Empire Justice Center
Making the law work for all New Yorkers

Legal Services Journal

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Inside This Issue

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Legislative Round Up

By Kristin Brown

This year, Empire Justice developed our most comprehensive legislative agenda to date. The combined expertise of GULP and PILOR allowed us to focus on a broad array of legislative initiatives all aimed at improving the lives of civil legal services clients. With such an extensive agenda, it was a very busy year. Empire Justice staff testified at close to a dozen hearings, analyzed many dozens of bills and wrote legislative memorandums on close to twenty five of them, and responded to countless requests for information from legislative staff, advocates and the media. We worked closely with members of our communities and collaborated extensively with the many coalitions we belong to.

While we continue to tangle with a number of outstanding budget issues, including restoration of the Temporary Assistance for Needy Families (TANF) funding for both the Disability Advocacy Program (DAP) and the Supplemental Homelessness Intervention Program (SHIP) and the distribution of the Legal Services Assistance Fund (LSAF), a number of important issues have been resolved. Below is a summary of where we landed on our pro-active priorities, along with information on some of the other issues we worked on during the 2006 legislative session.

Empire Justice Top Priorities:

Restore The Civil Legal Services State Appropriation (Budget) Once again, Empire Justice helped lead the community's efforts to restore and expand state funding for civil legal services. We testified at both the Human Services and the Public Protection Budget Hearings about the need for an increased investment in civil legal services, we developed materials and talking points that reflected the strategies we formulated with our colleagues in New York City, we coordinated 8 regional lobby days and we held bi-weekly informational calls for Program Directors outside New York City to give them the latest news on what was happening with state funding.

As a result of these efforts:

State Appropriation Restored, Vetoed and Restored Again: Thanks to the efforts of legal services programs across the state and the Assembly Majority's commitment to our cause, during the first round of budget negotiations, the $4.6 million state appropriation for civil legal services, which in-

(Continued on page 2)

Legislative Round Up—continued

(Continued from page 1)

cludes $359,000 to provide legal assistance to victims of domestic violence (DV) was restored by the Assembly Majority and included in the "on time budget" that passed this year. Unfortunately, on April 11th, the Governor issued a series of vetoes, including a veto of this critical funding. In his veto message regarding the civil legal services funding, the Governor noted that he had vetoed this appropriation because, along with "numerous items that, in the aggregate, [it] will adversely impact the state's capacity to maintain a properly balanced budget, provide for adequate fiscal reserves and ensure manageable out-year budget gaps."

The New York State Bar Association, a long-time supporter of civil legal services whose President had testified in support of expanded state funding during the budget hearings, responded to the veto by activating an electronic alert system to its membership. In less than 2 days, over 1500 Bar members had written to their legislators urging an override This, along with the ongoing efforts of the civil legal services community helped make the unanimous over-ride of the civil legal services veto possible in both the Senate and the Assembly.

Senate Makes New DV Funding Available: For years, Empire Justice and our partners have been urging the Senate join with the Assembly to create a more robust civil legal services infrastructure. Each year, we've completed the legislative session feeling that we have made progress – by gaining new supporters and solidifying our relationships with those who already "get" why civil legal services are so critical. This year, we were extremely pleased to learn that the Senate Majority was reviewing a funding source that would allow them to invest in the provision of legal assistance to victims of domestic violence (DV). While we had pushed for the creation of a statewide program that would ensure that at least some legal assistance would be available to DV victims in every county, we are still pleased to report that the Senate set aside $1 million in the Crime Victims Board, to be transferred to the Division of Criminal Justice Services (DCJS) for the provision of DV services.

Assembly Increases Its Investment In DV Legal Services: In addition to the state appropriation noted above, the Assembly Majority allocated an additional $250,000 in the Crime Victims Board budget for DV legal services.

Legal Services Assistance Fund (LSAF) - In The Budget, But Still Not Clear How Much Will Go To Civil Legal Services: Last year, the Legal Services Assistance Fund made it possible for the Assembly Majority to provide the community with the first increase in State Funding since 2001. Approximately $2 million was allocated to programs across the state. This year, the Governor included the LSAF in his Executive Budget, allocating $3 million to the Senate and $3 million to the Assembly. He also proposed a number of changes that were ultimately rejected. We understand that the Senate plans to continue to use its funding for the District Attorney loan forgiveness program. As we go to print, it remains unclear how much of the Assembly's portion will go toward civil legal services. We continue to urge the Assembly to allocate the full $3 million to civil legal services programs.

Maintain And Increase New York's Investment In The Disability Advocacy Program (DAP) – (Budget) While we were pleased that the $5.74 million base appropriation for DAP was included in the Executive Budget, we were very disappointed that the Governor did not include an increase in funding or the $ 1 million in TANF funding that has been added to the budget by the legislature for the past several years. Throughout the legislative session, we had advocated for an overall increase of $3 million to help address the loss in purchasing power the program has suffered as a result of so many years of stagnant funding.

At the conclusion of the Legislative Joint Budget Conference Committee negotiations, both

(Continued on page 37)

Reflections & Renewal

By Anne Erickson

It has been almost one year since we last published the Legal Services Journal (LSJ). With all the uncertainties of funding and the need to scale back and re-group we had to let the Journal go. Driven by grants, as so many of us are, some of the core services we provided – the LSJ, the Welfare Task Force, more frequent Domestic Violence Task Force meetings, the needed redesign of our website navigation were all put on hold. While we are proud – and amazed – of what we've been able to maintain, we also felt a certain lacking in our services as we continued to re-group after such devastating losses.

But here we are – and here we hope to stay – ten years after the Gingrich Revolution brought the end of Federal funding for support services, the restrictions on local services and the massive devolution of our country's most basic safety net and with it, the most fundamental changes in our country's approach to immigrants we have ever seen in our lifetimes. Our services were cut and curtailed just as our client communities needed us most.

Here we are, five years after a new IOLA Board started cutting and then eliminated all funding for our support services. Here we are, not only surviving as a community, but in many instances thriving. Yes, we've had to step back, re-think our strategies, re-kindle our hope, but we've also re-doubled our efforts. We've seen our colleagues tap new sources of support and funding. We've seen the New York State Bar Association, and with it many local bars, reassert their support for our programs and for the delivery of legal services. We've watched – and we've joined and helped lead where we could – this amazing community desperately turn disaster into opportunity and turn outside attacks into united collaboration. For us, our most basic collaboration was our "merger" – our blending of GULP and PILOR into the Empire Justice Center. We have, if you will – "emerged from the merger," stronger, deeper, richer and ready once again to serve with passion to the mission. So we are pleased and honored and relieved to once again offer the Legal Services Journal to you as testimony – not only to our staying power but to the inherent power of the community we serve.

In this edition you will read about our expanded legislative agenda, which with the blending of PILOR's staff brought us deeper into consumer law. You'll get a sense of the newly proposed Federal regulations on public assistance, long a critical area of our work. With this issue, we keep everyone informed about proposed changes to the regulations that drive our state's public benefits systems and we bring you an overview of the changes in Federal policy we secured to help bridge the divide between SSI regulations and their adverse, if unintended, impact on victims of domestic violence.

It's been a long, strange and at times painful road we've walked these last few years. From days of sheer terror when we thought we would never survive, (for the first time in GULP/PILOR history we were in debt and tapping our line of credit to make payroll), to this hot and muggy July when we are back in the black and planning ways to re-connect with our colleagues. We have stayed focused on the needs of the Legal Services Community and those we all serve.

And we survived.

State Returns Illegally Intercepted Refunds to Low Income Taxpayers

By Susan Antos

In 1997 and 1998 nearly 28,000 low income taxpayers had their New York State tax refunds taken to recover alleged public assistance overpayments. In many cases, their taxes were taken without adequate notice or an opportunity for a fair hearing. As a result of class action litigation in Federal (*Dantzler v. Wing*) and State (*Watts v. Wing*) courts, an agreement was reached to allow those with intercepted refunds to request a review which would result in a return of their refund if it was taken without due process. Further, the agreement established that in such cases, any alleged overpayment that was recovered without due process, would be declared void. Since February of 2006, the Office of Temporary and Disability Assistance (OTDA) has been sending out notices to class members on a staggered basis, (2333 per month), and will continue to due so through January of 2007, until all class members have received a notice.

To date, over 1,000 class members have been determined to be entitled to a refund and 210 refunds totaling $81,609.67 have been issued to *Watts* and *Dantzler* class members. Class members have 60 days from the date they receive a notice from OTDA to request a refund, and the OTDA has 5 months after that to make a determination as to whether a refund is due. Of those who received notices in February, 2006, about 30% requested that OTDA review their case, and of those requesting review, nearly 80% were determined eligible to receive a refund. Therefore if you have clients who come to you with *Watts/Dantzler* notices, advise them if they submit their review request form, they are likely to obtain a refund if they file a request for review.

If you have questions, please contact Susan Antos at 1-800-635-0355, x15. The pleadings and settlement agreements in *Watts and Dantzler*, including the form notices, can be found in the Benefits Law Database at: http://onlineresources.wnylc.net/welcome.asp?index=Welcome *Dantzler v. Wing* was brought by the Empire Justice Center (Susan Antos, Barbara Weiner) and *Watts v. Wing* was brought by the New York Legal Assistance Group (Jane Stevens).

A Note To Our Readers,

We are thrilled to have the Legal Services Journal back! We are continuing to work through re-design ideas and to bridge the design gap between a paper journal and an on-line publication. Please bear with us and feel free to share any ideas you might have.

Many Thanks,
Michelle Peterson, Publications Coordinator

New Federal TANF Regulations Eviscerate Community Service Activities for Welfare Recipients

By Saima Akhtar[1] and Susan Antos

As required by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171), the Department of Health and Human Services has promulgated interim regulations governing the Temporary Assistance to Needy Families (TANF) program which narrow the definition of many permissible work activities, and which make a number of other significant changes to the federal regulations governing work programs. The regulations, which were promulgated in the Federal Register on June 29, 2006, are effective immediately, and states must comply with these rules by October 1, 2006, or they will be subject to fiscal penalties for Federal Fiscal Year (FFY) 2007. The regulations are subject to public comment until August 28, 2006. [2]

In part, the regulations were a response to a General Accounting Office (GAO) report which was critical of the wide range of activities defined as permissible under the work categories of community service, job search and job readiness, vocational education, and job skills training. [3] The different definitions used by the states made it difficult for the GAO to compare work participation activities across the states.

The new regulations make clear that unsupervised activities will no longer count as work activities. In addition to the narrowing of the work activity definitions, the regulations revise the rules about counting the hours of participation. These rules tighten accountability, but allow states to adopt sick leave, holiday and excused absence policies that will help TANF recipients meet the demands of everyday life. The regulations also no longer allow states to count unsupervised study time as participation in vocational education. Only monitored study time can be counted towards the participation rate. States will also have the option to include SSI recipients who are in TANF households in their participation rates on a case by case basis - presumably those who are in programs with a goal of making them employable or those who are participating in trial work activities.

The Center on Budget Priorities and the Center for Law and Social Policy have jointly written a comprehensive analysis of the regulations, which is posted on their web sites. See *http://www.cbpp.org/7-21-06tanf.htm*. This article will not present an overview of the regulations, but will focus on how the new restricted definition of community service will affect local social services districts in New York State.

The Devil is in the Devolution

In most states, the definitions of the activities that constitute a particular category of work are uniform across each state. In New York State, however, the 58 social services districts each administer their own work programs. Each social services district files a biennial employment plan with the State Office of Temporary and Disability Assistance (OTDA) which defines permissible activities within each category of work activity. http://www.empirejustice.org/

This article will examine the scope of these variations in one category - community service - as defined by each of the social services districts across the State of New York, and analyze the effect the new definition of community service will have on the activities in each county.

States are required to meet federally defined work participation rates as a condition of receiving money to administer their welfare programs under the Temporary Assistance to Needy Families Block grant. Failure to meet these rates can result in penalties. The general rule is that 50% of all single parent families and 90% of all two parent families must be participating.[4] These numbers are adjusted downward by a caseload reduction credit.

(Continued on page 6)

New Federal TANF Regs—continued

(Continued from page 5)

Before 2006, this credit was based on a formula which compared the Aid to Families with Dependent Children caseload in 1995 with the current caseload. The DRA tightened the formula by making the comparison with the dramatically reduced caseload in 2005. [5]

Currently, recipients of TANF funded assistance must participate in work activities for at least 30 hours per week (55 hours per week for 2 parent families). [6] As states determine which recipients are counted as work participants, they must follow these rules: recipients must participate in at least 20 hours per week of "core" activities (30 hours per week for two parent families) and the balance of activities can be met with other "non-core" activities. [7] Core activities include unsubsidized employment, subsidized public or private sector employment, on the job training, job search and job readiness, community service, vocational education and providing child care to a person in community service. [8] "Non-core" activities include job skills or education directly related to employment and satisfactory secondary school attendance. [9]

Community service has always been defined as a "core" activity, but the new DRA regulations limit the use of this category to activities which "serve a useful community purpose," and to those activities that are supervised on at least a daily basis. [10] This is a dramatic change from the definitions currently used by many counties where community service is a "catch-all" for activities that do not fit into other categories. In defining community service for their biennial employment plans, many counties state that community service is any activity of benefit to the recipient that was excluded from other categories. For example, the Ontario County 2006-07 Employment Plan defines community service as "those activities to which a client may be assigned which are not contained in other defined activities." The Niagara County 2004-05 Employment Plan defines community services "any employment/education/training type activity not presently mandated at either the State or Federal level designed either in whole or in part to assist the individual in his/her attempt to transition from dependency to self-sufficiency."

The flexibility previously allowed under the federal regulations permitted an array of diverse activities that were responsive to the wide variation in need and personal circumstances in the lives of public assistance recipients. These activities included attending job fairs, school conferences, nutrition classes, helping in a church's food pantry, or taking a driver's education course, as well as many others. Under the new, more rigid definition of community service, local social services districts will find it impossible to continue activities that are personal to the recipient, such as drug abuse treatment or caring for a disabled household member. Foster care is likely not to be countable unless the districts create special intensely supervised programs for foster parents which meet HHS approval.

An Analysis of Current Plans

Empire Justice Center has completed a review of the employment plans of all 58 social services districts in New York State with a focus on the definition of community service activities included in their these plans.[11] A detailed county-by-county analysis is available in PDF format on our website. This analysis shows the current activities that each district counts as community service and an analysis of which activities are likely to not be countable under the new regulations. A second chart shows whether these activities are countable in a category of work other than community service.

Every social services district in New York has defined community service to include activities that fail to fit new work definitions. Community service activities fall into eleven general categories. Most of these activities can be reclassified as other types of work activity under the new federal regulations, but because several of these categories do not count as core activities, their use is limited. For example,

(Continued on page 7)

New Federal TANF Regs—continued

(Continued from page 6)

alcohol and substance abuse treatment are now classified as job readiness assistance and are limited to six weeks per year, of which only four weeks can be consecutive.[12] Several other categories of activity will simply be disallowed. Forty-three of the fifty-eight districts explicitly include alcohol and substance abuse treatment as community service. Another seven districts presumably allow for alcohol and substance abuse treatment as community service based upon broad language, such as the Tioga County Department of Social Services counting "activities that prepare an individual for work."

Community Service Activities at Risk

- Caring for a sick or disabled household member—52 districts
- Alcohol and substance abuse services—43 districts
- Mental health services—30 districts
- Participation in court mandated activities—28 districts
- Providing foster care—13 districts
- ESL classes—12 districts
- Domestic violence services—6 districts

Of the 58 districts, 13 districts, including New York City, Nassau, Monroe and Suffolk, count a foster parent's parenting time as community service, while 52 districts count individuals who remain in the home caring for a seriously ill or disabled household member in the participation rate. Twenty-eight of fifty-eight districts explicitly allow for participation in court mandated activities to be counted as community service. This includes both the expected programs, like alcohol treatment and community volunteer activities, and also court mandated programs such as like anger management and parenting education. Additionally, 12 districts include English as a Second Language (ESL) classes among their community service activities.

The limitations imposed by the new federal regulations as well as more stringent definitions of work in other categories, will harm public assistance recipients who might otherwise benefit from variety of flexible and unique services that had been considered community service under the older, more adaptable definition. For example, the Rockland County Department of Social Services counts its Next Step program as community service in its 2006-07 Employment Plan. Next Step is a 25 hour per week program for mothers of children under age 3 that runs for 6 months. In the Next Step program, mothers spend half their time in employment skills and readiness training and the other half in nursery learning parenting skills and resources.

In St. Lawrence County, the St. Lawrence-Lewis BOCES Family Literacy Program incorporates adult education, early childhood education, parenting skills training, and interactive parent-child literacy activities. This comprehensive, home-based education program has been considered community service, but will not readily fit into the new definition of work activities.

Because the New Start curriculum does not meet the requirement of a 20 hour per week core work program, it is unlikely that public assistance will continue to be available to the participants of this program. To continue participating in this program as it is currently designed, these mothers would have to participate in a "core activity" for 20 hours per week in addition to the 25 hours per week of Next Step activities. Alternately, the program could be restructured to more closely match the new work categories if funding allows. The program could be expanded to 30 hours per week: 20 hours per week of employment related time, 10 hours per week of parenting time. The 20 hours per week of employment time could be structured as a learn-to-work program with many hands-on components. This portion of the program could then be counted as work experience rather than wholly excluded. The program could also be extended to a full year program targeted to giving parents in the Next Step program a specific marketable job skill, such as obtaining a certificate to be a teaching assistant. This pro-

(Continued on page 8)

New Federal TANF Regs—continued

(Continued from page 7)

gram could meet the requirements for a vocational education program.

Of particular concern are public assistance recipients who must participate in court ordered activities, often as a result of probation or parole requirements. Failure to comply with these activities can result in incarceration. Many counties have accommodated individuals whose court ordered activities do not fit basic work definitions by classifying their activities as community service. A public assistance recipient court ordered into a 60-day program intensive outpatient substance abuse treatment program, or requiring an inpatient program following unsuccessful participation in an outpatient program, may be unable to comply with the work requirements under the new work definitions.

Public assistance recipients involved in ESL classes will have that activity counted as education directly related to employment, rather than community service. Education directly related to employment, under the new definitions, is a non-core activity; it can only be counted toward work participation once an initial 20 hours of work per week are completed. This change will prevent participation in a number of districts' full-time English-language emersion programs. In New York City and a few other districts, parents may attend school conferences or school counseling for children with barriers as a community service activity. These critical parenting activities will still be permitted by using an excused absence from the program, if the state opts to include this specific activity in its work verification plan. Under the new regulations, each state is permitted to define what it considers to be an excused absence and the policy for addressing excused absences as they arise.[13] Excused absences are limited to 10 per year, with only 2 days in a given month.[14]

Caring for a disabled child can no longer count as community service. However, the new regulation does allow states to exclude participants from the work participation rate if there is medical verification that she or he is needed at home to care for a sick or disabled household member who is not attending school full-time.[15] How this will play out in under the new regulations remains to be seen. Will absences from school because of illness or disability be taken into account when defining "attending full time"? When children with significant barriers are enrolled in full time programs, how will local districts accommodate recipient parents who need those 6-7 hours per day to shop, do laundry, clean and attend to their own needs?

Separate State-funded Programs May Provide a Solution

One of the conditions of the TANF block grant is that the states meet maintenance of effort (MOE) requirement requiring a yearly expenditure of state funds on the TANF eligible population in the amount of least 80% of the money that was spent in FFY 1994 on the Aid to Families with Dependent Children Program.[16] Until the DRA was passed earlier this year, programs funded with MOE dollars were not required to meet the work participation rates described above. The DRA requires that all MOE funded programs must now meet the federal work participation rates.[17]

The Article VII budget bill which was recently passed by the legislature and signed by the Governor, included a provision that adds a new subdivision 12 to Social Services Law 159. This new law allows the Office of Temporary and Disability Assistance to create separate state public assistance programs, funded only with state and local dollars, if they would assist the state in maximizing its participation rate. At the New York Public Welfare Association conference held on July 18, 2006, OTDA announced that it would utilize SSL §159(12) to create a separate state program for two parent families. Although the state will not be able to claim the money spent on assistance to these families to meet its maintenance of effort requirements, it will also not

(Continued on page 9)

Medicaid Back-Up for Medicare Part D to Continue New Rules for Institutional Long Term Care

By Trilby de Jung

The New York Medicaid program will continue its wrap around coverage for dual eligibles, those eligible for both Medicaid and the new Medicare Part D drug program, until January 1, 2007. This means pharmacists can still bill Medicaid when a Part D plan refuses to pay because a prescribed drug is not on the formulary or for other reasons. Dual eligibles are also eligible for Part D's Extra Help program, which eliminates the donut hole and keeps co-payments down to either $1 generics/$3 brand names (for those with income at or below 100% of the federal poverty level) or $2/$5 (for those above 100% of FPL).

In other good news from the final days of the legislative session, spousal refusal will continue to be available in New York, transfers of assets will not be penalized for home care services or assisted living and cost-sharing will not be increased in Family Health Plus. New York has implemented the federal changes to institutional long term care that are required by federal law (the Deficit Reduction Act). The Department of Health has just released a new ADM detailing changes in how the penalties will work for transfers of assets for Nursing Home and Lombardi care, visit the Online Resources Center at http://onlineresources.wnylc.net/pb/showquestion.asp?faq=90&fldAuto=2045

New Federal TANF Regs—continued

(Continued from page 8)

have to meet a 90% work participation rate for these households. Similarly, OTDA can create a separate state program to preserve the valuable service provided by public assistance recipients who are foster parents. OTDA could also create a separate state program for those on public assistance who must comply with court ordered activities which no longer meet the definition of community service, in order to protect these recipients from facing the choice of facing a sanction for not participating in a work program or violating the terms of their probation or parole. As separate state, non-MOE programs, OTDA would be free to define foster parenting or court ordered activities as community service for the purposes of these programs.

In conclusion, the revamping of the definitions of work activities will make it more difficult for New York State to meet its work participation requirements. All social services districts will be required to rewrite their plans and many vulnerable recipients may be threatened with sanctions for failure to participate if they can no longer participate in activities that allow them to comply with court ordered treatment, the needs of their disabled children or the needs of their foster children. However, with creative planning, OTDA can protect the important services provided by foster parents on public assistance and protect those who must participate in activities as a condition of probation or parole when those activities do not fit the new federal requirements for community service.

[1]Saima Akhtar is currently a law intern at the Empire Justice Center, and has recently completed six months as a fellow of the Center for Women in Government and Civil Society with Empire Justice Center. She is pursuing degrees in law and public policy at Albany Law School of Union University and the Rockefeller College of Public Affairs, University at Albany. She holds dual bachelors degrees in Social Welfare and History of Science from the University of Wisconsin-Madison.

[2] 71 Federal Register 37454-37483, available at http://www.gpoaccess.gov/fr/index.html

[3] *Welfare Reform: HHS Should Exercise Oversight to Help Ensure TANF Work Participation is Measured Consistently Across States* (GAO-05-821).

[4] 45 C.F.R. §§261.21,261.23, at 71 FR 37476 (2006).

[5] 42 U.S.C. §607(b)(3)(A)(ii) (2006).

[6] Social Services Law 335-b(1)(d).

[7] 45 C.F.R. §§261.31(a), 261.32(a) at 71 FR 37477 (2006).

[8] 45 C.F.R. §§261.31(b), 261.32(b) at 71 FR 37477 (2006).

[9] 45 C.F.R. §§261.31(c), 261.32(c) at 71 FR 37477 (2006).

[10] 45 C.F.R. §261.2(h), at 71 FR 37475 (2006).

[11] All 2006-2007 local district employment plans which have been approved by the Office of Temporary and Disability Assistance are available in PDF form on the Empire Justice website.

[12] 45 C.F.R. §261.34 (2006).

[13] 45 C.F.R. §261.60(b), at 71 FR 37479 (2006).

[14] *Id.*

[15] 45 C.F.R. §261.2(n)(2)(i), at 71 FR 37476 (2006).

[16] 42 U.S.C 409(a)(7)(B)(i)(III)

[17] 42 U.S.C. 611(a)(1).

2006 Partnership Conference

This year's Partnership Conference – a three-day training event sponsored by the New York State Bar Association on behalf of the legal services community – brought together over 350 participants from around the state. With sessions touching on consumer law, housing, health, public assistance, disability, family law and more, trainers included judges, staff attorneys and national advocates.

The Partnership also gives us an opportunity to pause, recognize and celebrate each other with the Denny Ray Awards, named in honor of the late civil rights activist and leader of the Legal Aid Society of Northeastern New York. These awards honor a legal services attorney who has shown extraordinary commitment to the creative and zealous representation to those in need; a nonprofit organization that has demonstrated an extraordinary commitment to strengthening access to justice; and to a legal services director who has provided outstanding leadership and serves as an inspiration to staff and community. And this year's honorees are……

Tom Karkau, Kathleen Lynch and Joe Kelemen with Lillian Moy.

We at Empire Justice were thrilled to nominate Joe Kelemen and the crew at the Western New York Law Center for the incredible and untiring technology support they provide to the community, from their TIME case management system to the On Line Resource Center and Fair Hearing Bank to new experiments with on-line trainings.

Lisa Frisch, Executive Director of The Legal Project was honored for her tremendous work in saving the agency after devastating federal funding cuts threatened its existence. Nominated by her Legal Director Ellen Schell, Lisa nomination at the conference was presented by Jill Dunn, past president of the Capital District Women's Bar Association which first launched The Legal Project.

Jill Dunn, Lisa Frisch and Mary Lynch

Louise Tarantino, David Ralph, Kate Callery

David Ralph of Chumng County Legal Services was nominated by his Executive Director, Tom Dubel, for this year's Denny Ray Award for Staff Attorney. Kate and Louise were only sorry that Tom beat them to the punch; they could not have been more supportive of seeing David receive this well-deserved recognition.

Lillian Moy, Chair of the New York State Bar Association's Legal Aid Committee and leading force behind this year's Partnership Conference is joined by Mark Alcott, newly installed President of the State Bar Association.

Lillian Moy and Mark Alcott

Senator Clinton Introduces Student Borrower Bill of Rights

By Kirsten E. Keefe

On May 26, 2006, Senator Hilary Rodham Clinton introduced the "Student Borrower Bill of Rights Act of 2006" (S.3255). According to findings set forth in the Bill, between 1994 and 2005, student loan borrowing increased a staggering 76 percent. Acknowledging that college education is becoming increasingly important for getting higher-paying jobs, and that there has been a dramatic growing dependence on private credit sources by students to fund their education, Senator Clinton introduced this strong consumer legislation to provide borrowers with the most basic necessary protections.

The Bill applies to private and public lenders, insurers, guarantors, and servicers of student loans. Five categories of "borrower's rights" are established. Highlights of each of the "rights" include:

A Right To Shop In A Free Marketplace – Student loan debt consolidation will be made easier, and borrowers will be allowed to re-consolidate. The Bill encourage greater competition in the student loan marketplace by including enhanced reporting requirements to credit reporting agencies regarding student loans, and allows borrowers to consolidate, and reconsolidate, student loans with a lender of their choice.

A Right To Timely Information About Loans - A monthly bill must be sent to the borrower with clear notice including the principal, current balance, amount paid in interest to date, amount of additional interest expected to be paid over life of loan, the total amount borrower has paid, a description of all fees, and contact information for the lender/servicer, as well as the total amount of the payment and date due, among other things. Also, the Bill requires that proper notice must be given by both the old and new servicer when servicing changes and that a 60 day grace period post-transfer be given, should a payment be sent to the incorrect party.

A Right To Make Affordable Loan Payments – Provides payments shall not exceed 10 or 20 percent of income, depending on income level. If Income Contingent payment does not cover all interest, then the federal government shall pay the difference. A study is encouraged under the Bill to examine what additional protections may be necessary to ensure that monthly payment amounts for different incomes are affordable, including examining payments required of students borrowing in other countries such as England and Australia. The Bill also reinstates ability to discharge student loans through bankruptcy after seven years,[1] and expands the current narrow definition of "disability" in order to receive a discharge from the Department of Education.[2]

A Right For Interest Rates and Fees To Be Reasonable – The Department of Education is encouraged to study interest rate and fees charged to borrowers of private student loans. The Bill caps the total amount of fees that can be charged for the collection of a defaulted student loan, as well as the total amount that can be charged to a borrower, including all interest as fees, as a percentage of the original loan amount.

A Right To Not Be Exploited – Requires schools to disclose group level job placement of graduates, as well as, graduation rates and default rates of students. The Bill allows administrative review for violations of the Higher Education Act and makes schools potentially liable for violations of the Higher Education Act.

While the likelihood of passage of S.3255 in this Congress is not great (and no companion bill has been introduced in the House or Representatives), it is still a very significant and important piece of legislation. The Bill formally recognizes many of the problems that student borrowers have been complaining about including unafford-

(Continued on page 13)

Student Borrower Bill of Rights—continued

(Continued from page 12)

able and abusive loan terms, being steered into higher priced loans, poor servicing and an overall confusion with the lending process. Senator Clinton's proposals for consumer-friendly resolutions – some of which read like basic common sense – are long overdue in the student loan arena.

Senators Barbara Boxer (CA), Mary L. Landrieu (LA), Barbara A. Mikulski (MD), John F. Kerry (MA) and Joseph I. Lieberman (CT) have signed on as co-sponsors. A copy of S.3255 can be downloaded off of Thomas (Library of Congress) at http://thomas.loc.gov/. For more information about the S.3255, contact Greg Walton or Mildred Otero in Senator Clinton's Washington, D.C. office at (202) 224-4451.[3]

A group of NYS Advocates plans to send a letter to Senator Clinton thanking her for introducing the bill and lending their support, and a letter to Senator Schumer asking him to co-sponsor the bill. (Some advocates will sign-on in their individual capacities.) **If you or your agency is interested in signing onto this letter, please contact Kirsten Keefe of Empire Justice Center at kkeefe@empirejustice.org or (518) 462-6831.**

[1] Prior to 1996, student loans could be discharged through bankruptcy after seven years. Currently, a debtor must prove the debt is an "undue hardship" in order for student debt to be discharged which has become a nearly impossible standard for debtors to meet.

[2] Currently, borrowers must show that they are "totally and permanently disabled" to receive a disability discharge from the Department of Education. This law would lessen that burden, defining disability as "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 60 months."

[3] For a comprehensive report regarding the current state of student loans in America, see *No Way Out: Student Loans, Financial Distress, and the Need for Policy Reform,* by Deanne Loonin, (June 2006) National Consumer Law Center (NCLC), available at *http://www.nclc.org/action_agenda/student_loans/content/nowayout.pdf.*

Shadows: The Dark Side of Strength

By Anne Erickson

Note: I wrote this for internal purposes as we were planning our recent staff retreat. We all found it helpful and I thought I would share it more widely since it impacts so many of us "in the struggle."

So many of us have been so overwhelmed lately. We've taken on so much; we're not sure where to draw lines; we're desperately trying to deliver so many services to so many constituencies. We need to figure out how to re-group; how to breathe.

I recently attended the ABA's Equal Justice conference and, as is usually the case, scooped up lots of reading materials, including an interesting article on ***trauma in mission-driven organizations.*** I found a strange comfort in it.

"An organization is a living human institution," they write. An organization's "real existence is expressed through the hearts, minds, and hands of its employees, members and volunteers."

In mission-driven organizations, "individuals who recognize societal issues or human needs, join forces to address them." This sense of "mission" shapes the culture of the organization. The overwhelming nature of the mission can also induce a sense – a culture – of trauma.

Trauma caused by --

> A constant exposure to unmet needs - not all of which we can meet
>
> Attacks from outside forces over which we have little or no control
>
> Constantly working against the grain, often without the support of others

"The nature of the work names the struggles or challenges and creates expectations about individual identification with the work." Often we merge ourselves, our lives with the life of the organization, not knowing where one ends and the other begins.

Sound familiar? This is what I shared with our staff: Think about our vision and mission:

> At Empire Justice our Vision is to be a statewide leader working to achieve social and economic justice in New York State.

Our mission?

> To protect and strengthen the legal rights of people in New York State who are poor, disabled or disenfranchised. We do this through systems change advocacy, training and support to other advocates and organizations, and high quality legal representation

We are out to make the world a better place for those who struggle against mighty odds. Are we "there" yet? Can we ever be "there"?

In this very mission-driven organization of ours, as with so many of our colleagues,

> "The work is perceived to be a higher calling"

and so it can consume every fiber, every moment of our being.

The highly mission-driven work creates an intense emotional culture, as we deal with the stress, guilt and exhaustion of striving to mission and never quite getting there.

Impact on Us, on Our Organization

The culture of Mission drives internal dynamics that are both functional and dysfunctional. And this is where the authors lead us – to recognize the shadows thrown on us by our strengths.

Strengths & Shadows—continued

Strengths	Shadows
Commitment to the work.	Over promising, over functioning Stress: external forces don't care or work against us.
Expertise-based success.	Rigid in approach, (it works; we've always done it this way) Exceed Capacity, (we're the only ones and it has to be done right).
Interdependence; caring deeply about relationships (internal & external).	Conflict avoidance, Unclear boundaries, (supervision, leadership, interpersonal relations).
Shared power and decision-making	Lack of decisions, no clear responsibility, (Who's in charge?).
Client-centered	No permission to not care, to step away, to say no; guilt → stress.
Social change Mandate/Mission	Sense of guilt and failure, we haven't ended poverty, things are worse not better, We/I'm failing.
Empathic, caring response to clients and to each other.	Over functioning, over worked, guilt/stress about not meeting all needs; no permission to say "No".
Autonomous; independent work (staff and organization).	Isolating/Isolation.
Mission-driven (all are one in the mission).	Loss of identity, disagreements become personalized or politicized, (you're not "with mission").

Strengths & Shadows—continued

The authors found that organizations that are this mission-driven risk falling into one of two patterns:

1. They focus on Strengths only with little criticism allowed; they overuse and over emphasize their strengths. They are driven by a need to affirm themselves, their work, and their mission within the greater struggle.

2. They focus on Shadows only. Their dysfunction becomes so intense that their strengths have been forgotten; cynicism and apathy become the norm. They are overworked, underappreciated and exhausted, so why bother?

So Now What?

> "The task is not to eliminate the Shadows, but to recognize them as a starting point for systemic analysis and insight."

I don't think we are so traumatized as to be dysfunctional, but we are extremely mission-driven and this framework really helped me put things in a new light.

I think for us the challenge is a healthy balance of recognizing and using our strengths, while at the same time recognizing and responding to our shadows.

As we begin to think about the next phase in our growth and development – and as we launch the next phase of our strategic planning – we need to work towards striking that balance.

Here are some tips from the article that might help us shape an approach:

Shine a Light on the Shadows

√ Explore our experiences through the framework of Shadows and Strengths

√ Encourage discussion of the inherent tensions without assigning blame to individuals or to specific roles; recognize that these are organizational issues, organizational dynamics

√ Remember our creation stories, the source of our inspiration, and our current strengths -- rekindle hope

Reduce Stress

√ Work to surface and change the norms that lead to stress

√ Encourage boundary-setting that says "no" to over-functioning, over-promising

√ Encourage organization-wide conversations about capacity and limits

√ Support realistic priority setting

Embrace Organizational Strengths and Shadows

√ Develop awareness of strengths and shadows -- "notice and name them"

√ Convene and facilitate conversations – open and non-confrontational

√ Actively work to shape our organizational culture and change dysfunctional dynamics

Reflect and Learn

√ Fully understand and embrace our strengths

√ Create change strategies in alignment with those strengths and values

√ From a sense of strength, open boundaries, increase information flow

√ Move from protecting ourselves to embracing collaborations – internally and externally

"Understanding the work-culture connection is the first step an organization can take to free itself from dysfunctional dynamics and heal from trauma." Let's think it through and work on our Strengths and Shadows before we become "traumatized."

Trauma and Healing in Organizations, Pat Vivian and Shane Hormann OD Practitioner, Vol. 34, No.4, 2002

New York State Passes the "Home Equity Theft Prevention Act"

By Kirsten Keefe

On July 26, 2006, after unanimous votes in both the New York State Assembly and Senate, Governor George Pataki signed into law the "Home Equity Theft Prevention Act." The bill was sponsored by Assemblyman Darryl Towns and Senator Hugh Farley, chairs of the Banking Committees in their respective houses. The new law (Chapter __ of the Laws of 2006) regulates the growing industry of "foreclosure assistance" – for-profit companies that target people in foreclosure and promise to rescue them from losing their homes.

"Deed Theft" Scams

Home equity theft, also known as "deed theft," occurs when investors agree to pay off the arrearage owed on a home and in return, require the homeowner sign the deed over to them. The investors comb court foreclosure records and call or send direct market mailings to vulnerable homeowners. Promises are made that the homeowner may continue to live in the property "renting" it from the investor, and then buy back the property in a year or so, once their credit has improved. The reality, however, is that homeowners are often evicted within months and the investor sells the property to a third-party, keeping all the equity. In other instances, the investor cashes out on the equity in the home upfront with a new mortgage, leaving the homeowner with a monthly payment that is wholly unaffordable.

While these scenarios have been proliferating in areas such as Brooklyn where property values have soared and many homeowners face trouble because of predatory loans they got in the '90's, these scams are increasingly occurring across the state. In Troy, for example, a homeowner facing real property tax foreclosure was offered $12,000 in assistance in exchange for adding the investor's name to the deed. In a year, the contract would have obligated her to buy the investor out of his half of the $80,000 property value, paying him $40,000 for the loan of $12,000. Described by a representative of one company as "a creative way around the lending system", these investors view themselves as saviors to homeowners in trouble, seeing the excessive profits they recognize as simply their ingenuity to profit in a free-marketplace.[1] As foreclosure rates continue to rise, it is likely these businesses will only expand their marketplaces.

Summary of the New Law

The "Home Equity Theft Prevention Act" amends the banking law, the real property law and real property actions and proceedings law.[2] It does not prohibit genuine and fair offers of assistance; rather, the law regulates this growing industry and requires the investors, referred to as "equity purchasers" in the law, to commit the agreement to writing making these transactions more transparent for consumers. The law goes into effect February 1, 2007.

Who is Covered

All transactions between a homeowner, referred to as the "equity seller" in the law, and "equity purchasers" are covered under the law. An "equity purchaser" is defined as "any person who acquires title to any residence in foreclosure or, where applicable, default, or his or her representatives as defined [in the law]." [3] In an attempt to exempt genuine transfers of property for real value, the law exempts from the definition those who purchase a property to be used as their primary residence, lenders who receive a property through foreclosure proceedings or others who acquire a property through a referee sale, a transfer to a relative, the transfer of a property to a non-profit or governmental housing organization and bona fide purchasers who pay real value for a home.[4] Thus, the vast majority of real estate transactions between sellers and

(Continued on page 18)

Theft Prevention Act—continued

(Continued from page 17)
buyers are not affected by this law.

The Written Contract (The "Agreement")
Agreements for the transfer of property between equity sellers and equity purchasers must be in writing, and signed and dated by both parties. If Spanish is the primary language of the seller, the agreement must be provided in English and in Spanish.[5] The Agreement must contain the following: the name, business address and telephone number of the purchaser, address of residence, total consideration to be given to the seller, a complete description of the terms of payment and services to be provided by the purchaser, the time which physical possession is to be transferred, the terms of any rental agreement, the terms of the conveyance agreement, and a notice of cancellation.[6]

The seller has a non-negotiable right to cancel the transaction within five business days of the date of the transaction.[7] Specific language regarding the seller's right to cancel is provided in the law and must be printed in 14 point type on the Agreement, including instructions for how to cancel.[8] Two copies of the contract a separate notice of cancellation must be given to the seller.[9] The law also includes several acts that are prohibited to be taken by the purchaser during this five day period.[10]

Extended Right to Rescission
The seller has a two year extended right to rescind the transaction for violations of certain sections of the law, including failure to provide a complete and accurate Agreement. If the purchaser or an affiliate still owns the property at the time a purchaser exercises their extended right to rescind, the property shall be returned to the purchaser. If the property has been sold to a bona fide third party, rescission does not affect the interest of this party, and the seller's remedy is to pursue claims for damages against the equity purchaser, including attorneys' fees and costs.[11]

Reconveyance Agreements
If the Agreement grants the seller an option to repurchase the property, unless otherwise shown, the Agreement is deemed to be a loan transaction.[12] In such reconveyance arrangements, the equity purchaser must verify that the seller has a reasonable ability to repurchase the property within the term set forth in the Agreement.[13] A formal closing must be conducted for any reconveyance arrangement that is conducted by an attorney not affiliated with the purchaser.[14] The seller must also sign off on any transfer of the property to a third party within the term set forth in the Agreement.[15] Lease and rental agreement terms during the reconveyance period must be commercially fair and reasonable.[16]

If the property is reconveyed to the seller, the purchaser must ensure that the title is properly transferred.[17] Should the seller be unable to repurchase the property at the term's end, then the seller is entitled to receive 82% of the fair market value (FMV) of the property, minus expenses paid by the purchaser.[18] The time for determining FMV must be determined at the time of the original contract and set forth in the reconveyance agreement – it can be either at the time of the original transfer, or at the time the property is ultimately sold to a third party.[19] The law sets standards for determining FMV, as well.[20]

All deeds or conveyances subject to a reconveyance arrangement must state explicitly on the face of the document that the conveyance is subject to a reconveyance arrangement, including the terms of the arrangement.[21] Reconveyance arrangements must be simultaneously recorded by the purchaser along with the deed in the county clerk's office, as well, to give title insurers and subsequent purchasers or potential lien holders adequate notice.[22]

Foreclosure Notice
One of the strongest pieces in the law is the "foreclosure notice." In an attempt to prevent vulnerable homeowners from falling prey to the enticement of "foreclosure rescue" schemes that might not be in their best interest, the law man-

(Continued on page 19)

Theft Prevention Act—continued

(Continued from page 18)
dates that foreclosing parties send a consumer education notice with the summons and complaint.[23] The notice must be on colored paper and in bold 14 point type and state:

> "Help for homeowners in foreclosure New York state law requires that we send you this notice about the foreclosure process. Please read it carefully.
>
> Mortgage foreclosure is a complex process. Some people may approach you about "saving" your home. You should be extremely careful about any such promises.
>
> The state encourages you to become informed about your options in foreclosure. There are government agencies, legal aid entities and other non-profit organizations that you may contact for information about foreclosure while you are working with your lender during this process.
>
> To locate an entity near you, you may call the toll-free helpline maintained by the New York State Banking Department at 1-800-BANK-NYS or 1-800-226-5697 or visit the Department's website at .www.banking.state.ny.us/. The State does not guarantee the advice or these agencies."[24]

The Banking Department is responsible for providing a telephone number and web address, and shall make this information readily available for lenders.[25]

Remedies
In addition to the five day right to cancel the Agreement, and the two year extended right to rescission for violations of certain sections of this law, sellers may bring a private cause of action for damages or equitable relief, treble damages and attorneys' fees and costs within six years after the date of the violation.[26]

The Attorney General is also empowered to bring an action against an equity purchaser for violations of this law.[27]

Criminal Penalties
In addition to civil penalties, an equity purchaser can be held criminally liable for violations of the law as either a Class E Felony or a Class A misdemeanor.[28]

Alternatives

Businessmen and women in this burgeoning industry see themselves as saviors to homeowners who would otherwise lose their home to foreclosure.

While that might be true, lawyers at South Brooklyn Legal Services who have seen the majority of these cases, have yet to learn of a single homeowner who successfully repurchased their home. In the Capital District, one homeowner was forced to buy back her property for $40,000 more than the mortgage which was paid off by the purchaser.

New York State has a comprehensive system of housing counseling agencies to which homeowners in trouble can turn for free assistance. Repayment agreements or loan modifications may be available to the homeowner, or there may be viable defenses to the foreclosure. If the default was caused by a temporary financial hardship, a chapter 13 bankruptcy may provide the homeowner with a chance to cure the arrearage over time. The hard truth in many cases, however, may be that the home has become unaffordable and the only option is to sell the property. It is the rare instance that a homeowner will be able to turn their credit around in a year's time, a typical term for re-conveyance agreements, to enable them to obtain affordable financing to buy back the property from the investor. However, if the homeowner sells the home up front, they – not the investor – will receive and benefit from their earned equity in the home.

(Continued on page 20)

Theft Prevention Act—continued

(Continued from page 19)

New Yorkers for Responsible Lending

Empire Justice is a member of New Yorkers for Responsible Lending ("NYRL"), a statewide coalition of legal services, housing counseling, advocacy, credit unions and other grassroots organizations lead by the Neighborhood Economic Development Advocacy Project (NEDAP) in New York City that was the driving force behind this bill. NYRL was convened around 2001 in an effort to get New York State's anti-predatory lending bill passed. NYRL has three main focus areas: mortgages and home issues, insurance, and financial service products (such as payday lending and refund anticipation loans). To learn more about NYRL or become a member, see NEDAP's website at http://www.nedap.org/programs/nyrl.html or by call NEDAP at (212) 680-5100.

Conclusion

With the passage of this law, New York became the sixth state in the nation to provide homeowners with meaningful protections against home equity theft. (Other states with such laws are California, Minnesota, Maryland, Georgia and Illinois.) More information about deed theft, as well as a detailed summary of the law can be found on the Empire Justice website at www.empirejustice.org. For a copy of the law, go to the New York State legislature's websites at http://assembly.state.ny.us/ or http://www.senate.state.ny.us/senatehomepage.nsf/home?openform and type in bill numbers A.10057B or S. 4744A.

[1] See Jim Schlett, *Investors to Focus on Foreclosures*, Schenectady Gazette, June 30, 2006; Michael DeMasi, *New Trade Group Will be Advocate for Buyers/Resellers of Real Estate*, The Business Review, June 16-22, 2006, at 8.

[2] The law amends New York State banking law, Section 595-a(1) by amending paragraphs (e), (f) and (g) (paragraphs (e) and (f) as added by chapter 571 of the laws of 1986, paragraph (g) as added by chapter 445 of the laws of 1990), and by adding paragraph (h). The law amends the real property law by adding section 265-a. The law amends the real property actions and proceedings law by adding section 1303.

[3] Real Property Law, §265-a(3).
[4] *Id.*
[5] *Id.* at §265-a(3).
[6] *Id*. at §265-a(4).
[7] *Id*. at §265-a(5).
[8] *Id*. at §265a(4)(I).
[9] *Id*. at §265-a(6).
[10] *Id*. at §265-a(7).
[11] *Id*. at §265-a(8).
[12] *Id.* at §265-a(11)(A).
[13] *Id.* at §265-a(11)(B)(I).
[14] *Id.* at §265-a(11)(B)(II).
[15] *Id.* at §265-a(11)(B)(III).
[16] *Id.* at §265-a(11)(C).
[17] *Id.* at §265-a(11)(D)(I).
[18] *Id.* at §265-a(11)(D)(II).
[19] *Id.* at §265-a(11)(D)(II)(B).
[20] See *Id.*
[21] *Id.* at §265-a(11)(F).
[22] *Id.*
[23] RPAPL §1303.
[24] *Id.* at §1303(3).
[25] *Id.* at §1303(4)-(5).
[26] Real Property Law §265-a(9).
[27] *Id.* at 265-a(13).
[28] NYS Real Property Law §265-a(10).

Regulatory Roundup

By Susan C. Antos

Regulatory Round Up reports on rule making of interest to public benefits specialists. It has been a nearly a year since the last Regulatory Round Up and so rules that were both proposed and adopted since the last publication of the Legal Services Journal will be reported only as adopted rules. The rulemaking described below appeared in the New York State Register from August 17, 2005 to July 19, 2006. All references are to 18 NYCRR, unless otherwise indicated. If you are interested in reading the text of a proposed rule or the summaries of public comment and the response regarding an adopted rule, please contact Connie Wiggins (cwiggins@empirejustice.org). If we submitted any comments on proposed regulations, they are available at www.empirejustice.org. From the Public Benefits section, go to "CashAssistance" and then "Comments on Regulations."

Notice of Proposed Rule Making

Date of Filing	Last Day to Comment	Regulations Affected	Summary
5/17/06	7/1/06	360-7.5(a)	**Reimbursement of Paid Medical Expenses:** This regulation implements the orders in *Greenstein v. Bane* and *Seittelman v. Sabol.* The regulation directs that reimbursement of medical expenditures paid by the recipient or his/her representative due to an erroneous determination of eligibility must not be limited to the Medicaid rate or fee. Further, reimbursement may not be limited to providers enrolled in the Medicaid Program during the period commencing on the first day of the third month prior to the month of application and ending upon the date of application for Medicaid.

Proposed and Withdrawn

Application for Safety Net Assistance

On October 19, 2005, the Office of Temporary and Disability Assistance proposed a regulation which would have imposed new application requirements upon Family Assistance households meeting the 60 month time limit, deleted the language requiring an abbreviated state application form and the language which assured a seamless transition to Safety Net Assistance. The intent of this regulation was to impose a 45 day waiting period after the Family Assistance case closed.

On February 1, 2006, OTDA withdrew notice of proposed rulemaking citing "concerns about possible negative impact."

Notice of Adoption

Date of Filing	Effective Date	Regulations Affected	Summary
6/6/06	6/21/06	415.9	**Market Rules for Subsidized Child Care:** This regulation, which was previously promulgated as an emergency rule, establishes the maximum subsidy rates for child care payments. This regulation also requires additional documentation requirements for parents who use more than one child care provider if the combined reimbursement to the provider would exceed one weekly market rate.
3/14/06	7/31/06	415.1 415.4 415.9	**Health and Safety Standards for Legally Exempt Informal Child Care Providers:** The Office of Children and Family Services significantly revised, republished for comment, and has now adopted new health and safety standards for legally exempt informal child care providers that were first proposed on January 5, 2005. The regulations establish Child Care Resource and Referral Agencies as the entities that approve legally exempt care for parents receiving child care subsidies. One out of every five legally exempt providers will be inspected each year. Legally exempt providers that participate in the Child and Adult Care Food Program are exempt from inspection.
3/28/06	4/14/06	347.99	**Enforcement of Support Obligations and Income Executions:** This regulation amends 18 NYCRR 347.9 to change the calculation used to determine the "Additional amount" to be included with an income execution to collect arrears. The general add on amount proposed is 50% of the current support obligation. The regulation requires that the Support Collection Unit lift any additional amount imposed where the debtor provides documentary proof that the imposition of an additional amount would lower his income below the self support reserve (135% of poverty for a household of one, currently $13,230 per year).
3/10/06	3/29/06	369.4(c)	**Verification of School Attendance:** This regulation relaxes the requirement that for purposes of eligibility for Family Assistance, school attendance of a minor be verified at each contact with the family. This regulation requires such verification only when the child is 18 years old. The commentary to the proposed regulation states that districts are not prohibited from verifying school attendance, but will not be required to do so unless the minor child is 18.

Notice of Adoption

Date of Filing	Effective Date	Regulations Affected	Summary
3/10/06	3/29/06	352.23 352.29	**Lump Sum Income:** This regulation implements the changes made to the 131-a(12) Social Services Law by Chapter 373 of the Laws of 2003, which allows a number of exemptions to be deducted when a period of lump sum ineligibility is calculated, including a $2,000 general resource exemption ($3,000 if a household contains a member age 60 or older), exemptions for automobile purchases, education and burial plots. These changes are described in detail in 03-ADM-10.
2/28/06	3/15/06	12 NYCRR 1300 Part 358 Part 387 Part 385	**Public Assistance Employment Programs:** In 1997 when public assistance work programs were transferred to the Department of Labor, all the work rules in 18 NYCRR were transferred to 12 NYCRR, the Department of Labor regulations. Earlier this year, these functions were transferred back to the Office of Temporary and Disability Assistance, and the regulations are being transferred back to 12 NYCRR. No substantive changes have been made in the regulations.
1/17/06	2/1/06	415.1(k)	**Federal Poverty Line:** Every year the federal poverty level is updated in the Federal Register by The United States Department of Health and Human Services (HHS). However, this section of 18 NYCRR incorrectly refers to poverty guidelines promulgated by the Federal Office of Management and Budget. This proposed regulation would correct that misstatement. Earlier this year this same change was made in: 352(g)(3)(vii), 370.3(b)(2) and 372.2(a)(2).
1/17/06	2/1/06	421.19	**Pre-Adoption Residency Requirement:** This regulation would conform state regulation to Domestic Regulations Law §112(6) which requires that a child reside with an adoptive parent for at least 3 months before an adoption can go forward. The regulation currently contains a longer 6 month time period.
1/17/06	2/1/06	404.5	**Exclusion of Certain Veteran's Benefits:** This regulation adds two types of income that must be excluded when determining eligibility for child care services: Veterans benefits made to or on behalf of certain Vietnam veteran's natural adult or minor child for any disability resulting from spina bifida suffered by such children, and benefits for other covered birth defects associated with the service of women veterans in Vietnam from 1961-1975.

Emergency Rule Making

Date of Filing	Rule Expires On	Regulations Affected	Summary
6/27/06	9/24/06	421.4, 421.6, 421.17 423.2 426.10, 426.4, 428.1 430.8, 430.9, 430.11, 430.12, 431.9 432.2 441.21, 441.22 443.2 476.2 507.2	**Permanency. Safety and Well-being of Children in Foster Care:** These regulations were enacted to conform to Chapter 3 of the Laws of 2005 which was intended to provide children who were placed outside of their homes with more timely judicial and administrative review. They have been filed as an emergency basis several times since December of 2005. No notice of proposed rulemaking has been filed.
5/16/06	8/13/06	360-2.3(c)(3)	**Self Attestation of Resources for Medicaid Applicants and Recipients:** This regulation implements Chapter 1 of the Laws of 2002 which permits a Medicaid applicant to attest to his resources unless he/she is seeking long term care. The regulation defines long term care services and short term rehabilitation services.
5/9/06	8/16/06	11 NYCRR 362-2.5 362-2.7 362-3.2 362-4.1 362-4.2 362-4.3 362-5.1 362-5.2 362-5.3 362-5.5	**Healthy New York:** These emergency regulations have been repeatedly filed on an emergency basis for over a year, and make a number of changes to the Healthy New York program, including deleting co-payments for well child visits, allowing a lower cost plan option which does not include prescription drugs, defining *de minimus* contributions for purposes of determining whether small employers qualify to participate, exempting child support received as income, and deleting the requirement that supporting documents be required upon recertification. To date, no proposed rule has been filed.

Notice of Expiration

Medical Utilization Thresholds

On December 15, 2004, the New York State Department of Health proposed regulations which would have required threshold override applications for Medicaid recipients with more than five physician visits per year and which would have reduced the pharmacy limits from 40 to 30. The rule was never adopted and on January 4, 2006, the New York State Register reported its expiration. It can not be adopted without a new notice of proposed rulemaking.

SSA Issues Administrative Message Addressing Homesteads Owned by Domestic Violence Survivors Who Have Fled Their Abusers

By Kate Callery, Louise Tarantino and Amy Schwartz

In late 2004, advocates from the Empire Justice Center contacted the Social Security Administration (SSA) on behalf of survivors of domestic violence who were facing complicated bureaucratic hurdles when they had to flee from their homes to escape abuse.

In some cases, claimants who left the marital residence and sought safe housing in a domestic violence shelter have been denied or faced denial because they were determined "over-resource" based on ownership of the home in which they were not residing because of safety concerns. In one case, in order to be approved for benefits, the claimant had to secure a statement from her husband-batterer that it would be an undue hardship on him to have to move out of the jointly owned home. Advocates were greatly concerned that such a resolution, which involved the cooperation of the batterer, would put survivors at increased risk of danger and further economic abuse. Additionally, survivors who need, and would otherwise be eligible for SSI benefits, might abandon viable claims for fear of approaching their batterer for such a statement. Our review of the existing policy guidelines appeared to offer no clear directives to Social Security claims representatives on how to handle these difficult situations.

In response to advocacy by the Empire Justice Center, in early 2005, SSA agreed to seek a regulatory change so that a home jointly owned with an abuser will not be counted as a resource to a survivor of domestic violence who is forced to leave the home because of the abuse. Although SSA indicated at that time that its current policies served to prevent any undue hardship or danger to survivors of domestic abuse, it agreed to issue a reminder item to its field offices in the meantime that SSA personnel are required to assist individuals in obtaining evidence and should take into consideration the individual's circumstances in determining resource availability. (See the March 2005 edition of *Disability Law News*, available at www.empirejustice.org., which fully discusses the issue and the SSA response.)

SSA has recently done just that. In late December 2005, it issued an Administrative Message (AM) reminding claims representatives to "use particular care and sensitivity when requesting evidence from individuals" who are fleeing from a domestic abuse situation. AM-0521 is available on the Online Resource Center.

The AM reminds claims representatives of how to interpret existing SSA policy directives (POMS) in a manner that will be most helpful and beneficial to a spouse fleeing because of domestic violence. The AM addresses issues including the requirement to assist beneficiaries, termination of deeming, intent to return, undue hardship/permission to sell, and conditional benefits.

Assistance to Beneficiaries: The AM emphasizes SSA's obligation to assist the beneficiary in obtaining evidence and specifically recognizes that the survivor of abuse should not be required to obtain evidence from her batterer. Further the AM suggests that if the claims representative provides assistance with evidence collection, the application and redetermination process will be expedited for survivors of domestic violence placed in dire financial straits.

Termination of Deeming: The AM similarly reminds claims representatives that deeming of the other spouse's (in domestic violence cases, the abuser) income and resources should be terminated as of the first moment of the month

(Continued on page 26)

Homesteads—continued

(Continued from page 25)
following separation or divorce. This means that the other spouse's resources can no longer be considered "available" for the purposes of eligibility. Additionally when a survivor on SSI (or an applicant) contacts SSA to report she has divorced or separated, the caseworker should try to process the application or the redetermination as soon as possible as the change may result in increased benefits or eligibility.

Intent to Return: The departure of the survivor from the home may result in a change in the home's status as an excluded residence. SSA will continue to exclude the home as a resource if the survivor intends to return to the home at some later point because the situation is resolved or is she returns after the abuser leaves the residence. If the survivor of domestic violence decides that she no longer intends to return to the home, it will become a countable resource, if no other exclusions apply. According to the AM, "There is no time restriction placed on the intent to return home policy."

Undue Hardship/Permission to Sell: Existing provisions regarding Undue Hardship and Conditional Benefits are also available to help survivors of domestic violence who flee. If the survivor no longer intends to return and a sale of the property to the abusive spouse who is continuing to reside in the home would result in housing loss, the home will remain an excluded resource. However, contact with the abuser or other co-owner residing in the home is necessary to verify that sale would cause a housing loss. SSA employees are directed to assist survivors to obtain this evidence and further recognize that the abuser may not be willing to cooperate with requests to obtain necessary information. In those cases, conditional benefits should be considered. See below. Additionally, claims representatives should investigate or assist the survivor with investigating how the home is held in title, whether the survivor has the legal right to sell the home without permission of the co-owner, and proof that the co-owner does not wish to sell.

Conditional Benefits: If non-home real property cannot be excluded through the above policies, then conditional benefits should be offered to the SSI beneficiary who has fled because of domestic violence. Conditional benefits can be paid for up to nine months pending the sale of the home. However, in the AM, SSA explicitly recognizes that battered spouses often will not be able to meet the reasonable efforts necessary to sell the home. Therefore, *in domestic violence cases only,* SSA will accept evidence such as a police report, order of protection, or statement from the director of a domestic violence shelter as evidence that the survivor is making reasonable efforts to sell the property if the survivor is unable to meet the selling efforts requirements in those nine months. After nine months, the property can continue being excluded provided the survivor continues to make reasonable efforts to sell. SSA employees are directed to assist survivors obtain this evidence.

SSA continues to promise that a regulatory change clearly providing for the "exclusion of a jointly-owned home for an individual who is fleeing a domestic violence environment will be issued in the near future." In the meantime, revisions to the existing POMS and development of a formal regulation are in progress.

This is an example of a situation where at least the upper echelons of SSA are striving to do the right thing. Please keep us informed of how this is working – or not working – for survivors of domestic violence. DAP State Support Coordinators Kate Callery and Louise Tarantino can be reached at kcallery@empirejustice.org and ltarantino@empirejustice.org; Amy Schwartz of the Domestic Violence Program can be reached at aschwartz@empirejustice.org.

Lead Poisoning Legislation Poised for Consideration Next Year

By Michael Hanley

Despite an impressive session-end showing of support from housing advocates (as well as from health professionals, educators, trial lawyers and even the National Paint and Coatings Association), the Childhood Lead Poisoning Prevention and Safe Housing Act, (A. 4201-D / S. 2513-D) just didn't have enough time to clear all of the committees it needed to get through in order to become law this year. Nevertheless, the key sponsors of the bill, David Gantt in the Assembly and Joseph Robach in the Senate, have made the lead poisoning prevention legislation a high priority. Moreover, the increased attention paid to the bill in *both* houses during the closing days of the session suggests that it is poised for serious consideration next year.

Undoubtedly legal services housing advocates will be called upon once again in the next session to support the bill. To help you address concerns you may hear raised regarding the substantive provisions of the legislation, what follows is an overview of the building inspection provisions of the proposed legislation, as well as a summary of the incentives and financial assistance that are included in the legislation to assist property owners to remove lead-paint hazards.

Primary Prevention.

Under current state law, a building is not inspected for lead-paint hazards until a child has already been poisoned. That's called "secondary" prevention. The Public Health Law (§§ 1370 et seq) only requires inspections when a child already has an elevated blood lead level (EBL). By then it is too late for that child -- injuries caused to the brain by lead poisoning are irreversible. What's needed is a system for "primary" prevention, that is, a system under which we inspect the most dangerous buildings for lead hazards before children are poisoned. Unfortunately, the state's building code, the "Property Maintenance Code" (19 NYCRR part 1226), promulgated under the state's Uniform Fire Prevention and Building Code (Executive Law, Article 18), doesn't even make lead-paint hazards a violation at all, let alone require proactive inspections.

Currently, local building inspectors do not inspect for lead-paint hazards unless a local law making such hazards code violations has been adopted. Such code provisions exist in Buffalo, Rochester and New York City, but only Rochester truly has a "primary prevention" plan, i.e. a code enforcement system that *affirmatively* requires inspections of at-risk buildings. Although municipal building inspectors in other cities may cite landlords for "deteriorated paint," doing so actually *increases* the risk of lead poisoning for a child because a landlord who gets out a paint scrapper (instead of using the simple "lead safe work practices" that are required to remove lead-paint hazards) is actually more likely to expose a child to the lead-paint chips and invisible lead-paint dust that are poison the small child who is most likely to exhibit "hand-to-mouth" behaviors.

Although lead paint poisoning is a serious problem across the entire state, it turns out that when the actual incidents of lead poisoning are mapped, those maps reveal that there are very concentrated areas of the state where the problem is much more severe. Lead-poisoning, not surprisingly, is highly correlated with poverty, the age of the housing stock, and the presence of families with children. Additionally, there is a high correlation with areas of minority concentration.

Instead of requiring inspection of *all* housing units in the state, the proposed legislation adopts a pragmatic approach of only requiring primary prevention plans where they are most needed:

- The legislation narrows the *types* of housing that need to be inspected (mostly to pre-1970 units), and then further narrows the require-

(Continued on page 28)

Lead Poisoning Legislation—continued

(Continued from page 27)

ments based upon whether there is "person at risk" in the housing (a child under age 6, or pregnant woman);

- Instead of requiring ***every*** municipality in the state to implement a "primary prevention" plan, the legislation would have Department of Health (DOH) identify the 30 municipalities with the highest incidents of lead poisoning and require plans for those areas only – that's just **3%** of the 1009 municipalities (cities, towns or villages) in the state, but will include nearly 90% of the children who are likely to be poisoned. These municipalities are called "Communities of Concern."

- Instead of imposing burdensome and technical requirements, in the thirty Communities of Concern, the legislation allows health officials, working with local building code enforcement officials, to design *locally responsive* "primary prevention" plans. These local plans might include a mix of outreach and educational activities, and could include inspections when warranted. Local planning allows for primary prevention plans that take into account the geography, type of housing and the population of the area, but would take advantage of "best practices" models identified by the state Commissioner.

- As an additional safeguard, the state DOH would use its current databases to identify specific neighborhoods (census "block groups" or "tracts") where more than 25 children have been poisoned. These hotspots are called "Areas of High Risk." In the Areas of High Risk the primary prevention plan would be more specific, and would include inspections of the housing most likely to pose the greatest risks.

- Instead of requiring that every housing unit be inspected by certified personnel, the legislation relies, in the first instance, upon inspections by property owners themselves. Doing so not only reduces the cost to the owner and speeds the process, but also takes advantage of court rulings that require owners to fix dangerous conditions once they become aware that they may pose lead-paint hazards. Additionally, the owner-inspection requirement will make existing federal laws regarding disclosure of known hazards more effective. And, as a safeguard, the legislation authorizes tenants to ask for inspections when they suspect that lead-paint hazards exist, thus providing critical protections to occupants.

<u>Incentives and Assistance for Property Owners</u>.

Recognizing the importance of assisting property owners to make their units lead-safe, the legislation provides incentives and financial assistance to landlords by creating a low-interest revolving loan fund and offering tax credits to owners.

- The Childhood Lead Poisoning Prevention and Safe Housing Act will make tax credits available to most property-owners who renovate their rental units or homes in order to eliminate or reduce lead-paint hazards.

- The tax credits, for both individual and corporate property owners, would be available on a matching basis, that is, for up to half of the cost for bringing an at-risk housing unit into compliance with the provisions of the act.

- A tax credit of up to $2,500 is available for each rental unit that is rendered either "lead-free" or "lead-contained" under the Act.

- A tax credit of up to $1,250 is available for each rental unit where repairs or renovations with an expected life of at least ten years have been made that satisfy the requirements for meeting a more easily achieved classification identified as "lead-stabilized" unit under the Act.

- In light of the comprehensive local law that already exists, the legislation would impose no new inspection obligations upon property owners in New York City, but all of the financial assistance provided in the legislation

(Continued on page 29)

Child Support by Debit Card

By Susan Antos

For years, custodial parents who were not on public assistance and who received child support through the IV-D system received that child support in the form of a check. Several years ago, New York State began offering parents the option of having child support directly deposited into their bank accounts, and even more recently allowed custodial parents the option of receiving support through a debit card, called the EPPICard. Despite these technological advances, most parents did not opt into the electronic systems and continued to receive their child support via a paper check.

Beginning on September 15, 2006, persons who currently receive child support in the form of a paper check, will receive debit cards in the mail and a letter from the State Office of Child Support Enforcement (OCSE) advising them that unless they opt out within 20 days, they will have to access their child support funds with that debit card in the future. By November 1, 2006, the mailing will be sent to all such persons. Parents can opt out of the debit card program by returning a reply to OCSE, indicating that they wish to continue to receive their child support in the form of a paper check or that they wish to enroll in the direct deposit program.

OCSE will monitor child support accounts and will follow up with persons who have not opted out of the debit card program and who have not accessed their child support.

The debit card will look like a Master Card and will have some fees associated with its use. Although purchases and cash back with purchases result in no fee, an ATM cash withdrawal has a ninety cent fee in addition to the bank surcharge, and a balance inquiry costs 50 cents. More information on fees associated with the card can be found at: https://newyorkchildsupport.com/custodial_parent_services.html

Lead Poisoning Legislation—continued

(Continued from page 28)

would be equally available to New York City residential property-owners.

- The tax credits are available for those who own and occupy their own homes, as well as for landlords.

The proposed legislation is likely to undergo extensive negotiations in the next few months in order to assure that the Assembly and Senate bills are identical, and to address the emerging concerns of opponents (mostly property owners associations not familiar with the bills provisions). There are likely to be changes ahead. As discussions get underway it will be critical that the communities most affected by lead poisoning – typically our legal services clients -- be at the table to assure the protections of the bill are not watered-down. If you or groups you work with would like more information about the proposed legislation or would like a presentation on the provisions of the bill, please call Michael Hanley at the Empire Justice Center's Rochester office, (585) 295-5723.

New Protection from Medical Debt

By Trilby de Jung

New York State took a major step to combat medical debt this session when the Legislature and Governor Pataki agreed upon the terms of comprehensive charity care legislation. The new law, which was passed as part of the 2006-2007 Budget, requires hospitals that receive funding from the state's bad debt and charity care pool to implement uniform policies and procedures for providing financial aid to those without adequate insurance coverage who cannot afford to pay their hospital bills. The new law also prohibits abusive debt collection practices.

Advocates have much to celebrate in the new law. Our clients should finally have the opportunity to apply for help with medical bills before facing collection agencies and the threat of medical bankruptcy. The new law does not provide a defense to a legal action to collect on unpaid bills, however. Ongoing advocacy with state agencies will be important to assure that hospitals comply with the law so that patients are able to access charity care in time to avoid judgments for unpaid bills.

A Brief History: A charity care law has been a long time coming in New York. Hospitals have been receiving reimbursement for providing charity care since 1983, when the Legislature created the bad debt and charity care funding pool under the Health Care Reform Act. New York State currently distributes approximately $850 million annually from the pool, which has been renamed the indigent care pool.

Advocacy groups across New York have issued reports criticizing hospital performance on charity care, and protesting the lack of accountability for indigent care funding. In 2003 the Wall Street Journal published a series of articles chronicling the experiences of low-income New Yorkers hopelessly mired in hospital debt and aggressively pursued by collection agencies. Congressional and legislative hearings followed, and in 2004, the American Hospital Association and the Hospital Association of New York issued voluntary guidelines for their members. Although the voluntary guidelines led to some improvements, implementation was uneven. Advocacy efforts for uniform policies intensified, culminating in passage of the new law this year.

What Does the New Law Require? The legislation adds a new subsection, 9-a, to New York Public Health Law §2807-k. Subsection 9-a requires general hospitals to have financial aid policies in place and effective as of January 1, 2007, as a condition of receiving distributions from the State's indigent care pool.

The policies must operate to reduce charges for low-income patients who a) have inadequate or non-existent insurance benefits, and b) can demonstrate an inability to pay the hospital's full charges. Hospitals also have the discretion to reduce or discount collection of co-payments and deductibles from insured individuals who can demonstrate an inability to pay. The hospital's policy must include clear, objective criteria for determining a patient's ability to pay.

The major provisions of the new law are outlined below.

Reduced Charges According To Income

Importantly, the new law links the fees that can be charged to poor and low income patients to the fees paid by the hospitals' highest volume payor which, because of their volume, is generally the payor that is able to negotiate the most favorable rates.

- Patients with income at or below 100% of the Federal Poverty Level (FPL) can be charged no more than a "nominal payment," to be defined in guidelines to be issued by the Commissioner of Health.

- Patients with income between 100% and 150% of FPL must be billed according to

(Continued on page 31)

Medical Debt—continued

(Continued from page 30)

a proportional sliding fee scale, on which the maximum payment is no more than 20% of what the hospital would have been paid by its highest volume payor, or Medicare or Medicaid, whichever payment is highest.

- Patients with income between 150% and 250% of the FPL must be billed according to a proportional sliding fee scale, on which the minimum payment is the 20% level and the maximum payment is what the hospital would have been paid by its highest volume payor, or Medicare or Medicaid, whichever payment is highest.

- Patients with income between 250% and 300% of the FPL must be billed no more than what the hospital would have been paid by its highest volume payor, or Medicare or Medicaid, whichever payment is highest.

- Patients with incomes below 300% of FPL are deemed "presumptively eligible" for one of the above payment reductions.

- In addition to the sliding scale payment reductions, a hospital's policy must provide for the use of installment plans for paying outstanding balances.

    - ► Generally, monthly payments cannot exceed 10% of the patient's gross monthly income.
    - ► However, if assets are considered in eligibility, pursuant to the guidelines below, they can be taken into account in setting the level of payment.
    - ► The interest rate cannot exceed the 90-day security rate, and
    - ► Accelerator clauses, under which a missed payment triggers higher interest, are prohibited.

Consideration of Assets

Hospitals are permitted to make exceptions on a case by case basis and deny rate adjustments if the patient has significant assets that should be taken into account in determining the appropriate payment amount.

However, these exceptions must be set forth in written policies and procedures that are subject to the prior review and approval of the Commissioner of Health. The maximum amount collected from such individuals still cannot exceed that collected from the hospital's highest volume payor, or Medicare or Medicaid, whichever is highest.

The following assets are exempt from consideration:

- The patient's primary residence
- Retirement accounts such as IRAs,
- College Savings accounts
- Cars in regular use by the patient or a family member.

Notification Requirements

Hospitals are required to notify patients that financial aid may be available, and how to obtain further information, in a timely manner. The law specifically requires hospitals with 24 hour emergency departments to provide this information through the following actions:

- Notifying patients during intake and registration
- Conspicuous postings of language appropriate materials
- Notifying patients on bills and statements
- Providing a summary of the financial aid policies upon request, including income eligibility levels, primary service area, and the process for applying.

Specialty hospitals without 24 hour emergency

(Continued on page 32)

Medical Debt—continued

(Continued from page 31)
departments are also required to provide clear and timely information on financial aid, but can do so by providing the information during admission and through information on bills and statements.

The Application Process

The new law provides that although hospitals can require financial documentation in support of applications, the application process cannot be "unduly burdensome or complex." More specifically, the law requires that:

- Upon request, patients be given assistance with interpreting the policies and procedures and with submitting applications for assistance.
- Patients be allowed to apply for assistance at least 90 days after the date of service or discharge, and be given at least 20 days to complete and submit an application.
- Decisions on applications must be made within 30 days of receipt.
- Denials and approvals must be in writing
- Hospitals must establish a process for appeals, which must be set forth in the text of written denials.
- Applications must be printed in the primary languages of the hospital's patients. Primary language is defined as a language used during at least 5% of patient visits per year, or spoken by more than 1% of the population in the hospital's primary service area.

Hospitals are allowed to make the financial aid contingent upon the patient applying for Medicaid or another public program, if the hospital determines that the patient is likely to be eligible.

Protecting Community Access To Hospital Services

Subsection 9-a requires hospitals to provide financial aid for emergency services for all New York residents, and for medically necessary services for residents of the hospital's primary service area (PSA). In order to prevent hospitals from avoiding charity care obligations by shifting their PSAs away from low-income and/or underinsured communities, the new law provides that PSAs are to be determined according to criteria established by the Commissioner of Health in consultation with the hospital industry, health care consumer advocates, and local public health officials.

The criteria for PSAs shall include, at a minimum:

- That a hospital cannot alter or develop its PSA in order to avoid medically underserved or uninsured communities.
- That every geographic area of the state is included in at least one general hospital's PSA.
- That a hospital must notify the Commissioner of Health of any changes to its PSA, and include a description of its PSA in the annual implementation report required by the new law (see Reporting Requirements, below).
- That a hospital cannot limit financial aid based on the medical condition of the applicant, except where medical necessity or clinical/therapeutic considerations dictate limitations on recipients of the service.

Limits On Collection Practices

The new law places strict limits on collection activities by hospitals as follows:

- Hospitals cannot seek foreclosure or forced sale on a patient's primary residence in order

(Continued on page 33)

Medical Debt—continued

(Continued from page 32)

to collect an outstanding medical bill.

- Hospitals are prohibited from sending an account to collection if the patient has submitted an application for financial aid and an eligibility determination is pending. Note: the submitted application must be complete, including required financial documentation.

- No collection actions are permitted against patients who are found to be eligible for Medicaid at the time services were provided, for services that are covered by Medicaid.

- Hospitals must provide patients with a 30-day notice prior to referring an account for collection.

- Collection agencies operating on behalf of a hospital must follow the hospital's financial assistance policies and procedures, including providing information to patients on how to apply for financial assistance where appropriate.

- Collection agencies must obtain the hospital's written consent prior to commencing a legal action.

Reporting Requirements

Hospitals are required to submit a written report on their policies and procedures for financial assistance to the Department of Health within 90 days of January 1, 2007. The report must include the materials the hospital plans to distribute to patients, a copy of the policies and procedures, and a description of the policies that covers eligibility rules (including any service area used in determining eligibility), the amount of aid patients receive, and the means of calculating such aid.

Hospitals are also required to include the following information in hospital reports submitted for pool distributions (with accuracy certified by an independent certified or licensed public account or senior hospital official):

- The number of patients who applied to the hospital for financial assistance, the number whose applications were approved, and the number whose applications were denied, organized by zip code;
- The number of liens placed on the primary residences of patients through a hospital's collection practices;
- The number of applications for Medicaid that the hospital assisted patients in submitting, as well as the number of these applications that were approved or denied;
- The amount of losses incurred by the hospital in servicing Medicaid patients;
- Costs incurred and uncollected amounts for providing services to uninsured patients;
- Costs incurred and uncollected amounts for deductibles and coinsurance for patients with insurance or other third-party coverage such as Medicare;
- The reimbursement received by the hospital for indigent care from the state's indigent care pool; and
- The amount of funds spent on charity care from private charitable bequests or trusts.

Enforcement

The law requires that all staff who interact with patients or have responsibility for billing and collections be trained in the hospital's financial aid policies. Hospitals are also required to measure internal compliance with the financial aid policies and procedures they develop. Nonetheless, without a means for aggrieved patients to enforce the new law, or even raise non-compliance with the law as a defense in a court action to collect on unpaid bills, there are reasons to be concerned about enforcement.

Rene Reixach, an attorney with Woods Oviatt Gilman LLP, former executive director of the Finger Lakes Health Systems Agency and a Board

(Continued on page 34)

Medical Debt—continued

(Continued from page 33)

member at Empire Justice points out in an editorial published in the Rochester Business Journal on June 2, 2006, that we need only look to the history of similar programs on the federal level to get an idea of how hospitals are likely to behave. In the 1940s, Congress created the Hill-Burton program to fund hospital construction as a means of addressing the shortage of hospital beds. Although the grants were conditioned on hospitals having a program to provide free care to poor patients, many didn't. The federal government started requiring reports of free care and auditing those reports for accuracy only after advocacy groups brought litigation. Even then, some hospitals in arrears for their obligations on charity care simply fell further into arrears with no effective sanction, just an obligation mounting on paper.

As advocates for low-income people at risk for medical debt, it is crucial that we make a report to the New York State Department of Health and the Attorney General's Office every time we learn a hospital has failed to satisfy its obligations under the new law. If you have a client that has difficulty accessing a hospital's charity care program, please call Trilby de Jung in the Rochester Office of the Empire Justice Center, at 1-800-724-0490. Let's make sure New York actively monitors compliance with the new law and takes prompt action when hospitals ignore their new responsibilities for notifying patients and making charity care available to those who need it.

Related Materials:

To read Empire Justice Center's 2006 report on Medical Debt, "*In Sickness and In Debt: A Review of Medical Debt in Upstate New York*," and the Legal Aid Society's Handbook, "*How to Fix and Avoid Medical Debt*," visit: http://www.empirejustice.org/MasterFile/IssueAreas/Health/RelatedInfo/MedDebt.htm

To compare hospitals' track records on charity care, read reports issued by Citizen Action at: http://www.citizenactionny.org/archives/archived_reports.html and the Legal Aid Society at: http://www.legal-aid.org/SupportDocumentIndex.htm?docid=119&catid=43

DID YOU KNOW?

State Judges Listed on Web Directory

A directory of more than 1,200 state judges who preside over trial and appellate courts is now available on the Unified Court System's Web site. The alphabetic list contains the name of every judge, along with an address and phone number. Included are links to expanded information about the judges, experience on the bench, prior professional experience, bar admission, education and civic and professional activities. The listing is an effort to increase information about and make the court system more accessible to the public.
http://www.courts.state.ny.us/judges/directory.shtml

Internet Resource Raises Awareness of Domestic Violence

A new website, created by Columbia students for the Legal Aid Society, contains important information about domestic violence. It offers visitors basic legal advice, critical safety tips, and links to other useful resources, including the website for the Domestic Violence Program at Barrier Free Living, which focuses on helping persons with disabilities.
http://www2.law.columbia.edu/lda/DV.index.html

Get Your Credit Report Free

A one stop secure website now allows you to free access to your credit report once every 12 months. The three credit reporting agencies, Eqifax, Experian and TransUnion sponsor the site. After providing your name, address, date of birth and social security number, you are then asked a three questions that only you would have answers to regarding either current or past loan information. The site is extremely user friendly and in a matter of minutes, you are able to read and print your reports from each of the credit reporting agencies. If you want to know your credit score (FICO), there is a small fee that ranges from $5.95 to $7.00. You can also request your credit report by phone or by mail. Click on the links for phone number and address information.
www.annualcreditreport.com

Where Do You Get Software and Hardware for a Price that a Not-for-Profit Program Can Afford?

By Nancy Krupski

Purchasing software and hardware for a not-for-profit organization for a reasonable price can be frustrating. Fortunately, there are programs out there that offer donated or discounted software and hardware for not-for-profit organizations. Below you will find a list of programs that help nonprofits with their technology needs.

Tech Soup Stock offers nonprofits donated and discounted technology products. They have a wide range of software from Adobe to Wikispaces.

The Microsoft Software Donation program offered through Tech Soup Stock allows not-for-profit programs to purchase up to six software titles and 50 licenses per title within a two year period. To read more about the Microsoft Software Donation Program and see all the donated and discounted products offer at Tech Soup Stock go to: http://www.techsoup.org/stock/default.asp?cg=header&sg=stock

The **Tech Foundation Marketplace** has partnered with a number of companies to offer technology that nonprofits need and can afford. Here you will find discounts on online courses, software and operating systems, desktops, notebooks and servers and much more. Visit Tech Foundation Marketplace at
http://www.techfoundation.org/index.cfm?objectid=F4F21511-0D0A-3946-9D000FE02B1BE8FC

Consistent Computer Bargains (CCB) offers charity pricing and they work exclusively for not-for-profits. CCB offers software, systems, memory, peripherals, storage, networking and much more. CCB has recently added Adobe to their not-for-profit pricing program at up to a 70% discount. To see all the products that CCB has to offer go to http://www.1computerbargains.com/

Gifts in Kind International provides donated software and special pricing programs to registered not-for-profit organizations. There is a registration fee and an administrative fee on all donated products. To see what Gifts in Kind International is all about go to: www.giftsinkind.org

If you've come across other places to find donated or low cost hardware and software, please let us know.

Legislative Round Up—continued

(Continued from page 2)

houses of the legislature agreed to restore $1 million in TANF funding for DAP, along with line item allocations of approximately $100 million in TANF funding. However, because of last year's Court of Appeals decision, the Legislature could not restore the funding without the Governor's agreement. Unfortunately, the Governor was not willing to make the changes. As a consequence, the budget was passed without the additional TANF funding. After the Governor vetoed over 200 items in the budget and the legislature overrode most of those vetoes, he announced that rather than negotiating with the Legislature, he was going to almost double last year's flexible fund block grant, which resulted in over $1 billion going to local social services districts. He withheld approximately $100 million, presumably to negotiate with the Legislature for restoration of a number of state-level TANF funded programs, including DAP, SHIP, displaced homemakers, emergency homeless, supportive housing, migrant child care and SUNY/CUNY child care.

As it stands now, the Legislature is expected to return to Albany this fall to deal with TANF and other outstanding issues.

Help New Yorkers Halt The Growing Burden Of Medical Debt By Increasing Access To Charity Care – (A.2519/S.4347, A.2520, A.2521) In January 2006 Empire Justice released *In Sickness and in Debt*, a report summarizing our analysis of the impact of medical debt on bankruptcies in a number of upstate counties. The report added to the previous research other organizations such as Citizen Action and the Legal Aid Society of New York City had published on the Medical Debt and access to Charity Care. Our report helped put a face on the issue, created additional media coverage and put pressure on lawmakers to address problems with the way hospitals spend Bad Debt and Charity Care/ Indigent Care funds. We supported three bills by Assembly Insurance Committee Chair, Pete Grannis' bills, (one of which was co-sponsored in the Senate by Senator George Maziarz) but the issue was ultimately resolved in the midst of budget negotiations. Empire Justice is pleased to report that Assemblymember Grannis negotiated a very strong agreement that includes a number of critical reforms. For more details about this exciting victory and how the new law will affect your clients see *New Protection from Medical Debt* on page 30 of this journal.

Stop Insurance Redlining – In May of 2005, Empire Justice (then PILOR) released *The Homeowner's Insurance Gap: How Race and Neighborhood Composition Explain Cost and Access Disparities in Rochester and Monroe County, NY.* The report analyzed how experiences with homeowners insurance varied between low income and minority neighborhoods and higher income and non-minority neighborhoods and whether income or minority status affected cost and comprehensiveness of policies. The study found that indeed, among those individuals we surveyed, homeowners who lived in lower income or minority neighborhoods paid higher premiums, had less comprehensive coverage and had their claims settled less quickly than those in higher income or non-minority areas. We found that minority homeowners also paid more, got less and were served in a less responsive manner than non-Hispanic white homeowners. While the report helped draw attention to the issue and certainly raised red flags, we realized that we needed more information to see if what we found in Rochester is happening across the state. To do this, in late 2005, we began working with Assemblymember Grannis' office to draft legislation, (A.11512) based on the federal Home Mortgage Disclosure Act (HMDA) which would increase the amount of information insurance companies are required to report to the State on the issuance and pricing of homeowners' insurance policies. The availability of this data would allow the State and interested advocates to analyze the data and then work with insurance companies to address any disparities in an effort to move toward access to quality, affordable insurance for all New Yorkers. This approach has been very successful with mortgage lending via HMDA – and with residential property insurance in other states such as

(Continued on page 38)

Legislative Round Up—continued

(Continued from page 37)

Massachusetts, where public data disclosure on insurance has helped increase homeownership and access to private market insurance.

In June of 2006, Assemblymembers Pete Grannis, David Gantt and Susan John, held a public hearing in Rochester to hear people's thoughts, ideas and recommendations for both the insurance data disclosure bill (A.11512) and the I-FUND bill (A.7537/S7362), which would create a program similar to the federal Community Reinvestment Act for insurance companies. The hearing was very successful, with an array of testimonies, from a local homeowner, to neighborhood groups, to city representatives and advocacy organizations.

We are pleased to report that the data disclosure bill, introduced by Assemblymembers Grannis and Gantt, has 29 co-sponsors and passed the Assembly unanimously. We are hopeful that we will be able to find a Senate sponsor and get the legislation passed next year. The I-FUND bill, which Empire Justice also supports, made it to third reading, but did not get to the floor for a vote in the Assembly and died in the Insurance Committee in the Senate.

Empire Justice is continuing to collect stories about homeowners' insurance issues from across the state to educate the state legislature and consumers about property insurance issues. Please contact Barbara van Kerkhove at (585) 295-5815 with any problems or concerns you or your clients have encountered.

End Childhood Lead Poisoning In New York State – (A.4201/S.2513) Empire Justice worked doggedly with the Coalition to End Lead Poisoning in NYS to push this legislation which would strengthen protections for residents and homeowners and would create tax credits for making homes lead safe. While a number of amendments were made to the bill to allow it to move forward, ultimately there was not enough time for this comprehensive legislation to pass both houses, despite the efforts of both the advocates and the bill's sponsors. (For more details on the legislation see *Lead Poisoning Legislation Poised for Consideration Next Year,* on page 27 of this journal). We are hopeful that we will be able to iron out the remaining issues and get this important legislation passed next year so we can stop NY's children from being poisoned unnecessarily.

Other Agenda Items:

Stop Financially Strapped Homeowners From Losing Their Homes To Unscrupulous "Investors" – (A.7667/ S.4744) Over the past two years, Empire Justice worked closely with members of New Yorkers for Responsible Lending (NYRL) to draft legislation that would help stop "foreclosure rescue scams" (for more information on the bill, see *New York State Passes the "Home Equity Theft Prevention Act"* on page 17 of this journal). Empire Justice, NYRL members and homeowners who had lost their homes to these scams testified at a hearing held by the Banking Committee last year. This year, the sponsors made a number of amendments to the bill, which ultimately allowed the State Banking Department to support the legislation. We are very pleased to report that this important legislation passed both houses unanimously at the end of the legislative session and was signed into law by Governor Pataki on July 26, 2006. The new law will go into effect February 1, 2007.

Ensure That Lower Income New Yorkers Don't Go Into Debt Heating Their Homes – (Budget) Empire Justice joined other advocacy organizations, including Statewide Senior Action, PULP and AARP in support of a proposal to provide a state supplement to the Home Energy Heating Assistance Program (HEAP) to help address the massive increase in heating costs this past winter. In January of 2006 the state allocated an additional $100 million in state funding to the HEAP program.

In February of 2006 Empire Justice presented testimony to the Assembly Standing Committee on Energy and the Assembly Committees on So-

(Continued on page 39)

Legislative Round Up—continued

(Continued from page 38)

cial Services and Aging on the implementation and effectiveness of New York's Low Income Home Energy Assistance Program. Our testimony focused on encouraging the State to increase the fuel for heating allowance for public assistance recipients. While costs vary by type of fuel and region, we were able to estimate that in one region oil costs have increased 262% since the allowance was last adjusted. (full analysis available at: http://www.empirejustice.org/MasterFile/Legislation/PublicBenefits/State/Testimony/2006/HEAPTestimony.htm) Our testimony also encouraged the State to help public assistance households deal with the debt that they incur as a result of the woefully inadequate heating allowance. Unfortunately, neither of these proposals were successful.

Ensure Access To Childcare Does Not Depend On Where Families Live - (A.1266) Empire Justice strongly supports this legislation, which would limit child care co-payments to 10% of household income and eliminate co-payments for those with incomes below poverty in every area of New York State. While this legislation did not move this year, we are hopeful that we'll see the issue addressed next year. To help inform the community about this important issue, Empire Justice updated our chart which shows the co-payment variations across the state (available at: http://www.empirejustice.org/IssueArea/ChildCare/CoPay/2006/7%2006%20copaymentdisparitychart.pdf)

Other Issues Empire Justice Produced Legislative Memorandums On That Were Not On Our Agenda, None Of which passed both houses of the legislature:

Protecting victims of domestic violence and stalking from housing discrimination (S.4112-B/A.6282-B)

Protecting the homes of welfare recipients by eliminating the authority for social service districts to put a lien on homes as a condition of eligibility for public assistance (A.5446)

Helping to ensure low income elderly New Yorkers can afford their medication by extending the $200 co-payment cap on prescription drugs provided under Medicaid to individuals who are eligible for Medicaid and Medicare (dual eligible) and receive prescription drug benefits under Medicare Part D. (A.11377)

Limiting the recovery of confinement costs to ensure that local districts are not taking money away from low income households (A.2671)

Creating an unpaid advisory committee of child care providers within the Office of Children and Family Services (OCFS) for the purpose of identifying and reviewing child care issues, changes to child care policies, providing recommendations about protection of children in day care, and recommending improvements to the child care subsidy system. (A.11130A/S.7901A)

Protecting the privacy and confidentiality of child care providers and their clients by prohibiting OCFS from posting a child care provider's address or a map to their location on the internet without allowing the provider to opt-out. (A.11131)

Creating a loan forgiveness program for child care providers modeled after the physician loan forgiveness program. (A.2380A)

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