

Clearinghouse REVIEW

May-June 2008
Volume 42, Numbers 1-2

Journal of
Poverty Law
and Policy

Using the Rehabilitation Act
to Obtain Damages

Interplay Among Workers'
Compensation Insurance,
ADA, and FMLA

New Theory Against Mandatory
Welfare Home Visits

Race-Conscious Approach
to Advocacy

SHOULD PUBLIC
BENEFITS BE
ADMINISTERED BY
PRIVATE VENDORS?

Inclusionary Zoning for
Economic and Racial
Integration

Student-Run Banks for
Financial Education and
Community Development

State Court Remedy for
the *Keffeler* Problem

Greening Affordable Housing



SHRIVER
CENTER

Sargent Shriver National Center on Poverty Law



Public Benefits Privatization and Modernization: Recent Developments and Advocacy

By Mary R. Mannix, Cary LaCheen,
Henry A. Freedman, and Marc Cohan

Mary R. Mannix
*Program Director and
Senior Attorney*

Cary LaCheen
Senior Attorney

Henry A. Freedman
Executive Director

Marc Cohan
Director of Litigation

National Center for Law and
Economic Justice
275 Seventh Ave. Suite 1506
New York, NY 10001
212.633.6967
mannix@nclej.org
lacheen@nclej.org
freedman@nclej.org
cohan@nclej.org

Privatization and modernization—two overlapping trends in the administration of food stamps, cash assistance, and Medicaid—continue to challenge advocates and low-income people.¹ Privatization refers to the delivery of public benefits and services by private entities.² A particular aspect of privatization is the use of private vendors to staff the call centers that accept and process applications and interact with clients. “Modernization” means various technology enhancements, such as computer system redesign, online application, and call centers in public benefits administration. Modernization in one form or another is under way in many states, but, as the Government Accountability Office confirms, not much is known about how modernization affects program access, benefit accuracy, or administrative costs.³

Systemic efforts to improve benefits administration have profound effects on low-income people. In particular, modernization, if done well, can improve program access, although vulnerable population groups such as the elderly, those with limited English proficiency, and those with mental and physical disabilities may have difficulty accessing or using technology. Whether these new methods are a replacement of or simply an addition to other points of access is a key question. A poorly designed and implemented method can harm low-income people by reducing access and delaying and wrongfully denying benefits. While currently not a major trend, the use of private entities in determining eligibility raises very troubling questions about the appropriateness of private entities having a key role in benefits delivery and whether such privatization can be cost-effective and accountable. Because the stakes for low-income people are high, advocates must decide how best to respond to such state initiatives, evaluate their likely effects on low-income people, and seek necessary improvements.

Here we summarize recent efforts and related advocacy in four states that have modernized—and in two of these states that have privatized—eligibility determination for public benefits (food stamps, cash assistance, Medicaid). Texas, Florida, and Indiana are using call centers and related technology, such as online application, in determining eligibility. The Texas and Indiana efforts have involved contractor-staffed call

¹For an earlier review of these problems, see the special issue on “The Implications of Privatization on Low-Income People,” 35 CLEARINGHOUSE REVIEW (Jan.–Feb. 2002).

²While the full scope of privatization is not clear, all states but one (South Dakota) have contracted for the private delivery of some services funded by the Temporary Assistance for Needy Families (TANF) block grant. U.S. GENERAL ACCOUNTING OFFICE, GAO-02-661, WELFARE REFORM, FEDERAL OVERSIGHT OF STATE AND LOCAL CONTRACTING CAN BE STRENGTHENED 8 (2002), www.gao.gov/new.items/d02661.pdf.

³U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-07-573, FOOD STAMP PROGRAM, USE OF ALTERNATIVE METHODS TO APPLY FOR AND MAINTAIN BENEFITS COULD BE ENHANCED BY ADDITIONAL EVALUATION AND INFORMATION ON PROMISING PRACTICES 3–4 (2007), www.gao.gov/new.items/d07573.pdf.

centers. Colorado replaced its antiquated computer system with a new system to integrate and manage numerous public benefit programs.

We aim to share advocates' experience, encourage advocacy elsewhere, and promote dialogue on these issues. The National Center on Law and Economic Justice has assisted advocates in these states and is available to work with others.⁴ Other national organizations have also been involved, providing technical assistance or engaging in advocacy or both (e.g., urging the U.S. Department of Agriculture (USDA) to exercise close oversight).

I. Using Private Entities in Determining Eligibility

Texas' 2006 rollout of privately operated call centers to handle eligibility determination was a disaster, and the state is now revamping the initiative. Indiana's privatized call center effort began in part of the state in late 2007.

A. Texas Integrated Enrollment and Eligibility System

Recent experience with the Texas Integrated Enrollment and Eligibility System exemplifies how hasty and inadequate planning and implementation of an initiative to use privately run call centers and enhanced technology in determining eligibility for food stamps, Medicaid, cash assistance, and the Children's Health Insurance Program (CHIP) led to disaster in early 2006. Low-income people suffered reduced access to benefits. The state ultimately cancelled the contract. However, Texas remains committed to modernizing administration; the state welfare agency, Texas Health and Human Services Commission, has embarked on contracting anew with private vendors to administer benefit programs, and this is now under greater legislative oversight. While the state's actions offer a lesson in how not to implement sweeping program innovations, the lessons from advocates'

persistent oversight and efforts to seek improvements are instructive for others.⁵

1. Background

Texas' interest in modernizing and privatizing public benefits administration dates back to a failed privatization effort in the mid-1990s. Driven by its desire to improve administration and realize projected cost savings, Texas moved to develop a new computer system to replace its antiquated one, but rollout stalled due to problems with the new system.⁶

2. Development and Rollout

In 2003 the state legislature responded to a massive budget deficit by cutting social services and directing the state agency to consider private call centers if cost-effective. The agency concluded that a private call center model would be so. The agency's call center proposals, released in early 2004, specified a drastic reduction in staff and local offices and assumed that call centers would largely replace them as the way low-income people accessed benefits. Applications would be made via the Internet, fax, mail, phone, or in person. Call centers would handle application processing, verification, benefit changes, and renewals, with documents related to each case scanned into the computer system. Applicants not exempt from an in-person interview would have to visit a local office for final approval by state staff. The model implicitly assumed that low-income people did not need caseworker help in navigating the system and that community organizations would voluntarily assist applicants and provide access to the Internet, fax machines, and the like. The model relied heavily on the new computer system that was not yet fully operational.

The Texas-based Center for Public Policy Priorities (particularly its policy analyst Celia Hagert and its associate director, Anne Dunkelberg) led the advocacy response to the call center proposal by using a multifaceted strategy of policy

⁴Background materials are at www.nclj.org/key-issues-privatization.php.

⁵For a comprehensive account of the experience with the Texas Integrated Enrollment and Eligibility System, see CENTER ON PUBLIC POLICY PRIORITIES, UPDATING AND OUTSOURCING ENROLLMENT IN PUBLIC BENEFITS: THE TEXAS EXPERIENCE (2006), [www.cppp.org/files/3/CPPP_PrivReport_\(FS\).pdf](http://www.cppp.org/files/3/CPPP_PrivReport_(FS).pdf). The site has a collection of center materials on the system.

⁶*Id.* at 14–15.

analysis, coalition building, state legislative and administrative advocacy, commenting on the contracting with private vendors to administer benefit programs, federal agency advocacy, media advocacy, and public education. The center supported the agency goal of improving access to benefits and program administration through modernization. However, the center argued that the state's model jeopardized low-income people's access to benefits because the model depended on huge staff reductions and office closings; wrongly concluded that the new system could function with fewer staff; rested on untested assumptions about the role of community organizations; and ignored indications that low-income people, particularly those with disabilities, limited English proficiency, and the elderly, would have difficulty accessing and using computers and the Internet. Advocates called for careful testing, training, and evaluation before implementation. They recommended improvements in the request for proposals, such as specific changes to protect low-income people with disabilities and limited English proficiency and to improve contract requirements regarding complaints and fair hearings.⁷

The Center for Public Policy Priorities' federal agency advocacy focused on the USDA, which oversees the Food Stamp Program. The USDA was more responsive than U.S. Department of Health and Human Services (HHS), which oversees Medicaid. The USDA rejected advocates' arguments that the initiative should proceed as a demonstration project followed by an evaluation and that the initiative required a waiver of the federal requirement that state merit personnel make eligibility decisions. However, the USDA raised various concerns with the state during the project's development.⁸

After nine months, Texas entered into an \$899 million, five-year contract with Ac-

centure, which had overall responsibility for the group of companies involved in the effort. Claiming that the new system would save \$646 million during the contract period, Texas signed the contract; Texas ignored the USDA's request for review and approval.⁹ While the USDA declined advocates' recommendations for detailed data collection on the project's effect on vulnerable population groups, it initially approved only short-term funding and conditioned subsequent funding on the system's functioning.¹⁰

3. Disastrous Rollout and Its Aftermath

In early 2006, some six months after the contract signing, the system rolled out in two counties. Disaster ensued. Low-income people had trouble getting through to the call centers, and poorly trained call center staff could not process applications timely or solve client problems. Clients suffered major delays in getting benefits. For example, the food stamp application timely processing rate was only 80 percent in March 2006. Child enrollment in Medicaid plunged, and adult Medicaid enrollment also dropped. CHIP enrollment fell due to both the new system and tougher new enrollment policies. Significant technical problems, clients' difficulty getting through to the call center, and inadequately trained private call center staff were among the major causes of the disaster. In response to the Center for Public Policy Priorities' prerollout request, both the state and the USDA assigned staff to help with client problems. The USDA and its independent contractor monitored implementation in the initial months and identified serious deficiencies—application processing delays, misinformation given by call center staff to clients, insufficient documenting of client problems, inadequate computer and system testing, a rollout schedule that left no time to resolve problems, and inadequate staffing.¹¹

⁷*Id.* at 18–27.

⁸*Id.* at 27.

⁹*Id.* at 28–29.

¹⁰*Id.* at 37–38.

¹¹*Id.* at 39–48.

After a few months, the state agency postponed and then suspended further rollout. It delayed plans to reduce staff further and took corrective action, giving state workers a greater role, increasing training in policy and in the computer system, strengthening oversight of the contractor, and awarding grants to non-profit entities to help people apply for benefits.¹² The state comptroller criticized the contract design and implementation and state oversight. She recommended termination of the contract and establishment of a turnaround team and a new state office to provide expertise and oversight for such projects.¹³

In early 2007 Texas decided to end the contract and take over call center management and oversight.¹⁴ The state awarded an interim contract to Maximus to continue operating and staffing the call centers in the pilot area and for statewide CHIP operations. Maximus is expected to hold this contract until and if a new contract is awarded.

After investigating, the state legislature adopted legislation setting goals for an enhanced eligibility system, requiring the state agency to prepare a transition plan for its ongoing efforts, mandating ongoing independent oversight of the eligibility system, and requiring contracts for call centers to meet the needs of clients with limited English proficiency.¹⁵ Contracts must have “performance standards that measure the effectiveness, promptness and accuracy of the contractor’s oral

and written communication with [persons with limited English proficiency].”¹⁶ Bidders must submit a language access plan describing how the contractor will identify those who need language assistance, provide language assistance, inform individuals of language services, develop qualifications for bilingual staff, and monitor compliance with the plan. The state agency must consider the provision of meaningful language services in awarding a contract and must avoid contracts that it reasonably believes will not provide adequate language service.¹⁷ The legislation increased funding for state agency staff.¹⁸ The Center for Public Policy Priorities gave significant technical assistance to the state legislature.

As of early 2008 the state had begun contracting anew with private vendors to administer benefit programs, as outlined in its transition plan.¹⁹ Texas is committed to modernization and says it will learn from the Integrated Enrollment and Eligibility System pilot and rebalance the role of the private and public sectors.²⁰ The state lost staff to the failed privatization. Staffing shortage, combined with ongoing problems with the new computer system, is hampering the state’s efforts to rebuild the eligibility system. As of December 2007, food stamp and Medicaid timely application processing had fallen to only 59 percent and 71 percent, respectively, in the pilot area; statewide timeliness across the programs was also lagging.²¹ Advocacy continues.

¹²*Id.*

¹³Letter from Carole Strayhorn, Texas Comptroller, to Sen. Eliot Shapleigh, Sen. Carlos I. Uresti, and Rep. Carter Casteel (Oct. 25, 2006), www.window.state.tx.us/comptrol/letters/accenture/letter.html.

¹⁴Press Release, Texas Health and Human Services Commission, Texas Access Alliance Agrees to End Contract Early (March 13, 2007), www.hhs.state.tx.us/news/release/031307_AccessAlliance.shtml.

¹⁵TEX. GOV’T CODE §§ 531.451–.458, 531.019 (2007).

¹⁶*Id.* § 531.019.

¹⁷*Id.*

¹⁸CENTER FOR PUBLIC POLICY PRIORITIES, EFFORTS BY THE TEXAS LEGISLATURE TO FIX THE ELIGIBILITY SYSTEM FOR PUBLIC BENEFITS 1, 4 (Sept. 2007), www.cppp.org/research.php?aid=711&cid=3&scid=7.

¹⁹Health and Human Services Commission, House Bill 3575, Health and Human Services Eligibility System Transition Plan (Oct. 2007), www.hhs.state.tx.us/consolidation/IE/HB_3575_TransitionPlan.pdf.

²⁰*Id.* at 1–3.

²¹See www.hhsc.state.tx.us/research/FMTtimeliness.html.

4. Reflections on Advocacy

The Center for Public Policy Priorities, in advocating on the Texas Integrated Enrollment and Eligibility System, needed to master the intricacies of the system and of contracting with private vendors to administer benefit programs. The center, together with allies, brought the otherwise missing perspective and experience of low-income people. While advocates were not able to secure necessary improvements before the disastrous rollout, the center's analysis of the initiative's flaws proved correct. Advocates hope that the credibility the center earned regarding the Integrated Enrollment and Eligibility System will encourage the state agency to consider more carefully the informed views of stakeholders. The center helped shape and inform the public debate over the initiative. Legal aid and community groups worked with the center to identify those hurt by the new system and bring them to the attention of federal and state officials, thereby helping make the case for improvements.²²

B. Modernizing Indiana's Determination of Eligibility

The Indiana Family and Social Services Administration issued, in October 2005, a request for information to modernize the eligibility determination for Temporary Assistance for Needy Families (TANF), Medicaid, food stamps, TANF and food stamp employment and training programs, child care vouchers, and foster care benefits.²³ The initiative has these features, among others (they are the same as those in other states): (1) use of vendor-operated call centers to accept applications, answer questions, and scan documents; (2) online and telephone application for benefits; (3) reliance on

community agencies to give clients information about benefit programs and help clients apply online (without funding for this work); and (4) drastic reduction in state agency staff, most of whom were invited to apply for jobs with private contractors.

The initiative's stated goals, among others, are to improve access to benefits, improve TANF work participation rates, reduce TANF and food stamp caseloads, improve program accountability, reduce error rates, and modernize technology.²⁴ The request for proposals indicated that the contractor would receive performance bonuses for TANF caseload reduction.²⁵ Although the initiative was described as "modernization," upgrading the agency's computer software was not part of the proposal. To justify the initiative, a report detailed the agency's failings—the lowest welfare caseload reduction of any state as well as lack of training and oversight, application backlogs, high caseloads, inconsistent application of agency rules and policies.²⁶ The state did not explain why privatization was necessary to solve these problems other than to say that the state was seeking the best "business solution."²⁷

The initiative was put on a fast track, with no pilot project and limited opportunity for public input. The agency held a public forum on the initiative months after the request for proposals was issued and only three weeks before the contract was awarded, in December 2006. The contract, worth \$1.16 billion, went to an IBM-led consortium, of which one member, Affiliated Computer Services, had close ties to the governor's office. Three months later 70 percent of the agency's staff became employees of the

²²For the Center for Public Policy Priorities' recommendations regarding advocacy on similar initiatives, see *supra* note 5, at 51.

²³Indiana Department of Administration & Indiana Family and Social Services Administration, Request for Information 6-C, Solicitation For Eligibility Determination Services (n.d.), www.ichsonline.org/Privatization/FSSA%20RFI.pdf.

²⁴Indiana Department of Administration & Indiana Family and Social Services Administration, Eligibility Modernization: The Need for a Change (Aug. 18, 2006), www.in.gov/fssa/files/0020_013.pdf.

²⁵Indiana Department of Administration & Indiana Family and Social Services Administration, Request for Proposal 6-58, Solicitation For Eligibility Determination Services 22–23 (n.d.), www.in.gov/fssa/files/RFP-6-58.pdf.

²⁶Eligibility Modernization, *supra* note 24.

²⁷Request for Information, *supra* note 23, at 6.

private contractor. In November 2007 the first call center began operation. At this writing, the initiative is in a transitional phase, with a call center operating only in some parts of the state.

Iowa Sen. Tom Harkin, chairman of the Senate Agriculture Committee, raised concerns that Indiana lacked federal authority to implement the initiative because the Food Stamp Act required public employees to be the eligibility determiners.²⁸ In light of the reduction in agency staff, Senator Harkin maintained that the agency would, in effect, rubber-stamp vendors' eligibility decisions.²⁹ Based on representations from the state that private vendors would gather information from applicants and state agency staff would conduct interviews and determine eligibility, the USDA rejected this argument.³⁰ A USDA program review found that some applicants were not having eligibility interviews with state agency staff.³¹

After approving initial funding, the USDA required the state to meet "key milestones" related to operational and systems readiness before receiving additional funding.³² The USDA imposed data reporting and monitoring requirements, such as a requirement that data be disaggregated to identify problems that particular vulnerable population groups may have in accessing benefits.³³ USDA

reviews find failure to screen applicants for emergency food stamps within mandated time frames, high caseloads, and increased application processing delays as a result of the involvement of both state staff and contractor staff in every case.³⁴ Clients, social service providers, agency staff, and legal aid providers report that delays in application processing have increased and that they are unable to reach workers by phone. Advocates report that they do not know whether workers are state employees or staff of the private contractor and that the chain of command within contract agencies is unclear.

Several organizations—the Indiana Coalition for Human Services, Citizens Action Coalition, Indiana Legal Services, the American Federation of State, County, and Municipal Employees—gathered information about the initiative; raised questions and concerns with the state, contractors, and the USDA; participated in public meetings held by one of the contractors; reviewed and analyzed key documents; reached out to advocates in other states working on similar issues; and informed legislators and the press. Media coverage in Indiana regarding Accenture's disastrous performance in Texas no doubt contributed to Accenture's decision to withdraw from the Indiana bidding. Advocates convinced the state legislature to raise questions about the

²⁸ U.S.C. § 2020(e)(6)(b); 7 C.F.R. § 272.4(a)(2) (2008).

²⁹ U.S.C. § 2020(e)(6)(B); Letter from Sen. Tom Harkin, Chairman, Senate Committee on Agriculture, Nutrition and Forestry, to Mike Johanns, Secretary, U.S. Department of Agriculture (March 16, 2007) (on file at the National Center on Law and Economic Justice).

³⁰ Letter from Nancy Montanez Johner, Undersecretary, Food, Nutrition, and Consumer Services, U.S. Department of Agriculture, to Sen. Tom Harkin, Chairman, Senate Committee on Agriculture, Nutrition, and Forestry (April 19, 2007), and attachments (on file at the National Center on Law and Economic Justice).

³¹ U.S. Department of Agriculture, Process Improvement Plan for Marion County (May 30, 2007) (draft submitted with letter from Ollice Holden, Regional Administrator, Food and Nutrition Service, U.S. Department of Agriculture, to Mitchell Roob, Secretary, Indiana Family and Social Services Administration (July 16, 2007)) (on file at the National Center on Law and Economic Justice).

³² Letter from Nancy Montanez Johner, Undersecretary, Food, Nutrition, and Consumer Services, U.S. Department of Agriculture, to Mitchell Roob, Secretary, Indiana Family and Social Services Administration (Dec. 16, 2006); Letter from Ollice Holden, Regional Administrator, Food and Nutrition Service, U.S. Department of Agriculture, to Mitchell Roob, Secretary, Indiana Family and Social Services Administration (March 14, 2007) (on file at the National Center on Law and Economic Justice).

³³ Letter from Ollice Holden, Regional Administrator, Food and Nutrition Service, U.S. Department of Agriculture, to Mitchell Roob, Secretary, Indiana Family and Social Services Administration (Feb. 8, 2007) (on file at the National Center on Law and Economic Justice).

³⁴ Indiana Modernization Program, Access/Customer Service Reviews Report 4 (March 28–30, 2007; April 13, 2007) (on file at the National Center on Law and Economic Justice); Process Improvement Plan for Marion County, *supra* note 31.

initiative and introduce relevant bills.³⁵ The Indiana Coalition for Human Services website has information for policymakers, the press, and the public about the initiative.³⁶ Another website offers a forum for agency staff, clients, and social service providers to share experiences about the initiative's effects; information gathered from this site has been shared with the press, legislators, other state government officials, and the USDA.³⁷

Advocates report such difficulties as securing funding, obtaining information from the state and contractors about changes, and finding individuals to speak out about problems.

II. How to Modernize Eligibility Determination without Privatization: Florida

Advocates in Florida have lessons to share from their experience with a state undertaking modernization in which the state maintained responsibility for the entire application process.³⁸

A. The Florida System

Florida originally planned to contract out operation of the Florida Automated Community Connection to Economic Self-Sufficiency (Access) system, but the legislature blocked such plan.³⁹ The state then decided to modernize the application process itself. Now almost all applications are submitted online. The state claims savings of \$83 million (in large part due to the closing of most intake offices, the reliance on call centers, and a

40 percent reduction in staff) as it processes 1.8 million food stamp and Medicaid applications and 290,000 TANF applications per year.⁴⁰

The Kennedy School of Government, in giving Florida Access a 2007 Innovations in American Government Award, urged "the replication of this successful innovation ... throughout the country."⁴¹ But advocates from Florida Legal Services contend that, before copying Florida, other states should pay close attention to the totality of Florida's experience. While the advocates have instigated reforms in response to complaints from around the state as Access was implemented, problems remain. For example:

- Low-income people face obstacles in applying. Because many applicants do not have computers and Internet access at home, the state asked "community partners" to offer computers at their offices for applicants to use. Community partners receive little to no funding and no supervision. Many identified on the agency's website do not participate, have limited hours of operation, or serve only those the partner has previously served. Staff often cannot answer questions or help in completing an application. Paper application forms are often not provided. Few state agency offices remain, and those that do have been stripped of personnel and often give no assistance to applicants.
- No provision is made for identifying persons who may have difficulty ap-

³⁵S.B. 113, 114th Gen. Assemb., 2d Sess. (Ind. 2006); S.B. 241, 114th Gen. Assemb., 2d Sess. (Ind. 2006); S.B. 63, 115th Gen. Assemb., Reg. Sess. (Ind. 2007); S.B. 425, 115th Gen. Assemb., Reg. Sess. (Ind. 2007); H.B. 1062, 115th Gen. Assemb., Reg. Sess. (Ind. 2007); H.B. 1079, 114th Gen. Assemb., 2d Sess. (Ind. 2006); H.B. 1215, 114th Gen. Assemb., 2d Sess. (Ind. 2006); H.B. 1325, 114th Gen. Assemb., 2d Sess. (Ind. 2006); H.B. 1026, 115th Gen. Assemb., Reg. Sess. (Ind. 2007).

³⁶See www.ichsonline.org/privatization.htm.

³⁷See www.ConcernedHoosiers.org; personal communication between Cary LaCheen and Beryl Cohen (Jan. 24, 2008).

³⁸See U.S. DEPARTMENT OF AGRICULTURE, MODERNIZATION OF THE FOOD STAMP PROGRAM IN FLORIDA (April 2008), www.fns.usda.gov/oane/MENU/Published/recentreleases.htm (final report on a study of the Florida Automated Community Connection to Economic Self-Sufficiency (Access) system; Mathematica Policy Research conducted the study); see also FLORIDA LEGISLATURE OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY, REPORT NO. 08-13, ACCESS IMPROVED PRODUCTIVITY: ADDITIONAL REFINEMENTS WOULD BETTER MANAGE WORKLOAD (March 2008), www.oppaga.state.fl.us/reports/health/r08-13s.html.

³⁹2005 Fla. Laws ch. 2005-61 § 6, repealing 2004 Fla. Laws ch. 2004-267 § 114.

⁴⁰See www.dcf.state.fl.us/ashaward.shtml.

⁴¹*Id.*

plying because of a disability, limited English proficiency, and the like, or for accommodating persons with such barriers.

- Many applications are denied for lack of verification or cooperation due to problems with telephone interviews or faxing documents. Despite website statements that telephone assistance is available, the agency's telephone system and staffing are inadequate. Often calls go unanswered or the person reached cannot explain why an application is considered incomplete or what further action is needed. Tens of thousands of calls to call centers are "abandoned" each month.⁴²
- Despite the state's claim that workers can access all relevant documents immediately, most advocates could not at first get any documents from agency staff and can now succeed only through a cumbersome process.
- Since the same system is used for disaster relief, at times of disaster neither set of benefits can be processed because the system is overwhelmed.

B. Advocacy

Florida Legal Services used many tools to secure improvements. Litigation and legislative advocacy helped block privatization.⁴³ Due to litigation the state used Administrative Procedure Act rule making to adopt the online application form; changes will be presented for comment in advance of adoption.⁴⁴

Ongoing media coverage in the Orlando area secured additional telephone operators after the press learned about difficulties in accessing community partner sites and in reaching agency staff by telephone. A local advocate's investigation helped move media coverage along after a client brought her case to a reporter's attention.

Negotiation between legal aid advocates and the state agency secured many improvements in the application form; some improvements were in relation to languages other than English, and other improvements were in relation to accessing a client's documents. After Florida Legal Services approached the agency on behalf of a client with disabilities, staff training was modified. However, comments submitted to the USDA Food and Nutrition Service with regard to data to be collected by the state, concerns brought to federal civil rights offices, and the presentation of the results of a survey of 224 applicants who identified a host of problems appear to have yielded few improvements.

C. Lessons

Cindy Huddleston and Valory Greenfield of Florida Legal Services offer the following advice:

1. Get involved in advocacy early. Do not wait until infrastructure is dismantled and staff levels are reduced. Try to ensure that at least one office is within reach of remote areas and that the system is not solely technology-based.
2. Prepare for extensive advocacy focused on the beginning of the application process—on what happens after the applicant clicks "submit" (especially in regard to the telephone system and real-time customer support). Ensure that complete and understandable notices are given or sent and that the applicant be given an opportunity for a meaningful interview. Do not worry as much at the outset about problems with the design of the online application form; those are relatively easy to remedy after the fact by changing the text or fixing the program logic to omit irrelevant questions that lead to erroneous denials.

⁴²DCF Quick Facts, www.dcf.state.fl.us/publications/docs/quickfacts.pdf.

⁴³*Reed v. Gallagher*, No. 2004-CA-1679 (Fla. Cir. Ct. filed Aug. 26, 2004) (settled after legislature repealed privatization mandate that, plaintiffs claimed, was adopted in violation of constitutional procedures).

⁴⁴*Tamara Clark v. Department of Children and Family Services*, Nos. 05-2104RP, 05-2105RP (consolidated appeal filed with Florida Division of Administrative Hearings). The pleadings are at www.doah.state.fl.us/internet/search/docket.cfm?CaseNo=05-002105.

3. Do not allow the agency to ignore applicants' right to and need for effective telephone interviews if a face-to-face interview is not required. (Florida had obtained a federal waiver of the mandatory face-to-face interviews, and advocates report that phone interviews are often bypassed as well). Many people may not know how to respond to directives in written notices such as "cooperate with child support." A telephone interview should consist of more than a courtesy call to the applicant's answering machine.
4. Insist that paper application forms be available at all locations.
5. Ensure that the agency plans to meet the needs of special population groups such as persons with disabilities or limited English proficiency (how applicants from such groups access the system; how the agency follows up with them).
6. Ensure that the agency publicizes accurate and comprehensive information about how and where to get personal assistance not only on the website but also at offices and in mailings.

III. Replacing the Computer System: The Colorado Experience

Colorado brought online, on September 1, 2004, the Colorado Benefits Management System, a computerized information technology system developed by the state agencies responsible for administration of a wide variety of human services programs in collaboration with Electronic Data Services. Designed to manage the applications and ongoing benefits for almost all Colorado public benefit programs (food stamps, Medicaid, Colorado Works, Children's Basic Health Plan, Old Age Pension programs), the Colorado

Benefits Management System replaced six computer data systems with one unified system for data collection and eligibility determination.⁴⁵

The Colorado Benefits Management System represented a classic failure to plan adequately for a massive and far-reaching automation project and a refusal to heed evidence of looming problems from the pilot as well as warnings from key stakeholders. For example, on August 16, 2004, several larger counties that participated in the pilot program expressed "serious concerns regarding the readiness of this project, including conversion issues, potential lawsuits, the high error rate experienced by the pilot planned scenarios, security, procedural papers, [and] Federal sanctions...."⁴⁶ Among the concerns were a benefit-processing accuracy rate of only 63 percent, even though the state had committed that the system would not be implemented until the accuracy rate was 98–99 percent. Moreover, the pilot identified federal law compliance problems, particularly related to the Food Stamp Program; "interface" problems that resulted in the system being unable to recognize recipients; wrongful denials; overpayments and underpayments; and unintended disenrollment of recipients. The counties concluded that the implementation "is unacceptable."⁴⁷

The counties' assessment was not unique. Other stakeholders (legal aid community; service providers; community-based advocates) noted that the system had severe problems that, based on the pilot results, would result in the wrongful denial, reduction, suspension, or termination of desperately needed public benefits for tens of thousands of Colorado residents.

A broad-based coalition, urging the state to delay implementation, argued that the system was simply not ready and that further work was necessary to ensure

⁴⁵Overall the Colorado Benefits Management System was intended to manage more than forty benefit programs that allocate more than \$2 billion worth of benefits annually. In Colorado the state and counties administer benefits jointly.

⁴⁶Letter from Dave Long, Weld County Commissioner and Chairman, Colorado Counties Inc. Health and Human Services Committee, to Colorado Gov. Bill Owens (Aug. 16, 2004) (on file at the National Center on Law and Economic Justice).

⁴⁷*Id.* at 2.

that the rollout would not jeopardize the benefits of eligible persons and overtax county resources. The state refused to delay.

In late August 2004 the Colorado Center on Law and Policy, joined by the National Center for Law and Economic Justice and private law firms pro bono, sued the agencies in state court to enjoin the rollout of the system or for an order requiring the state to have in place adequate backups to ensure benefits delivery.⁴⁸ The lawsuit was part of a coordinated strategy of pressure from the counties, community-based organizations, sympathetic state legislators, and provider networks; the lawsuit, they hoped, also would support complaints being reported to the two federal oversight agencies, the USDA and HHS. Plaintiffs sought a classwide preliminary injunction.

The court declined to stay the rollout of the system but issued classwide injunctive relief mandating timely and accurate processing of benefits, elimination of a backlog of overdue cases, emergency processing for clients losing benefits as a result of the system, extensive reporting to plaintiffs and the court, improved notices to applicants and recipients, and a stay on collection of overpayments caused by the system. The court declined to require the state to submit a corrective action plan or to appoint a special master to oversee implementation of the order.⁴⁹

Over the next three years, plaintiffs' counsel litigated the matter and secured orders enforcing and expanding the preliminary injunction. Under the supervision of a retired judge, the parties negotiated a comprehensive settlement (reached in December 2007) that addressed remaining issues and provided for ongoing monitoring.⁵⁰

The overarching question is whether the lawsuit was a strategic response to the rollout of the system inasmuch as plain-

tiffs were unable to prevent that rollout or secure a special master to oversee implementation. The answer is yes. First, the lawsuit resulted in court orders that benefited applicants and recipients by ensuring mechanisms for timely benefit delivery, cutting red tape for clients, and imposing monitoring. Second, the lawsuit helped galvanize the state legislature to focus on the system fiasco. Third, the lawsuit helped motivate oversight by the USDA and HHS. Fourth, the court order emboldened the counties to demand greater accountability by the state in administering the system. And, fifth, the press ran with the story, generating ongoing clamor for expeditious and timely fixes.

The response to the system rollout worked as well as it did because the advocates chose to reach out to all interested stakeholders before filing the lawsuit and to make sure that the lawsuit itself was one piece of a broad strategy. The advocates understood that litigation alone would be unlikely to have sufficient impact. Yet a coordinated approach without litigation would have been equally unlikely to secure the desired result. Furthermore, within the bounds of their ethical obligations, the advocates continuously worked with key stakeholders, shared information, and collaborated in proposing fixes. While the state continues to work on solving ongoing problems with the benefits management system, advocates continue to monitor the system. The Colorado example shows that well-timed and coordinated litigation can minimize the harm caused by an improvident decision to roll out a new benefits computer system.

IV. Pending Federal Food Stamp Legislation

Privatization and modernization have attracted the attention of Congress. Food stamp legislation enacted by the House and Senate in 2007 contains both dif-

⁴⁸*Hawthorne-Bey v. Reinerston*, 04 CV 7059 (Colo. Dist. Ct. Denver County filed Aug. 30, 2004).

⁴⁹*Id.* (Order of December 21, 2004). Significantly, while the order protected the "class" of persons affected, the court did not certify a class.

⁵⁰*Id.* (settled sub nom. *Davis v. Henneberry*, 04 CV 7059 (Colo. Dist. Ct. Denver County Dec. 19, 2007)) (stipulation and order of settlement).

fering and similar provisions relevant to food stamp modernization and privatization.⁵¹ How the House-Senate conference will reconcile the differences remains to be seen. Unlike the Senate bill, the House-passed bill directly addresses privatization by clarifying the requirement that state merit personnel make food stamp eligibility decisions. It bars federal funds for contracts that provide otherwise, with a short transition period for current contracts, and would thus prohibit Texas' and Indiana's use of privately staffed call centers for food stamps.⁵² Both House and Senate bills bar a state from recovering food stamp over-issuances that result from major system failures such as a computer meltdown, although the state remains liable to the federal government.⁵³ Both bills authorize states to allow food stamp application by phone and to accept a phone-recorded verbal assent as a signature.⁵⁴

The Senate bill requires the secretary of agriculture to develop standards for identifying major system changes in state agency operations (e.g., a substantial increase in the use of automated systems

for certification) and requires states to collect data as required by the USDA to assess how the system affects program access.⁵⁵ Federal funding is available for computer systems that, among other requirements, meet conditions set by the secretary, have a pilot before implementation, are adequately tested pre- and postimplementation, and are tested for their effects on program access and payment accuracy.⁵⁶



Modernization and privatization call for creative advocacy. Advocates should be involved early and communicate with colleagues who have addressed similar issues in other states. The National Center for Law and Economic Justice is available to assist advocates and is interested in hearing from advocates about developments in their states. Contact Mary R. Mannix at mannix@nclej.org or Cary LaCheen at lacheen@nclej.org.

Authors' Acknowledgments

We thank the advocates named in this article for their help in its preparation.

⁵¹See CENTER ON BUDGET AND POLICY PRIORITIES, SIDE-BY-SIDE COMPARISON OF NUTRITION PROVISIONS IN HOUSE- AND SENATE-PASSED FARM BILLS (rev. Jan. 14, 2008), www.cbpp.org/12-21-07fa-full.pdf.

⁵²H.R. 2419, 110th Cong., 1st Sess., § 4015 (as passed by the House, July 27, 2007).

⁵³*Id.* § 4018; H.R. 2149, 110th Cong., 1st Sess., § 4301 (as passed by the Senate, Dec. 14, 2007).

⁵⁴H.R. 2419 (House-passed), § 4014; H.R. 2149 (Senate-passed), § 4204.

⁵⁵H.R. 2149 (Senate-passed), § 4211.

⁵⁶*Id.* § 4212.

New York City's WeCARE Program: An Advocacy Case Study

New York City's welfare agency, the Human Resources Administration, contracted for over \$200 million with a private company and with a non-profit organization, in December 2004, to operate the newly created WeCARE (Wellness, Comprehensive Assessment, Rehabilitation, and Employment) program and to serve 135,000 welfare recipients with disabilities for three years. WeCARE provides an array of services—medical employability evaluations; vocational assessments; vocational educational services; monitoring compliance with medical and mental health treatment; job search; workfare; assisting welfare recipients in applying for Supplemental Security Income (SSI) benefits. While generally supporting the idea of the program, advocates had concerns about implementation; many of the concerns were borne out by experience. The National Center for Law and Economic Justice and other advocates have been using non-litigation advocacy strategies to monitor the program and seek improvements.

Under New York City procurement rules, city agencies must make drafts of new service contracts for over \$100,000 available for public inspection and hold public hearings before the contracts are finalized. The National Center for Law and Economic Justice reviewed the draft WeCARE contracts and, in testimony at the hearings, focused on the contracts' failure to require adequate compliance with federal civil rights laws and lack of deference to clients' treating professionals. The Human Resources Administration changed the contracts in response to the center's concerns.

Once the program was up and running, the center used the state's freedom-of-information law to request data on program performance, subcontracts, recoupments, and disallowances for failure to comply with contract requirements. When the Human Resources Administration failed to respond, the center reached out to a private law firm for pro bono assistance. The data revealed that contractors and some subcontractors had staffing shortages; there were far fewer subcontractors than planned; contractors' SSI approval rates were low; most participants were placed in programs indistinguishable from those in the general welfare program despite those participants having disabilities that limited employment; the Human Resources Ad-

ministration failed to contract with an independent organization to monitor the program for two years. The center shared this information with the city council, the press, and the city comptroller, who reviews and registers city contracts and audits city programs.

Community Voices Heard, a low-income grassroots advocacy organization, conducted focus groups of WeCARE participants and issued a report highlighting problems with WeCARE—difficulty navigating the program; poor-quality assessments; one-size-fits-all job preparation services; a poor record of job placement; inadequate assistance with SSI applications. The report, available at www.cvhaction.org, was released at a press conference, speaking at which were the city council's general welfare committee leader, advocates from the National Center for Law and Economic Justice and others, and members of Community Voices Heard. The *New York Times* and local publications covered the story. As a result, WeCARE's director agreed to meet with Community Voices Heard on a regular basis about the program, and the Human Resources Administration began to acknowledge that changes were needed.

The National Center for Law and Economic Justice and Community Voices Heard persuaded the general welfare committee to hold an oversight hearing on the program; the Human Resources Administration commissioner, program participants, and advocates testified. The center's testimony relied heavily on data obtained from the freedom-of-information requests.

After learning that the Human Resources Administration intended to renew the contracts with the two main contractors, the National Center for Law and Economic Justice and Community Voices Heard, in a memo for the city council general welfare committee and the comptroller's office, recommended contract modifications to improve program performance and agency oversight and recommended longer-term changes in human service contracting rules. At this writing, the contract renewal is still under way.

For further information, contact Cary LaCheen, lacheen@nclej.org, of the National Center for Law and Economic Justice.

Subscribe to CLEARINGHOUSE REVIEW

Annual subscription price covers

- six issues (hard copy) of CLEARINGHOUSE REVIEW and
- www.povertylaw.org access to current issues of CLEARINGHOUSE REVIEW and all issues from 1990

Annual prices (effective January 1, 2006):

- \$250—Nonprofit entities (including small foundations and law school clinics)
- \$400—Individual private subscriber
- \$500—Law school libraries, law firm libraries, other law libraries, and foundations (price covers a site license)

Subscription Order Form

Name _____

Fill in applicable institution below

Nonprofit entity _____

Library or foundation* _____

Street address _____ Floor, suite, or unit _____

City _____ State _____ Zip _____

E-mail _____

Telephone _____ Fax _____

*For Internet Provider-based access, give your IP address range _____

Order

Number of subscriptions ordered _____

Total cost (see prices above) \$ _____

Payment

- My payment is enclosed.
*Make your check payable to **Sargent Shriver National Center on Poverty Law.***

- Charge my credit card: Visa or Mastercard.

Card No. _____ Expiration Date _____

Signature _____

We will mail you a receipt.

- Bill me.

Please mail or fax this form to:
Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602
Fax 312.263.3846

CUT HERE