their fields, on topics of interest to poor people's and public interest lawyers. The REVIEW covers such substantive areas as civil rights, family law, disability, domestic violence, housing, elder law, health, and welfare reform.

Subscribe today!

We offer two ways to subscribe to CLEARINGHOUSE REVIEW.

A **site license package** includes printed copies of each monthly issue of CLEARINGHOUSE REVIEW and online access to our archive of articles published since 1967. With a site license your organization's entire staff will enjoy fully searchable access to a wealth of poverty law resources, without having to remember a username or password.

Annual site license package prices vary with your organization size and number of printed copies.

- Legal Services Corporation-funded programs: \$170 and up
- Nonprofit organizations: \$250 and up
- Law school libraries: \$500

A **print subscription** includes one copy of each of six issues, published bimonthly. Annual rates for the print-only subscription package are as follows:

- Legal Services Corporation-funded programs: \$105
- Nonprofit organizations: \$250
- Individuals: \$400

A print subscription for Legal Services Corporation-funded programs and nonprofit organizations does not include access to the online archive at www.povertylaw.org.

Please fill out the following form to receive more information about subscribing to CLEARINGHOUSE REVIEW.

Name _____

Organization _____

Street address _____ Floor, suite, or unit _____

City _____ State _____ Zip _____

E-mail _____

My organization is

- Funded by the Legal Services Corporation
- A nonprofit
- A law school library
- None of the above

What is the size of your organization?

- 100+ staff members
- 51-99 staff members
- 26-50 staff members
- 1-25 staff members
- Not applicable

Please e-mail this form to subscriptions@povertylaw.org.

Or fax this form to Ilze Hirsh at 312.263.3846.

Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602