

SSCIP's



in this issue

- 1 Supreme Court declines review of DES budget cuts
- 2 President's Letter
- 3 Featured Agency: Creative Labor Services, Inc.
- 3 Noriega elected to Board of Trustees
- 4 USDOT to hold distracted driver forum
- 4 National Safety Council cell phone use while driving fact sheet
- 5 Utah law tough on texting drivers who cause fatality
- 5 Sample policy on cell phones and texting while driving
- 6 Welcome New Members
- 8 Board of Trustees

Supreme Court declines review of DES budget cuts

The Arizona Supreme Court has refused to stop the Department of Economic Security (DES) from cutting millions of dollars from programs that serve the developmentally disabled by declining to review an Arizona Court of Appeals, Division One, ruling that vacated a preliminary injunction issued by a trial judge.

In its decision, the Court of Appeals said that there was not enough evidence on the record to support the injunction. The decision added that if the cuts "are shown to have impaired" services, the plaintiffs "may return to court to present that evidence." The Court of Appeals remanded the matter to the trial court for further hearings.

The Arizona Association of Providers for Persons with Disabilities had filed a suit in February after DES management "combined program cuts, suspensions and reductions to reduce expenditures" by \$83 million, an amount dictated by the Legislature in an effort to address a projected \$1.6 billion state deficit for the 2008-2009 fiscal year.

Senate Bill (SB) 1001, which contained the reduction in DES funding along with budget cuts for other state agencies and programs, was signed into law on Jan. 31. SB1001 was only 13 pages in length, and the DES reduction was noted in a single line with no specific direction to DES administrators about how to achieve the reduction.

Among the actions taken by DES administrators was to cut 100 positions within its Division of Developmental

Disabilities, which the administrators acknowledged would impair the Division's ability to provide and monitor delivery of services.

The Division then suspended home- and community-based services funded by the State General Fund, which impacted an estimated 4,000 persons, and imposed a 10 percent reduction in the rates its pays providers for home- and community-based services. That action impacted an estimated 850 agencies and 3,500 independent providers.

Following hearings, a Maricopa County Superior Court Judge issued a preliminary injunction prohibiting the

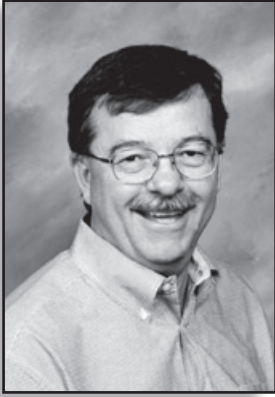
implementation of "the suspensions and reductions, rate cuts and the like." The State then appealed.

The Appeals Court decision states, "We do not disagree with Plaintiffs' contention that the DES service suspension and rate reductions pose a great threat of irreparable harm to developmentally disabled Arizonans. Because we agree ... the dispositive issue is whether Plaintiffs present 'serious questions' of law going to the merits of their claims.

"By laws, an individual support plan (ISP) is created for each developmentally disabled person served by the Division. Although Plaintiffs argue, and the Superior Court found, that an ISP creates an entitlement to the services ... we have found no legal authority establishing in the individual the right to receive services consistent with an ISP without regard to the State's ability to afford those services.



see **SUPREME COURT** on page 7



Dear SSCIP Members:

As most of you know, SSCIP's annual Board of Trustees elections were recently held, and on behalf of the entire Board, I want to thank all of the Members who took the time to submit their election ballots. I'm very pleased that incumbents Dolores Zimmerman of Intermountain Centers, Brian Lensch of the Arizona DES Department of Developmental Disabilities, David Paddison of the Foundation for Senior Living and Ralph Romero of the Arizona Department of Education were elected to continue as Trustees. We appreciate their continued willingness to provide SSCIP with the leadership it needs to remain strong, innovative and successful. I'm also happy to announce that former Trustee Donna Noriega, Chief Operating Officer of the Arizona State Hospital, was once again elected to the Board after a five-year absence.

Donna replaces longtime SSCIP Trustee Diann Patterson of the Arizona Department of Juvenile Corrections who decided not to run for re-election when her term expired. I'd like to express the Board's appreciation to Diann for her many years of excellent service and dedication to SSCIP. Our membership has benefited greatly from her input and ideas, and we thank her for donating so much of her time and energy to making our organization a success.

Dolores Zimmerman and I are also thankful for the Board's support in re-electing each of us to continue in our respective positions of Vice President and President. I'd also like to thank newly elected Secretary/Treasurer Brian Lensch for agreeing to serve as an Officer on the Board. Brian is another longtime Trustee who has continuously volunteered his time and his expertise to SSCIP. He will replace Rita Schmidt on SSCIP's Executive Committee. Rita decided not to run for re-election as Secretary/Treasurer. Fortunately, however, she will continue providing SSCIP with her guidance and insight as a Trustee. Each of our Officers and Board Members is committed to continuing the high standards that have made our organization the leading provider of insurance coverage and risk management resources for Arizona's social service providers.

As the third quarter of 2009 comes to a close, I'm pleased to report that SSCIP continues to weather the tough economic times that have touched virtually every aspect of our nation's economy. At the Annual Members Meeting, our administrator reported that, in the face of tough competition from the standard insurance market, so far in 2009, 241 members have chosen to continue with SSCIP and 42 new members have joined the Pool. Our net written premiums for the first seven months of 2009 were up by more than \$500,000 when compared to the same period in 2008. Clearly, SSCIP continues to be the social service industry's insurance provider of choice, even in the face of cut-rate pricing (and cut-rate service) from our competitors.

Our 2009 Member equity is down by about \$400,000 compared to the same time period in 2008, which is largely the result of the drop we've seen in our investment income. Clearly, all organizations are feeling the pinch of the country's economic downturn. However, our Members' loyalty, garnered through our strong track record of providing top quality claim handling and loss control services, has allowed SSCIP to survive these tough financial times and remain strong.

As our Executive Committee and many of our Trustees begin new terms following the recent SSCIP Member elections, we pledge to continue working our hardest to guide the Pool through this challenging fiscal period with renewed commitment and with continued gratitude for the support and encouragement of our membership.

Sincerely,

A handwritten signature in black ink that reads "Richard W. Hill". The signature is written in a cursive, slightly stylized font.

Richard W. Hill • President – SSCIP Board of Trustees

SSCIP'r

Featured Agency:

Creative Labor Services, Inc.

Jim and Tesa Machelor have been working with developmentally disabled individuals for nearly 30 years, and they started Creative Labor Services, Inc., which now includes a full-service restaurant, by going door-to-door in Casa Grande.

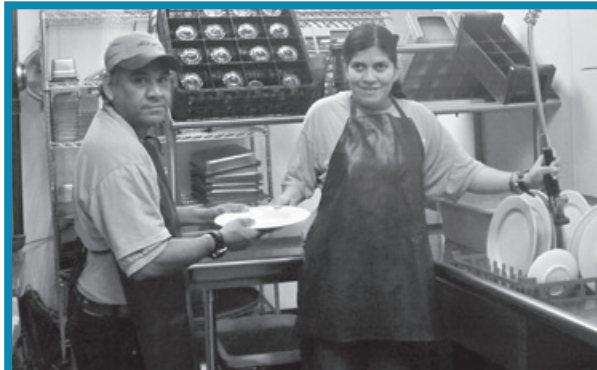
“In the early 80s, we managed day programs in Casa Grande, as well as the Globe-Miami area,” says Tesa. “Going door-to-door, I developed community-based work stations with the City of Casa Grande as well as private business. We incorporated in 1986 under the name Creative Labor Services.

“Over the years we have grown considerably and now serve 80-plus consumers,” she continues. “We still have some of those contracts from our earlier days, as well as a DTA (day treatment adult) program, and a full-service restaurant.”

Jim has a degree in restaurant management and extensive experience working in the restaurant business.

“Several individuals work in the café,” says Tesa. “They bus tables, seat people and help in the kitchen and dish area.”

On other programs, she says, “Creative Labor Services has 40 individuals we serve in group supported employment. We have two contracts with the City of Casa Grande. One crew picks up litter at 18 city parks. This was the first contract we procured. In 1983, we started washing the police vehicles and continue that contract today. We also



“Several individuals work in the café.”



have 16 individuals that do landscape maintenance for businesses and residential properties.

Our DTA program is operated in a new building that was completed in late 2005,” Tesa continues. “It was designed specifically for a day program. The building includes a computer lab, game room, full kitchen, exercise room, library and a theatre room. We serve close to 40 individuals in that program. ❖

Noriega elected to Board of Trustees

Donna Noriega, chief operating officer of the Arizona State Hospital, was elected to the SSCIP Board of Trustees at a recent Board meeting to replace Diann Patterson, who had decided not to run for re-election after serving on the Board since 1996.

Noriega had previously served on the Board from 1996 to 2004. Her current term runs to 2012.

In another change, Brian Lensch, ALICS Program Administrator at the Arizona Department of Economic Security, was elected Board Secretary/Treasurer. He replaces Rita Schmidt, who decided to remain on the Board as a Trustee, but withdrew her name from consideration as a Board Officer.

Rick Hill was re-elected President, and Dolores Zimmerman was re-elected Vice President. ❖

USDOT to hold distracted driver forum

The U.S. Department of Transportation (USDOT) will hold a two-day summit to determine the best ways to reduce the number of crashes and deaths due to distracted driving on Sept. 30 and Oct. 1.

"Safety is our number one priority," said Ray LaHood, U.S. Secretary of Transportation. "As we become a more mobile and wireless nation, we can't afford to ignore new technology's impact on roadway safety.

"People in America got fed up with their children and loved ones being killed by drunk drivers," LaHood continued. "And people in America are very tired of the idea that people can text and drive and use cell phones and drive in some states.

"If it were up to me, I would ban drivers from texting, but unfortunately, laws aren't always enough," LaHood said. "We've learned from past safety awareness campaigns that it takes a coordinated strategy combining education and enforcement to get results. That's why this meeting with experienced officials, experts and law enforcement will be such a crucial first step in our efforts to put an end to distracted driving."

A number of deadly accidents involving text messaging behind the wheel have called attention to the dangerous problem of distracted driving. In 2008, a commuter train crash in California involving an operator who was texting on a cell phone killed 25 people and injured 135 others. In another incident, a Florida truck driver admitted to texting moments before a collision with a school bus that killed a student. In yet another, a 17-year-old high school student from Peoria, Ill., was killed when she drove off the road while texting with friends.

"The bottom line is that distracted driving is dangerous driving," said LaHood. "Following the summit, I plan to announce a list of concrete steps we will take to make drivers think twice about taking their eyes off the road for any reason."

The distracted driving summit will bring together senior transportation officials, elected officials, safety advocates, law enforcement representatives, private sector representatives and academics to address a range of issues related to reducing accidents through enforcement, public awareness and education. Authoritative speakers from around the nation will lead interactive sessions on a

see **USDOT TO HOLD** on page 6

National Safety Council cell phone use while driving fact sheet

The National Safety Council (NSC) has assembled the following statistics from studies on cell phone use while driving.

- Using cell phones while driving is a very high risk behavior with significant impact on crashes and society. More than 50 peer-reviewed scientific studies have identified the risks associated with cell phone use while driving.
- Drivers who use cell phones are four times more likely to be in a crash while using a cell phone, according to a 1997 New England Journal of Medicine examination of hospital records and 2005 Insurance Institute for Highway Safety study linking crashes to cell phone records.
- There is no difference in the cognitive distraction between hand-held and hands-free devices, according to simulator studies at the University of Utah.
- Cell phone use contributes to an estimated 6 percent of all crashes, which equates to 636,000 crashes, 330,000 injuries, 12,000 serious injuries and 2,600 deaths each year, according to the Harvard Center of Risk Analysis.
- 80 percent of crashes are related to driver inattention. There are certain activities that may be more dangerous than talking on a cell phone. However, cell phone use occurs more frequently and for longer durations than other, riskier behaviors. Thus, the No. 1 source of driver inattention is cell phones, according to a Virginia Tech Transportation Institute 100-car study for the National Highway Traffic Safety Administration.
- It is estimated that more than 100 million people use cell phones while driving. CTIA – The Wireless Association reports 270 million cell phone subscribers. A Nationwide Insurance public opinion poll showed 81 percent of the public admit to talking on a cell phone while driving.
- The annual cost of crashes caused by cell phone use is estimated to be \$43 billion, according to the Harvard Center for Risk Analysis.
- Talking to a passenger while driving is significantly safer than talking on a cell phone, according to simulator studies at the University of Utah.
- Many businesses understand the risk and are already taking action. Among NSC members that responded to a survey, 45 percent (651 of 1,453 respondents) said their companies had a cell phone policy of some kind. Of those, 22 percent said they re-engineered their processes to accommodate the policy and 85 percent said the policy did not affect productivity.



Utah law tough on texting drivers who cause fatality

The State of Utah has a new law that penalizes a texting driver who causes a fatality as harshly as a drunken driver who kills someone. In effect, a crash caused by such a multitasking motorist is no longer considered an "accident" like one caused by a driver who, say, runs into another car because he nodded off at the wheel. Instead, such a crash would now be considered inherently reckless.

"It's a willful act," Lyle Hillyard, a Republican state senator and a big supporter of the new measure, which took effect in May, told the New York Times. "If you choose to drink and drive or if you choose to text and drive, you're assuming the same risk."

According to the New York Times in its series "Driven to Distraction," the Utah law represents a concrete new response in an evolving debate among legislators around the country about how to reduce the widespread practice of multitasking behind the wheel.

The impetus for the law was a 2006 accident in which two men were killed when a 19-year-old college student, who was texting with his girlfriend, crossed the yellow dividing line on the two-lane road and clipped the car in which the two men were driving. The men's car spun across the highway and was struck by a pickup truck hauling a trailer filled with two tons of horseshoes and related equipment.

At first the student refused to discuss whether he was texting while driving with investigators or prosecutors, but the trooper investigating the accident for the Utah Highway Patrol was able to obtain the student's phone records that indicated the student and his girlfriend had sent 11 text messages to each other in the 30 minutes before the crash, the last one at 6:47 a.m., a minute before the student called 911 to report the accident. Investigators concluded he sent that last text when he crossed the yellow line.

Still, county prosecutors thought they were unable to charge the student with something other than "left of center." For instance, if they wanted to prove him guilty of negligent homicide, a misdemeanor, they would need to show he knew of the dangers or should have known of the dangers of texting while driving.

However at a hearing in 2008, the New York Times reports that the student, Reggie Shaw, "looked at the families of the two dead men and decided he could no longer keep dismissing the phone records that showed he was texting, even though his lawyers advised him to remain quiet."

"It hit me that I was being selfish dragging this on," he told the Times. "I decided I've got to do whatever it takes to make this come to an end. If there was anything I could do – spend a year in jail, two years in jail, whatever – I'd do it."

He pleaded guilty to two counts of negligent homicide, but his record will be cleared if he fulfills the sentence imposed by the judge. It included 30 days in jail, 200 hours of community service, and a requirement that he read "Les Misérables" to learn, like the book's character Jean Valjean, how to make a contribution to society.

In February, Shaw spoke to the Utah House Subcommittee on Law Enforcement and Criminal Justice, which was considering a ban on texting for motorists. The measure seemed likely to fail given the legislature's lack of interest in previous such efforts. According to the Times, Shaw stood to talk about his crash and started sobbing.

"I was the one driving and texting," Shaw said. "Excuse me. I apologize. I didn't know the dangers."

see **TEXTING DRIVERS** on page 7

Sample policy on cell phones and texting while driving

The following is a sample policy on cell phones Members can use as a guide in putting together their own policy:

"This policy applies to any device that makes or receives phone calls, leaves messages, sends text messages, surfs the Internet, or downloads and allows for the reading of and responding to email whether the device is company-supplied or personally owned.

"An employee who uses a company-supplied device or a company-supplied vehicle is prohibited from using a cell phone, hands on or hands off, or similar device while driving, whether the business conducted is personal or company-related. This prohibition includes receiving or placing calls, text messaging, surfing the Internet, receiving or responding to email, checking for phone messages, or any other purpose related to your employment; the business; our customers; our vendors; volunteer activities, meetings, or civic responsibilities performed for or at-

tended in the name of the company; or any other company or personally related activities not named here while driving. Use of company owned vehicles or devices for personal business is discouraged.

"We recognize that other distractions occur during driving, however curbing the use of cell phones while driving is one way to minimize the risk of accidents for our employees. Therefore, you are required to stop your vehicle in a safe location so that you can safely use your cell phone or similar device.

Employees who violate this policy will be subject to disciplinary actions, up to and including employment termination."

The sample is available on the Internet at http://humanresources.about.com/od/policysamples/a/cell_policy.htm. Or you can call Southwest Risk Services at 602-996-8810



USDOT TO HOLD

continued from page 4

number of key topics including the extent and impact of distracted driving, current research, regulations and best practices.

Participants will also examine distractions caused by current and planned automotive devices, such as navigational systems. The summit's second day will include a panel of state and local officials to discuss solutions from their perspectives.

"This summit will not only bring leaders in transportation safety together to talk about this issue," said LaHood, "It will also give people from all over the country – and world – the opportunity to be a part of this historic dialogue."

In a story announcing the summit, the New York Times reported that several U.S. senators had proposed withholding federal highway money from states that fail to ban texting while driving. The Times has been running a periodic series on the perils of cell phone use and texting while driving entitled "Driven to Distraction."

"This is a sea change if it leads to action," Clarence Ditlow, the executive director for the Center for Auto Safety, a nonprofit advocacy group, told the New York Times.

Fourteen states already ban texting while driving, though three states, including New York, have passed measures that have yet to take effect.


A spate of reports has highlighted the dangers of distracted driving. A study released in late July by the Virginia Tech Transportation Institute found that truck drivers face a risk of a crash or near crash 23 times as much when texting than when not doing so. A study from the University of Utah using a driving simulator found that college students faced a crash risk eight times as much when texting.

A number of studies also found that drivers talking on a cell phone face a crash risk four times as much, though the Virginia Tech Transportation Institute found the risk to be lower.

Fives states and the District of Columbia require drivers to use a headset when talking on the phone. But many researchers say hands-free laws do not solve the problem because the chief distraction, they argue, comes not from having hands off the wheel but the mind focused on a conversation and not the road.

"I hope what comes out of the summit are recommendations for policies that are evidence based," Corinne Peek-Asa, told the New York Times. She is director of the Injury Prevention Research Center at the University of Iowa where she studies traffic safety. "State policies are sometimes made in complete disregard for the evidence."

Safety advocates say they worry that texting bans will become fashionable and would wrongly suggest that the problem is solved, when the much pricklier societal issue and subtler safety issue pertains to talking on cell phones.

Drivers themselves express inconsistent feelings about the issue. In a poll released recently, the AAA Foundation for Traffic Safety found that 58 percent of drivers consider other motorists talking on a cell phone to be a very serious threat and that 87 percent consider motorists e-mailing or texting to be such a threat. And yet 67 percent of drivers said had they recently talked on the phone while driving and 21 percent had recently texted. 

Welcome NEW MEMBERS

SSCIP would like to welcome the following new members:

-  A New Horizon, LLC
-  Ahead of the Class, LLC
-  Alcoholism Council of Cochise County
-  American Focus Care, Inc.
-  Center for Family Services, LLC
-  Green Energy Group, Inc.
-  Heart to Heart ACH
-  Huppert Pediatric Therapy, Inc.
-  Individual Achievements Association, dba Gaitway
-  Mary V. Fox, PhD
-  Millagros Gaccino, dba The Vineyard Assisted Living Home
-  Nicole L. Roskens
-  Pleasant Living Family Group Home
-  Sojourner Center
-  Successful Journeys, LLC
-  Valley Care & Enrichment Services, Inc.
-  Wheels on the Bus, Inc.
-  Where You Dwell Home Based Services, LLC

SUPREME COURT


continued from page 1

"To the contrary, a number of statutes in Title 36 make clear that the provision of any service is contingent on appropriations and other funding," the decision says. "Simply put, under Arizona law, an ISP does not entitle a developmentally disabled person to services that the Division lacks the funds to provide."

On whether the cuts would violate the State's obligations under federal law, the Appeals Court decision states the "evidence failed to demonstrate the existence of a serious threat."

In conclusion, the Appeals Court says, "Plaintiff beneficiaries and those who care for the developmentally disabled understandably seek to ensure that services to that vulnerable population continue

without interruption. We also recognize that the abrupt nature of the service suspensions and rate reductions the Division imposed in February cause great alarm and dismay.

"Finally, we appreciate the difficulty of assembling and presenting evidence – on very short notice – to demonstrate facts to support the existence of serious legal questions as to whether the Division's decisions will cause the State to breach its obligations under federal law. We conclude, however, that the record before us at this time simply does not contain substantial evidence to support enjoining the Division's service suspensions or rate reductions." 

TEXTING DRIVERS

continued from page 5

Observers considered the moment a turning point in getting the law passed.

Under the Utah law, someone caught texting and driving now faces misdemeanor penalties to include up to three months in jail and up to a \$750 fine. If they cause injury or death, the punishment can grow to a felony and up to a \$10,000 fine and 15 years in prison.

However because of a parallel to how drunk driving is treated, the legal ramifications of the Utah law are much more far reaching, according to the New York Times in its analysis of the law. The Times analysis follows:

"Studies show that talking on a cell phone while driving is as risky as driving with a .08 blood alcohol level – generally the standard for drunken driving – and that the risk of driving while texting is at least twice that dangerous. Research also shows that many people are aware that the behavior is risky, but they assume others are the problem.

"Treating texting behind the wheel like drunken driving raises complex legal questions. Drunken drivers can be identified using a Breathalyzer. But there is no immediate test for driving while texting; such drivers could deny they were doing so, or claim to have been dialing a phone number. Many legislators have thus far made a distinction between texting and dialing, though researchers say dialing creates many of the same risks.

"If an officer or prosecutor wants to confiscate a phone or phone records to determine whether a driver was texting at the time of the crash, such efforts can be thwarted by search-and-seizure and privacy defenses, lawyers said.

"Prosecutors and judges in other states already have the latitude to use more general reckless-driving laws to penalize multitasking drivers who cause injury and death. In California, for instance,

where texting while driving is banned but the only deterrent is a \$20 fine, a driver in April received a six-year prison sentence for gross vehicular manslaughter when, speeding and texting, she slammed into a line of cars waiting at a construction zone, killing another driver.

"But if those prosecutors want to charge a texting driver with recklessness, they must prove the driver knew of the risks before sending texts from behind the wheel.


"In Utah, the law now assumes people understand the risks."

The law "is very noteworthy," Anne Teigen, a policy specialist with the National Conference of State Legislatures, told the New York Times. "They have raised the bar and said texting while driving is not just irresponsible, and it's not just a bad idea. It is negligent."

Teigen said legislators throughout the country were struggling with how to address threats created by new technology, just as they once debated how to handle drunken driving.

Anne T. McCartt, senior vice president for research at the Insurance Institute for Highway Safety, provided another perspective.

"When you look at something like cell phone use or texting, most people already know these behaviors are not safe, but they do them anyway," she told the New York Times. "But the challenge in highway safety is that we do unsafe things day after day and don't end up in a crash, and so I think, over time, people go back to their everyday behaviors.

"What we have found again and again in different areas of highway safety is that education alone may have a short-term effect, but in the long run, people need to believe there are going to be legal consequences attached to their behavior," McCartt continued, citing seat belt and drunken-driving programs. "What really gets people to change their behaviors is strong laws, strongly enforced." 

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SSCIP is a non-profit corporation created in 1987. Its primary purpose is to provide property and casualty coverages to social service providers contracted with the State of Arizona and other political subdivisions.

SSCIP is governed by a 15 member Board of Trustees elected by its members. The newsletter is published in a continuous effort to inform and educate its members. Suggestions for articles are welcome.