



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: June 30, 2020

To: California Paraprofessional Program Working Group

From: Dana McRae and Carolin Shining

Subject: Consideration of Health as a Practice Area to Be Included in a Paraprofessionals Program

Executive Summary

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the selection of practice areas for inclusion in the program.

Discussion

At its first meeting on April 21, 2020, the CPPWG discussed potential practice areas for program inclusion. No final determination as to the areas to be recommended was made. Several practice areas were determined to warrant further preliminary discussion as to the basis for their inclusion or exclusion. These areas were called "wobblers" meaning that additional information would be beneficial before a decision could be made regarding their status. Members of the CPPWG volunteered to study each of the wobbler areas with the goal of generating recommendations regarding ongoing consideration for the program for review by the full body at its next meeting.

The present two-person team assessed the Health practice area. In generating our recommendations, outlined below, we considered the following:

- Health care-related questions and responses included in the California Justice Gap Study; and
- Information obtained from subject matter experts.

California Justice Gap Study

The California Justice Gap Study included questions about health care-related issues, including questions asked about billing, the inability to access or other problems getting health care insurance, the denial of an interpreter in a medical setting, issues with debt collection or financial assistance relating to health care insurance coverage, and payment for needed equipment, procedures, or other services, as detailed below.

Health care-related issues were the most common type of legal problem experienced by Californians at all income levels, with 30 percent of all households reporting at least one health care-related problem. Health care ranked second highest for the percentage of problems for which only nonlegal help was received by Californians overall, and third highest for those with income above 125 percent of the federal poverty level.

The California Justice Gap Study results for the Health practice area identified the following specific legal needs for this population:

- Being billed incorrectly for medical services, including copays and deductibles.
- Having health care insurance that would not cover medically needed procedures, services, medical equipment, prescriptions, transportation services, or mental health services.
- Not being informed about financial assistance for health care or that free care might be available from a hospital or at home.

Subject Matter Experts¹

We had meetings with representatives of several organizations that provide assistance to or serve people with health care-related legal problems. Initially, we met with representatives from Santa Cruz County, including Ms. Siobhan Kelley, from the County Counsel's Office, Ms. Ellen Timberlake, from the Human Services Department, and Ms. Leslie Conner, from the Santa Cruz Community Health Center. We subsequently met with Ms. Stacey Hawver, Executive Director of the Legal Aid Society of San Mateo County and Mr. Gerson Sorto, of Neighborhood Legal Services of Los Angeles, to discuss the medical legal partnerships (MLPs) that are part of these organizations. MLPs assist patients by addressing needs that impact their health, such as access to housing, food, and other benefits. From our discussions with the two MLPs we learned that while these types of programs do provide health-specific legal services, those types of services are not their primary focus. It was suggested that we contact the statewide Health Consumer

¹ The summary of the conversations with subject matter experts is based on notes from staff, and have not been reviewed by the experts who were consulted.

Alliance (HCA), a network of 10 health consumer centers (HCCs) operated by community-based legal services organizations throughout the state, to get information about the type of health-specific legal needs outlined in the California Justice Gap Study.

To that end, we contacted Mr. Jack Dailey, coordinator of the statewide HCA and Director of the Health Consumer Center (HCC) housed within the Legal Aid Society of San Diego.

HCCs provided by legal aid programs serve the entire state; they assist people with the types of health-related problems identified in the California Justice Gap Study, including issues with billing, access to specialists, and denial of medical equipment. The HCA has identified a diverse array of funds, from the California Department of Managed Health Care, Covered California, and the California Endowment, that allows HCCs to serve people regardless of income; however, 90 percent of those served by these HCCs have a household income of less than 200 percent of the Federal Poverty Level (FPL) and another 5 percent are between 200 and 400 percent of FPL. The remaining 5 percent are above 400 percent of FPL. While services are available for free to all Californians regardless of income, the low utilization rate by Californians above 200 percent of FPL may be due to a lack of awareness about available services or an assumption of income ineligibility due to the fact that HCCs are housed within legal services programs, which generally serve low income populations. Mr. Dailey indicated that, while broader outreach may be necessary and would increase awareness, the HCCs do not currently have the capacity to serve all in need.

The legal work performed by the HCCs was described as being potentially suitable for nonattorneys to perform. In fact, there is currently a full array of nonattorney professionals assisting both HCC attorneys, and independently as part of a private market, in health-related advocacy. However, given the potential complexities involved, and the importance of relationships in solving many problems that arise, a rigorous and well-designed paraprofessional program would be required; Mr. Dailey expressed reservations about the ability of this work being performed in the absence of attorney oversight. Mr. Dailey explained that, while these areas require specialized knowledge, access to the appeals process is designed to be consumer friendly; the assistance of a licensed paraprofessionals with extensive training might be beneficial to those in need. Mr. Dailey also identified benefits planning and asset protection as areas where a trained, licensed paraprofessional might benefit consumers. One potential downside of the State Bar establishing a paraprofessional license in this area would be the possibility that those with limited means would inadvertently be diverted from the free services provided through the HCC's; careful marketing and information materials published by the State Bar would need to address this concern.

Medi-Cal Administrative Appeals

The administrative processes for Medi-Cal appeals is similar to the process for public benefits, workers' compensation insurance and unemployment insurance, as detailed in the recommendation memo regarding the Income Maintenance practice area: if an initial application or claim is denied, an appeal is filed with California Department of Social Services. A

second level of appeal is available through the Department of Healthcare Service's Office of Administrative Hearings and Appeals, before an administrative law judge. The final remedy is superior court review, via an administrative writ.

The administrative processes allow for nonattorneys to represent the claimant in the proceedings themselves and no training or certification is required for nonattorneys. However, the statutes and regulations that allow for this representation appear to be silent about the scope of allowable representation outside of the parameters of the hearings themselves.

Recommendation

We recommend that the Health practice area be included for ongoing consideration in a paraprofessional program, with a focus on the following subtopics identified by the California Justice Gap Study as areas of significant need:

- Billing for medical services, including copays and deductibles.
- Denial of access to services or equipment.
- Denial of access to insurance.
- Failure to inform of free services or available financial assistance.

Consideration of representation by licensed paraprofessionals in Medi-Cal appeals raises issues addressed by the discussion of representation in appeals regarding public benefits, workers' compensation and unemployment matters in the recommendation memo regarding the Income Maintenance practice area. Discussion of Medi-Cal appeals should be included during the discussion of that topic.

Paraprofessional licensing in the area of health care assistance would require rigorous licensing, training and testing, with continuing education in the field required for ongoing certification.