



FLORIDA HEALTH JUSTICE PROJECT, INC

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VIA EMAIL: etarbert@floridabar.org

Mayanne Downs, Chair
Task Force on Distribution of IOTA Funds
c/o Elizabeth Tarbert, Ethics Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

Re: Task Force on Distribution of IOTA Funds

Dear Ms. Downs,

Thank you for the opportunity to comment.

I offer these comments as someone who has had the privilege of working as a legal services attorney for more than 40 years, including 35 years in Florida. This work included 10 years as a Staff Attorney and Public Benefits Unit Co-Director at Legal Services of Greater Miami and more than 20 years as a Senior Health Law Attorney at Florida Legal Services (FLS).

I am currently the [Executive Director](#) of the Florida Health Justice Project. Our mission is to help ensure access to quality and affordable health and engage in comprehensive advocacy to expand healthcare access and promote health equity for vulnerable Floridians.

Our strategies include: providing legal services attorneys and technical assistance, tools and training that help them be more effective, e.g. creating the [Advocate's Guide to the Florida Medicaid Program](#) and the [Advocate's Guide to the Florida Long Term Care Program](#), organizing the first South Florida Elder Justice Conference; and leading on litigation that provides systemic impact for Florida Medicaid beneficiaries. e.g. *Harrell et al.v. Poppell*, M.D. FL, Case 3:19-cv-00912.

Prior to moving to Florida, I worked for two rural legal services programs. At those programs, I handled high caseloads of individual direct service cases.



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As someone who has worked in both rural programs and urban programs, and as both a generalist and a specialist, I am keenly aware of the need to support a delivery system that provides necessary direct representation, effectively shares expertise and institutional knowledge, identifies and addresses systemic issues, and effectively collaborates with members of the private bar.

We all know that there will never be sufficient funds to provide civil legal aid for every low-income Floridian who needs an attorney. Even if legal aid were limited to just one legal need, e.g. divorces, the need would exceed available resources. And we all know that civil legal needs extend to housing, consumer, food, health, immigration etc. Thus, hard choices need to be made about how to most effectively address the multiple civil legal needs of Floridians.

Because I have had the opportunity to focus on one area of poverty law, the following comments are focused on how to most effectively use a portion of IOTA funds to ensure health care rights for needy Floridians.

Primarily these rights flow from the federal Medicaid Act, along with a complex federal and state regulatory scheme, and managed care contracts. Medicaid is complicated; various federal court judges have referred to it as, e.g. “ a Serbian bog... unintelligible to the uninitiated. “

Most low-income Floridians who are either uninsured or who rely on Medicaid do not know that they have health care rights. If someone is being evicted or abused or has their families’ SNAP (food stamps) allotment reduced, many know to seek assistance at local legal aid. By contrast, most people who are uninsured or who are on Medicaid, and whose medically necessary services are denied, delayed, or suspended, often don’t know that they may have legal rights. Thus, there is a tremendous need for outreach, education, screening, and technical assistance. Using 100% of IOTA funds for representation of litigants would not allow funding for these needed activities.

Further exacerbating effective delivery of healthcare rights is the fact that most legal aid programs do not have attorneys with expertise in Medicaid law, or experience in using the advocacy tools needed to effectively enforce their clients’ rights. For those programs that do accept health access cases and do Medicaid fair hearings, they typically resolve single cases and do not work on systematic resolutions, including federal court injunctive relief (with or without a class). The proposal to use all IOTA funds for litigation representation matters would effectively terminate funding for the activities needed to build capacity in the legal services and pro bono communities needed to help clients with health access challenges.

In sum, there is a need for funding state health law experts who can develop and share tools, provide technical assistance, help identify and address systemic issues, and collaborate effectively with local legal aid Lawyers and the private bar. Some examples of successful enforcement of health care rights which helped hundreds of thousands of Floridians include:

- Right to behavioral services for children with autism¹
- Right to coverage of diapers for children whose incontinence is due to their complex medical needs²

¹ *K.G. ex rel. Garrido v. Dudek*, 981 F. Supp. 2d 1275 (S.D. Fla. 2013), *aff’d in part and modified in part*, 731 F. 3d 1152 (11th Cir. 2013)

² *Smith v. Benson*, 703 F. Supp.2d 1262 (S.D. Fla.)

³ *Edmonds, et al. v. Levine*, 417 F. Supp. 2d 1323 (S.D. Fla. 2006)



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- Right to notice and due process of Medicaid beneficiaries whose prescription drug coverage is denied coverage
- Right to coverage of drugs prescribed for medically accepted indications³
- Right to coverage of Hepatitis C drugs that affect cure the disease.⁴

I worked on the cases listed above as a health law attorney employed by FLS. None of these successful case outcomes, including the Hepatitis C case that was settled at the administrative level and before the federal court complaint was filed, would have happened without FBF support through IOTA funds. It is not an overstatement to assert that hundreds of thousands of Floridians were directly assisted as a result of this collaborative litigation.

Additionally, in each case, the delivery system was enriched by my co-counseling with a local legal services attorney. If IOTA funds were no longer available for the sorts of activities that underlie and support these successful enforcement actions, e.g. outreach and education, technical assistance, provision of tools, such as *Advocate Guides*, our ability to serve Floridians who need help enforcing their health care rights would be gravely diminished.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact me.

Sincerely,

Miriam Harmatz

Miriam Harmatz
Executive Director

² *Smith v. Benson*, 703 F. Supp.2d 1262 (S.D. Fla.)

³ *Edmonds, et al. v. Levine*, 417 F. Supp. 2d 1323 (S.D. Fla. 2006)

⁴ *Legal Aid Attorneys Push Florida Medicaid To Cover Cure For Hepatitis C*. The Florida Bar Foundation, 1 November 2016, <https://thefloridabarfoundation.org/legal-aid-attorneys-push-florida-medicaid-cover-cure-hepatitis-c/>.