Using Law to Support and Sustain the Community Health Worker Profession

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Overview

» Legal mechanisms
» Federal law & policy
» State law & policy: examples across the states

Key Issues

» Using law to support your work as a CHW
Legal mechanisms

» **Direct Regulation**
  
  » **Registration** – provide information to state
  
  » **Statutory Certification** – only those certified may legally use title of occupation, but anyone may perform duties
  
  » **Licensure** – restrictive; creates exclusive area of practice
  
  » **Regulation through supervision** by a licensed practitioner

» **Payment & Accreditation**

Federal law & policy

» 2010 – Department of Labor / Bureau of Labor Statistics recognized the role of Community Health Worker

Federal law & policy

» 2010 – New opportunities created under Affordable Care Act

» Authorized CDC to award grants to promote use of CHWs in medically underserved communities (codified at 42 U.S.C. § 280g-11)

» Medicaid Health Homes (codified at 42 U.S.C. § 1396w-4)

» State Innovation Model (SIM) Grants (ACA created CMS Center for Medicare & Medicaid Innovation to test innovative payment and delivery models; codified at 42 U.S.C. § 1315a)
Federal law & policy

» 2014 – January 1, 2014, is effective date for CMS’s final rule revising definition of preventive services at 42 C.F.R. 440.130(c)

» Under new rule, reimbursable services must be “recommended by physicians or other licensed practitioners,” but may be provided by non-licensed practitioners

» Enable CHWs to be reimbursed under Medicaid for providing preventive services
Other federal programs that include roles comparable to CHWs

» Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

» Indian Health Service – Community Health Representative (CHR) Program

Image from WIC Works Resource System
https://wicworks.fns.usda.gov/topics-z/image-gallery#Food

Image from https://lmic.ihs.gov/federalpartners/fedpartnershhsihs/
State law & policy: examples across the states

- As of December 2014, eighteen states (including DC) had codified law pertaining to CHWs (Barbero et al.)*


State law and policy: Credentialing and Training Considerations

» Certification versus Licensure
» State versus private credentialing and training programs
» Grandfathering provisions
» Membership in community
» Barriers to entry – e.g. criminal background checks
» Involvement of CHW community in policy development
State law & policy: examples across the states

» Examples of state laws
  » Texas
  » Minnesota
  » New Mexico

» An alternative approach using law
  » Michigan

» State laws with local impact
  » Washington state
  » North Carolina
State law & policy: examples across the states

» Examples of state laws

» Texas
  • Detailed regulatory structure
  • Certification required if CHW receives any type of compensation for services

» Minnesota
  • Demonstrate completion of approved training program to be eligible for Medicaid reimbursement

» New Mexico
  • Voluntary certification following completion of department approved training program
Texas

» 2001 laws regarding training and regulation of promotoras and CHWs:

» Dept. of State Health Services must establish and operate a training program.

» Participation in training program is mandatory for promotoras and CHWs providing services for compensation; voluntary if services are not compensated.

» State agencies must use certified promotoras and CHWs to the extent possible in health outreach and education programs for recipients of medical assistance programs (e.g. Medicaid).

» 2011 law directs CHW advisory committee to provide recommendations on employment, funding, sustainability.
Texas

» **Definition of CHW:**

» May or may not be compensated

» Is a liaison and provides cultural mediation between health care and social services, and the community

» Is trusted member, and has close understanding of, the ethnicity, language, socioeconomic status, and life experiences of the community served

» Assists people to gain access to needed services and builds individual, community, and system capacity by increasing health knowledge and self sufficiency through a range of activities such as:

  - Outreach
  - Patient Navigation & follow up
  - Community health education and information
  - Informal counseling
  - Social support
  - Advocacy
  - Participation in clinical research

Texas

Certification requirements & definitions

Minimum eligibility requirements for certification:

1. Live in Texas
2. At least 18 years old (or a minor approved by the department)
3. Freedom from physical or mental impairment which interferes with performance of duties or constitutes a hazard to health or safety of persons served
4. Achievement of core competencies through (a) completion of certified competency-based training program by an approved institution or (b) verification of related experience (within past 6 years, obtained 1000+ cumulative hours of experience demonstrating competency in core areas)
5. Submission of application form

25 Tex. Admin. Code § 146.6
Texas

» Core competencies included in standards for training curriculum and required for certification:

» Based on those identified in National Community Health Advisor Study, June 1998

- Communication skills
- Interpersonal skills
- Service coordination
- Capacity-building skills
- Advocacy
- Organizational Skills
- Teaching
- Knowledge base on specific health issues

» 25 Tex. Admin. Code § 146.4 (h)
Texas

» More about certification…

» Training programs must include at least 160-hour curriculum that meets state-defined criteria, including training in core competencies

» Certified CHWs receive identification card from department and must carry with him/her.

» Certification must be renewed every 2 years; renewal requires proof of 20 hours of continuing education.

» Department may disapprove an application based on conviction of a felony or misdemeanor relating to duties and responsibilities of a promotora or CHW.

» 25 Tex. Admin. Code §§ 146.1-146.8
Texas

» Regulations establish Professional and Ethical Standards (25 Tex. Admin. Code §146.7)

» Regulations establish a Promotor(a) or CHW Training and Certification Advisory Committee

» Need for committee will be reviewed by May 1, 2019, to determine if need still exists

» Advise department on standards, requirements, employment and funding, sustainability, and review applications for sponsoring organizations (providing training)
Minnesota

» **2007 state law allows for Medicaid reimbursement of CHW services.**

» Minn. Stat. § 256B.0625, subdivision 49; § 256D.03, subdivision 4

» To be eligible for reimbursement, CHW must have:

  – Received a certificate from the Minnesota State Colleges and Universities System approved curriculum OR

  – Completed at least five years of supervised experience with a Medicaid-enrolled provider (**but CHWs eligible under this clause were required to complete the certification program by Jan. 1, 2010 to continue to be eligible**
Minnesota

» **Medicaid will cover diagnosis-related patient education services (not social services) provided by a CHW.**

» Supervised by a Medicaid-enrolled physician, APRN, mental health professional, dentist, or certified public health nurse;

» Services are ordered to be provided by CHW by one of the practitioners listed above;

» Service involves teaching patient how to self-manage health or oral health with health care team;

» Service is provided face-to-face with recipient, individually or in a group, in an outpatient, home, clinic, or other community setting;

» Content of education plan/training is consistent with recognized health care standards.

» See [Minnesota Medicaid Provider Manual](#).
New Mexico

» **Office of CHWs established in NM Dept. of Health in 2008**

» **CHW Act passed in 2014, followed by regulations in 2015**
  (N.M. Stat. Ann. § § 24-30-1 through 24-30-7; N.M. Code. R. § 7.29.5)

» **Statutory definition:**

  » Public health worker who applies an understanding of the experience, language, and culture of the populations that the individual serves and who provides direct services aimed at optimizing individual and family health outcomes, including:

   - Informal & motivational counseling & education
   - Interventions to maximize social supports
   - Care coordination
   - Facilitation of access to health care & social services
   - Health screenings
   - Other services defined by rule
New Mexico

» The Act and regulations establish a voluntary certification program for CHWs:

» Act creates Board of Certification of Community Health Workers.

» To use the title “certified community health worker” (CCHW), an individual must be certified under CHW Act.

» CCHWs may only engage in activities authorized by CHW Act and regulations (unless otherwise licensed).
New Mexico

» Certification requires:

1. Application form with verification that applicant has met eligibility requirements
   • At least 18 years of age
   • Proof of completion of department-approved training program that includes examination component for each core competency
   • At least a high school diploma or GED
   • *Alternative grandfathering requirements may apply to CHWs practicing before effective date of Act.*

2. Application fee

3. Criminal history screening
New Mexico

More about certification:

» CCHWs must carry certificate and present it upon request.

» Certification must be renewed every 2 years; renewal requires proof of 30 hours of continuing education.

» A CCHW may be certified as a generalist or a specialist I, II, or III (based on training in specialty areas, e.g. heart health, behavioral health, maternal and child health).
New Mexico

» Scope of practice to be defined by NM Dept. of Health with recommendations from Board.

» Current guidance from Dept. of Health / Office of CHWs provides following scope of practice:

- Community & Cultural Liaison
- System Navigation, Care Coordination, & Case Management
- Community Assessment & Mobilization
- Community Outreach
- Home base Support
- Clinical Support
An alternate approach using law: Michigan

State contract requires Medicaid MCOs to provide or arrange for provision of CHW services:

Focus on enrollees with significant behavioral health issues and complex physical co-morbidities

MCO must:

- Establish reimbursement methodology for CHW services
- Maintain CHW to Enrollee ratio of at least 1 full-time CHW per 20,000 Enrollees
- Must ensure CHWs have all core competencies:
  - Role advocacy and outreach
  - Navigating community resources
  - Legal and ethical responsibilities
  - Teaching and capacity-building
  - Communication skills and cultural responsiveness
  - Coordination, documentation, and reporting
  - Healthy lifestyles
State laws with local impact

» Washington state

» State statute (WAC 246-170-035) requires the state health department to develop a course to be used by state and local health departments to train tuberculosis CHWs.

» The DOH refers to this as “TB Certification.” TB certified CHWs may perform TB testing and directly observed therapy (DOT).
State laws with local impact

» North Carolina

» State regulation (10A N.C. Admin. Code 48B.0803) requires local health departments to lead efforts in community to link individuals to preventive health and health promotion services.

» Must assure that program planning and implementation involves community health advocates that represent populations served.
State laws with local impact

» Other Examples?

» Examples of local ordinances?
Key Issues: Pros and Cons of increased regulation

» Possible pros:
  » Increase recognition of unique skills
  » Decrease confusion / increase hiring
  » Improve job mobility and opportunities for career advancement
  » Increase confidence for funders and payers
  » Improve data collection and evidence base
  » Decrease opposition by clarifying role
  » Well-defined role can ensure optimal functioning

Key Issues: Pros and Cons of increased regulation

» Possible cons:

» Potential loss of key CHW attributes
» More restrictions
» Increase barriers to entry
» Negative impact on those who do not seek voluntary credential
» Decrease flexibility to meet evolving needs
» Unnecessary?
» Lack of limits to scope can lead to burn out

### Key Issues: Pros and Cons of increased regulation*

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Key Issues: Evidence-Based Elements of Law


» Identified 14 components of an evidence-informed policy

» Categorized components by quality/depth of evidence base

» Elements supported by “best evidence” included:

- Inclusion of CHWs in multidisciplinary health care teams;
- Core competency certification;
- Provision of care under supervision of a health care professional;
- Standard core competency curriculum;
- Medicaid payment for CHW services;
- Specialty area CHW certification
- Inclusion of CHWs in developing certification requirements
- CHWs provide chronic disease care services
Using law to support your work as a CHW

» Medical-Legal Partnership
  » Housing issues
  » Benefits denials
  » Immigration status
  » Visit the National Center for Medical-Legal Partnership at http://medical-legalpartnership.org/

» Add your voice to state rulemaking
  » Changes to public benefits programs

» Partner with organizations advocating around repeat issues for state or local change
Supporters

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.

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