

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN®



Georgetown University
Health Policy Institute

CENTER FOR CHILDREN
AND FAMILIES

EPSDT FOR PROVIDERS AND ADVOCATES: WHEN TO ENGAGE THE LEGAL COMMUNITY

WEDNESDAY, OCTOBER 24TH
2 PM – 3:30 PM EASTERN

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- In the coming days, you will be sent follow-up information on how to claim your CME credit by viewing this webinar, in addition to an event evaluation via SurveyMonkey.



AGENDA OVERVIEW

Welcome and Introductions

Marielle Kress, MPP, Director, Federal Advocacy, American Academy of Pediatrics

Medical-Legal Partnership and Medicaid EPSDT Advocacy

Yael Cannon, JD, Co-Director, Health Justice Alliance, Georgetown University

Working with Legal Services Lawyers to Help Kids Access Medical Care

Jennifer Mezey, JD, Supervising Attorney, The Legal Aid Society of DC

Making Advocacy Part of Pediatric Practice: Using EPSDT to Improve Care for Kids

Gordon Bonnyman, JD, Staff Attorney and Co-Founder, Tennessee Justice Center

Discussion

Kelly Whitener, JD, Associate Professor of the Practice, Georgetown University Center for Children and Families





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HEALTH JUSTICE ALLIANCE

Medical-Legal Partnership and Medicaid EPSDT Advocacy

Yael Cannon, JD

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October 24, 2018



GEORGETOWN UNIVERSITY

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The Medical-Legal Partnership Model

The National Medical-Legal Partnership Movement

National Center for Medical  Legal Partnership

Helping to build an integrated health care system that better addresses health-harming social needs by leveraging legal services and expertise to advance individual and population health.

American Academy of Pediatrics 2017 Top Resolution:

That the Academy educate pediatricians on the process of developing MLPs or other referral systems that foster collaboration between pediatricians and lawyers for the benefit of immigrant children and adolescents.

**American College of Obstetricians and Gynecologists
Opinion #729, January 2018:**

OB-GYN practices that are part of a community health care clinic or network should encourage the facility to establish medical–legal partnerships.

41 States

155
Hospitals

139 Health
Centers

75,000
Patients

MLP Impact & Examples

Improved Housing Conditions

- Study of 12 asthma patients showed hospitalization visits ↓ 91% & overall reduction in steroid use*

Overall Health & Well-being

- In a family medicine clinic MLP showed mean PSS-10 (perceived stress) scores ↓ 8.1 points & well-being scores ↑ 1.8 points**

Financial ROI

- MLP in cancer practice = approx. \$1 million in denied claims for cancer patients
- MLP in rural Illinois Hospital = 149% ROI on \$115k investment & 319% Medicaid ROI

Providers

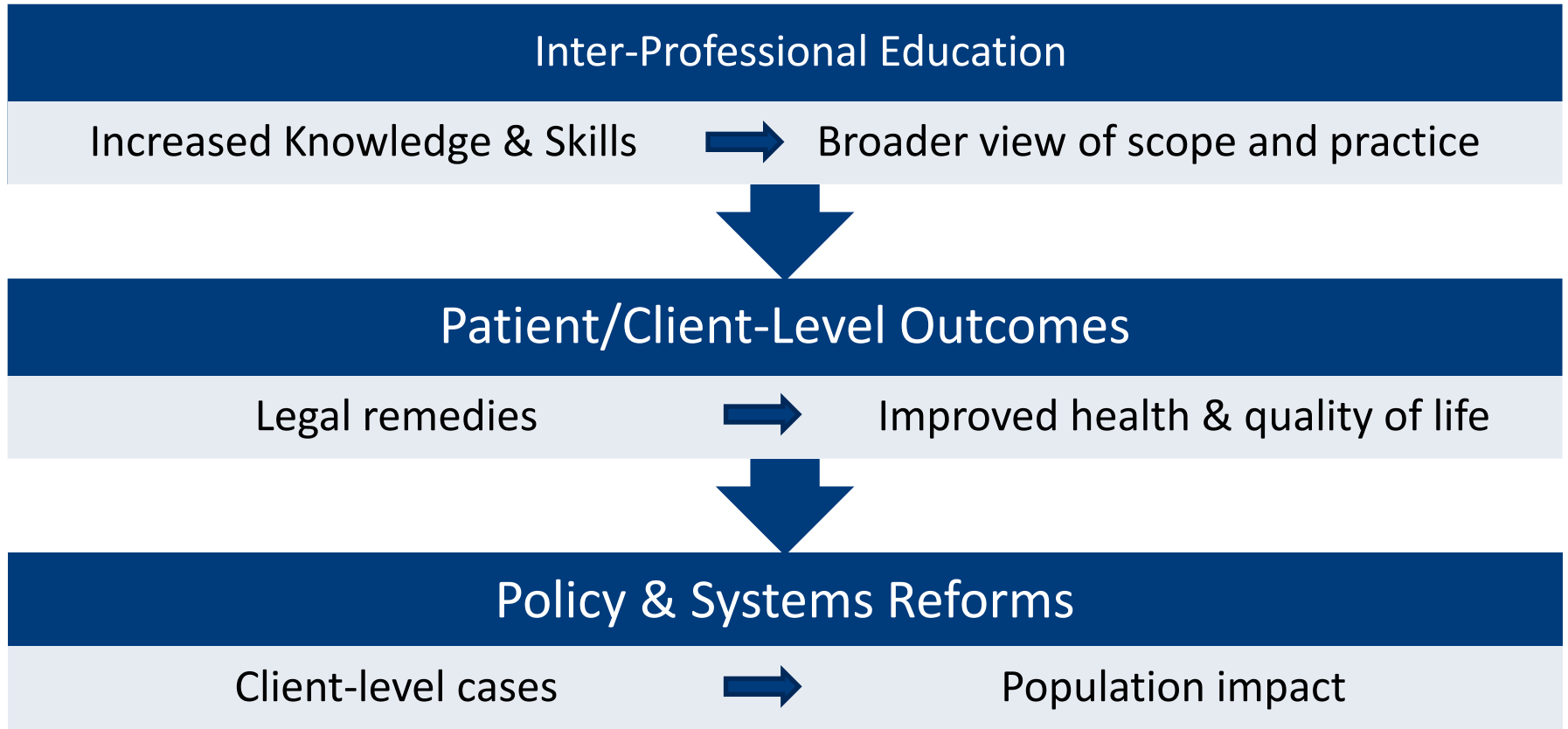
- Increased confidence, knowledge, comfort, & willingness to engage with patients on social determinants of health***

* O'Sullivan et. al. *Journal of Asthma* ; 49(9): 911–917 (2012)

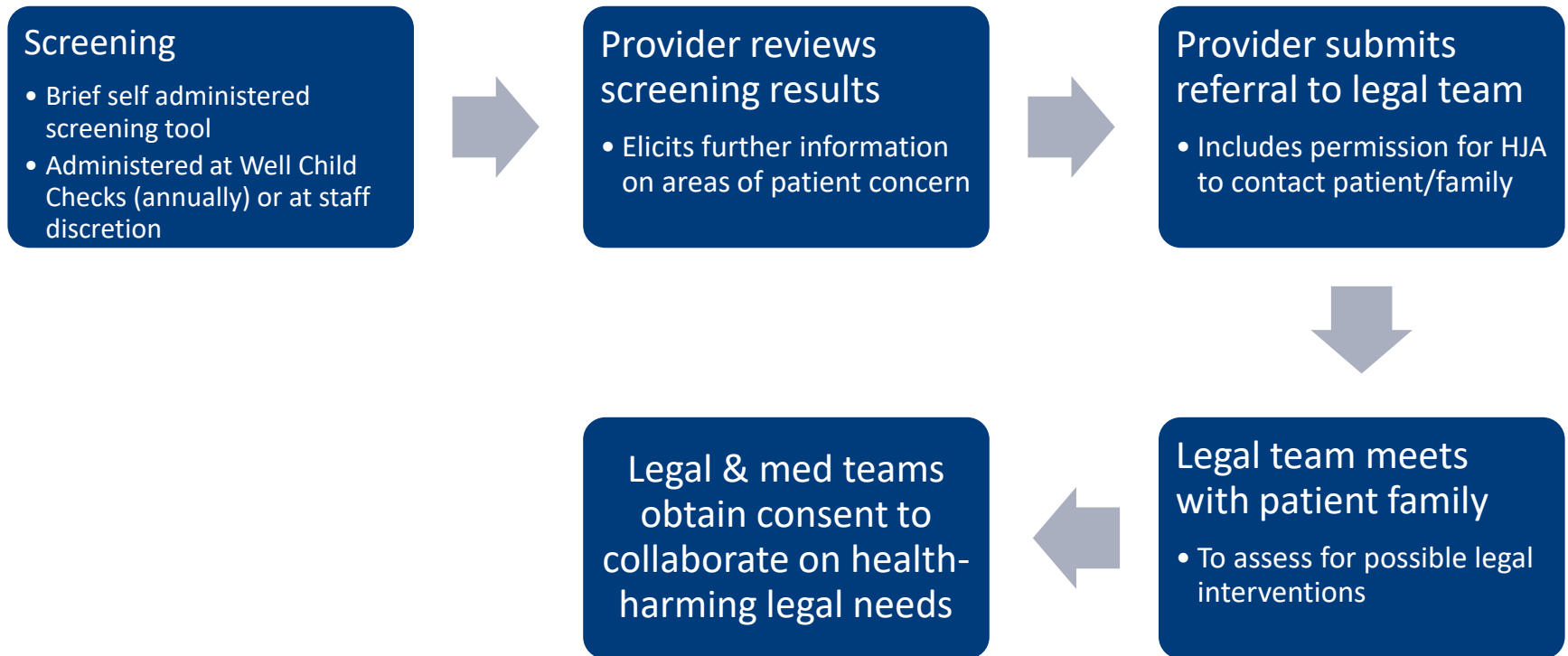
**<https://www.ncbi.nlm.nih.gov/pubmed/23698668>

***<http://medical-legalpartnership.org/resident-confidence-addressing-social-history-influenced-availability-social-legal-resources>

Collaborative Impact at Multiple Levels



Health Justice Alliance – Street Level View



Frequently Identified Legal Issues

Access to Public Benefits

- TANF, SNAP, Medicaid, Disability

Custody/Guardianship Questions

- Student lives with grandparent
- Parent is incarcerated
- Guardian lives out of state
- Change in guardianship

Food Insecurity

Housing Insecurity

Intimate Partner Violence

Special Education Services

Medicaid EPSDT Advocacy

Refer denials to lawyers

Collaborate on informal advocacy

- Medical necessity wording
- Preparation for consultations with MCO Medical Directors

Administrative Hearings





Working with Legal Services Lawyers to Help Kids Access Medical Care

Jennifer Mezey
Supervising Attorney
jmezey@legalaiddc.org

Webinar for Georgetown Center on Children and Families
and American Academy of Pediatrics

October 24, 2018



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What are legal services organizations?

- Free civil legal services provided to low-income individuals and families
- General versus targeted populations
- Types of cases (generally):
 - Housing (conditions, eviction prevention)
 - Family law/domestic violence
 - Public benefits (health insurance, cash assistance)
 - Probate and wills
 - Consumer (debt collection, foreclosure)
- Generally not personal injury
- Not criminal

How do I know where to find help for my patients?



- Federally-funded legal services organizations:
 - <https://www.lsc.gov/what-legal-aid/find-legal-aid>
 - Restrictions on income, type of work (no class actions) and who can be served (*ie*, no undocumented immigrants)
 - Every state (and DC) has a federally-funded legal services program
- Other types of programs that may have fewer restrictions on who they can help and what they can do:
 - LawHelp.org
 - Findlaw.com
 - <https://medical-legalpartnership.org/> (find out where the MLP's are in your area so that they can help your patients or connect them with other legal services)

Examples of public benefits cases involving children in the District

- Medicaid managed care organization denies coverage for diapers for eight year old child with severe developmental delays as a result of genetic disorder.
- Undocumented immigrant mother who lives in the District gives birth to child in Virginia and now has medical bills from labor and delivery.
- Mother has renewed her Medicaid but provider shows her as not having coverage.
- Mother does not receive Food Stamps and TANF (welfare) benefits in October but no notice of termination (due to data glitch at agency). She and social worker spend hours trying to resolve.
- Child's SSI is terminated because of mother's earnings. As a result, child is threatened with losing her Medicaid (because it is based on her SSI) but she remains income eligible for Medicaid (without SSI).

Alternatives for resolution



- You and/or your staff spend hours going back and forth with the human services agency and/or Medicaid MCO about coverage or eligibility problems.
- You and/or your staff advise the parent to call the agency or MCO or go in person to resolve. Parent spends hours on hold or waiting in line to find out what is going on.
- You reach out to MLP or other legal services provider (or give your patient information about how to connect with legal services). Legal services attorney follows up with agency and/or MCO and resolves through informal advocacy and/or fair hearing.

How does an EPSDT case get resolved once lawyer is involved?



- Confirming that child has Medicaid.
- Making sure that client has received relevant notices so that s/he knows why agency or MCO denied coverage → sometimes notices just go to providers.
- Filing informal grievance with MCO and/or informal advocacy with the Medicaid agency.
- Filing fair hearing request.
 - Physician oral testimony could be helpful.
 - If oral testimony not possible, written testimony is essential.
 - Treating physician's opinion supported by research and other evidence as to why treatment is medically necessary.
 - Lawyers can help draft letters for doctors review, edit and sign that specifically address Medicaid and/or MCO standards (which are not always clear, public and compliant with the law).



- Helping legal services organizations expand their reach to vulnerable clients who can't connect with these organizations on their own.
- Helping to identify gaps in coverage and eligibility that could be addressed through systemic advocacy.
 - Example: Children's National Medical Center and problems with newborns losing Medicaid eligibility.
- Documenting impact of unfair or illegal agency policies or practices regarding eligibility or coverage on vulnerable patients.
 - Support for class action litigation like *Salazar v. District of Columbia*
 - Advocacy with legislatures and agencies

Making Advocacy Part of Pediatric Practice:

Using EPSDT to Improve Care for Kids

October 24, 2018

Gordon Bonnyman, Tennessee Justice Center

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Advocating for Individual Patients

- YOU are your patient's *uniquely qualified* advocate, because you know her.
- YOU are armed with knowledge that EPSDT provides coverage unlike any other, and guarantees that she receive all medically necessary care.

Encountering “Delay, Delay, Deny”

- Utilization Review is down and dirty.
 - Uses guidelines based on research literature on trials with adult subjects
 - Is administered on volume basis by clerical personnel without clinical qualifications
 - Professional reviewers typically see only a small summary of a patient’s record
 - Cookie cutter approach is a poor fit for children with special needs.

Make it personal

- The antidote to cookie cutter decision making is individualized clinical judgment
- Demand peer-to-peer conference
- The treating clinician has decisive influence, but only if:
 - She explains the reasons why the patient needs the prescribed treatment
 - citing history, tests, symptoms and inadequacy of whatever alternative the reviewer is pushing.

Use Appeal to Force Review

- Appeal triggers review, and this is another occasion for clinicians to submit letter and supporting records. That usually results in win for the patient.
- If it goes to “fair hearing,” demonstration of your knowledge of the patient can trump testimony of consulting expert hired by MCO or state.

Using AAP's "Bully Pulpit"

- Pediatricians have credibility and moral authority on matters of care for children.
- Maximize pediatricians' ability to use EPSDT:
 - Educate pediatricians via CME
 - Provide template letters and instructions for justifying a patient's treatment.
- Create committee to collect members' feedback, identify systemic problems.
- Address system problems by advocating as organization with Medicaid agency and MCOs.

AAP can bring CQI to EPSDT

Continuous Quality Improvement for EPSDT:

- AAP trains clinicians about EPSDT, so that they can identify when Medicaid is not compliant.
- AAP collects front line reports of non-compliance, formulates plan, negotiates with state and MCOs.
- Monitors state's corrective action, identifies further need for improvement.
- Repeat cycle.

When all else fails...

- Class actions can address particular systemic problems, e.g.:
 - Medicaid failures affecting a subpopulation (e.g., kids in state foster care) or
 - a particular condition or treatment (e.g., refusal to cover applied behavioral therapy for autism)
- Class actions can also address overall system of care.
- In these cases, large law firms are available to offer pro bono assistance.

DISCUSSION

