

Governor's Eugenics Compensation Task Force Meeting

Member Reports

Tuesday, December 6, 2011

- Report 1:** **Review of Compensation, Taxation, etc**
Demetrius Worley Berry and Judge Fetzer Mills
- Report 2:** **Review of Health Care, Mental Health, Medicaid**
Phoebe Zerwick and Dr. Laura Gerald
- Report 3:** **Review of Education and Exhibit**
Dr. Lenwood G. Davis

The Task Force's Final Recommendations will be reported to the Governor on February 1, 2011

Governor's Eugenics Compensation Task Force Meeting
Tuesday, December 6, 2011 - 10:00am

To: Members of Governor's Task Force to Determine the Method of Compensation for Victims of the North Carolina Eugenics Board

From: Demetrius Worley Berry and F. Fetzner Mills, Task Force Members

1. Task Force Assignment:
 - A. Determine impact of any lump sum compensation to survivors sterilized under the former N.C. Eugenics Board who are Medicaid Beneficiaries
 - B. Determine taxation impact on any lump sum compensation to survivors sterilized under the former N.C. Eugenics Board
 - C. Explore whether any lump sum compensation should also go to the estate of deceased victims of the former N.C. Eugenics Board

2. Findings:
 - A. Based upon discussions with Linda Faulkner, Policy Coordinator in the Medicaid Eligibility Unit, lump sum compensation that may be recommended by the Task Force for survivors sterilized under the former N.C. Eugenics board is akin to a restitution payment. Such payments to recipients under Medicaid Family and Children's programs are considered non-countable income and a non-countable resource. Further, any interest earned on such a payment is excluded as a countable income or countable resource to recipients under the Medicaid Family and Children's program.

The Medicaid Adult program for the Aging and Disabled follow Supplemental Security Income (SSI) Policies. More detailed information will be forthcoming as to how potential lump sum compensation may be treated under SSI policies. However, generally, as set forth by the Social Security Administration at www.ssa.gov, a recipient of SSI benefits must report settlement and awards. Under SSI, income includes cash, checks and other things a recipient may get that can be used for food or shelter. Examples of income set forth on the website are as follows:

- Wages from your job, whether in cash or another form;
- Net earnings from your business if you are self-employed;
- The value of food or shelter that someone gives you, or the amount of money someone gives you to help pay for them;
- Department of Veterans Affairs benefits;
- Railroad retirement and railroad unemployment benefits;

- Annuities, pensions from any government or private source, workers' compensation, unemployment insurance benefits, black lung benefits and Social Security benefits;
- **Prizes, settlements and awards, including court ordered awards;**
- Proceeds of life insurance policies;
- Gifts and contributions;
- Support and alimony payments;
- **Inheritances in cash or property;**
- Rental income; and
- Strike pay and other benefits from unions

B. As set forth by Internal Revenue Service (IRS) at www.irs.gov, in 1996, the Internal Revenue Code § 104(a) (2) was amended to exclude from gross income "the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness." IRC § 104(a) (2). Accordingly, compensatory damages for personal physical injury or physical sickness are not included as gross income for tax purposes. Emotional distress alone is not a physical injury or physical sickness; however, damages received for emotional distress as a result of a physical injury or sickness are treated as received for physical injury or physical sickness and are excluded from income for tax purposes.

3. Recommendation(s) based on findings:

- A. As part of the task force's recommendations, it should be specifically recommended that the General Assembly legislate that any lump sum compensation to survivors of the former N.C. Eugenics Board be excluded as a countable income or countable resource to avoid any negative consequences on state social benefits such as Medicaid.
- B. As part of the task force's recommendations, it should be specially recommended that the General Assembly legislate that any lump sum compensation to survivors of the former N.C. Eugenics Board be characterized as compensation for "physical injury or physical sickness" to avoid inclusion as gross income for tax purposes.
- C. As part of the task force's recommendations, any lump sum compensation should go to living survivors sterilized under the former N.C. Eugenics board and to the estate of deceased victims that were living at the time of verification through the N.C. Justice for Sterilization Victims Foundation.

Draft Mental Health Recommendation

By Dr, Laura Gerald and Phoebe Zerwick

Sterilization victims have told us loud and clear that they have suffered a lifetime of psychological disorders from the forced sterilization they endured as children or young adults. No data exists on the mental-health status of these survivors, but as a direct result of state actions many may suffer from any number of psychological disorders such as post-traumatic stress disorder, depression, anxiety and mood disorders. We believe that a meaningful compensation package should include mental-health services to help victims with these disorders and to come to terms with the trauma they suffered.

We have looked into services provided by the state through the Division of Mental Health, the Division of Medical Assistance and the State Health Plan. These all have their limits. We propose that the state appropriate a pool of money that would be used to pay for counseling, victims support groups and other out-patient mental health services for victims of the eugenics program. The pool could be used to pay the full cost of services for victims who are uninsured and it could pay for co-payments, deductibles and other costs for victims who are insured through private health insurance, Medicare or Medicaid. A state agency or entity should be designated to manage this pool and claims for reimbursement. We also recommend that the state provide funding to Area Health Education Centers (AHEC's) to create a training module for health professionals that outlines specialized mental health treatment for those sterilized through the eugenics program. Such a curriculum could be incorporated into existing AHEC training venues and would increase the supply of qualified health professionals throughout the state who are able to treat victims. Finally, we recommend that officials with the divisions of Medical Assistance and Mental Health work with staff from the NC Justice for Sterilization Victims Foundation on developing costs estimates and other details associated with these recommended services. Such details would include the scope of approved services, advocacy for victims to ensure eligibility for services and training for mental-health professionals. Our aim would be to make sure mental health services are made available to all living victims of the state eugenics program.

In arriving at these recommendations we have made a brief study of existing state mental health services and reimbursement plans. North Carolina provides outpatient mental-health services through a system of Local Management Entities that operate throughout the state. These agencies provide comprehensive community-based services that may be particularly helpful and necessary for victims with acute and specific psychiatric needs. However, as with Medicaid, there is an eligibility process and sterilization victims may not meet specific qualifications for services. Therefore, we do not believe that simply referring victims of the eugenics program to these LME's would guarantee that they would receive treatment.

We also looked into the possibility of extending benefits through the North Carolina State Health Plan to eugenics victims. The plan covers state employees, retirees and teachers. Extending the plan to cover victims of the state eugenics program would require approval by the Legislature. We do not believe this is a practical way to provide mental health services. First of all, the State Health Plan currently requires a \$52 co-payment or higher for outpatient mental health services, which would be beyond the reach of many victims. Additionally, the plan is a complete medical plan with an annual premium paid by the state of \$4,931 for every member. Extending state health benefits to the estimated 2,900 living victims would cost about \$15 million a year. We believe our proposed pool for mental health care is a more cost-effective solution.

Many of the eugenics victims are already eligible for Medicare or Medicaid, the health insurance program for certain low-income populations. Victims aged 65 and over are eligible for Medicare, which provides mental health services with a co-payment. Others may be eligible for Medicaid, which currently covers a wider array of mental-health services than Medicare. In 2014, Medicaid benefits will be extended to nearly 500,000 currently uninsured residents of North Carolina through the federal Affordable Care Act. By then, we believe that the majority of the living eugenics victims will have some sort of health insurance that will cover a portion of their mental-health care. The pool we recommend would then cover the cost for those victims who remain uninsured and the cost of co-payments and other costs not covered by insurance.

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From: Dr. Lenwood G. Davis, Historian

Task Force Assignment:

- A. Investigate possibilities for housing the exhibit and agencies that could assist with the exhibit

Recommendations for the Exhibit:

1. The exhibit should be viewed in all demographical areas, rural, large towns, and cities since sterilizations took place in all of North Carolina's 100 counties.
2. Funding for the exhibit and related travel should come from the Legislature, private sector and other sources.
3. Since there are 58 Community Colleges in the State, the N.C. Justice for Sterilization Victims Foundation should consider partnering with the colleges to help display the exhibit since many of the community colleges are located in small towns and service all 100 counties.
4. The exhibit should be easy to assemble so that it can be dismantled for ease of travel and to reduce travel and storage costs.
5. The current exhibit should be updated so that it reflects the diversity of the people affected by the sterilization program. Both men and women were sterilized of different racial backgrounds.
6. Since it isn't known at this time where the exhibits will be seen, a dollar amount cannot be given. The N.C. Justice for Sterilization Victims Foundation should own the exhibit and collaborate with other state agencies for the exhibit's research quality, display in the community and to develop cost estimates.