

2012 ANNUAL REPORT



National Senior Citizens Law Center

Protecting the rights of low income older adults

Leadership Perspective

The National Senior Citizens Law Center celebrated its 40th anniversary this past year and what an amazing 40 years it has been. Our early history included important efforts from defending pensions in the courts to achieving reform of the nation's nursing homes. We litigated significant issues with broad impact on government benefits programs, restoring millions of dollars for seniors and protecting future beneficiaries from illegal practices.

The challenges we face today to Social Security, Supplemental Security Income (SSI), Medicare and Medicaid remind us that an organization committed to protecting the rights of poor seniors remains as important today as it was in 1972.

NSCLC fights to ensure quality health care, economic security, and access to our justice system on behalf of millions of older adults who have little or no voice in Washington or in state Capitols. There is no other national non-profit that remains as deeply committed to and focused on the rights of America's low-income older adults as NSCLC.

In 2012, there were notable successes in each of the organization's primary issue areas. Here are some examples:

- **Health Care:** NSCLC led a broad-based movement to protect benefits and fight cuts to key services for older adults under Medicare and Medicaid. It also stepped up its efforts to protect and expand home and community-based services to keep low-income older adults out of long-term care institutions. NSCLC, which was a leading voice in support of the health reform law and its constitutionality, celebrated the Supreme Court's landmark decision on the Affordable Care Act.



Robert Johnson, Chair, Board of Directors

- **Economic Security:** NSCLC led an educational campaign that raised awareness of the need to update SSI program, the primary income support program for the very poor. The result will be the introduction of legislation in Congress to address some of the problems NSCLC identified. In June, a federal court ordered the Social Security Administration to implement a plan to find and restore benefits to over 140,000 seniors and people with disabilities. They lost benefits because of an illegal policy that NSCLC and partners successfully challenged in litigation. This fall, NSCLC also began work on a multi-year, grant-funded project that seeks fixes to SSI's broken non-disability appeals process.

NSCLC also continues to offer information, education and counsel to legal services and aging services advocates from all over the country through its publications, frequent alerts, monthly webinars, case consultations and frequent presentations at conferences, seminars and forums. In 2012, for example, we trained over 2,000 aging advocates and provided over 600 case consultations.



Founding Executive Director Paul Nathanson, shown here with the late activist and Gray Panther founder Maggie Kubn, served the organization from 1972–80 and returned to lead it in 2008. While he directed the University of New Mexico (UNM) Institute of Public Law and taught at UNM's law school in the intervening years, he also served as a NSCLC board member. Nathanson is retiring this year, but plans to remain actively involved in the work of NSCLC and its continuing struggle to secure and protect the rights of the elderly poor.

While delivering these services, we also took steps to grow our board and staff. Over the past year, the board added Arnold and Porter Managing Partner Richard Alexander, National Hispanic Council on Aging President and CEO Yanira Cruz and retired CareFirst Executive Vice President John Picciotto and welcomed Staff Attorneys Fay Gordon and Kate Lang to the Washington, DC staff.

We are grateful for the continued support we receive from some of America's leading foundations and are excited to be adding more foundation and outside support to our efforts—including first-time grants from the Oak Foundation, the National Committee to Preserve Social Security and Medicare and the Gay and Lesbian Alliance Against Defamation. We are

also extremely thankful for the contributions we receive from individual donors and law firms. We appreciate their ongoing interest in and commitment to low-income older adults.

The coming year will bring new challenges and significant changes at NSCLC. Paul Nathanson, our Executive Director, has announced that he will retire in 2013. The Board of Directors has begun a search for a new Executive Director to lead the organization into the future. Paul has been a fixture at NSCLC for much of its history, having been its first Executive Director, a long-serving Board member and a trusted leader for the past five years. Due to his visionary leadership, NSCLC's financial status is sound and NSCLC is poised to do great things. Here's to 40 more years!

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Health Care

NSCLC's health team, in collaboration with local advocates and other national and state organizations, uses administrative advocacy to provide information to and push for policy changes from federal and state agencies on relevant issues. NSCLC selectively uses litigation to protect the rights of individuals to benefits and to their continued access to the courts.

NSCLC seeks to protect low-income older adults with Medicare and Medicaid (dual eligibles) as many states propose moving them into managed care plans as part of demonstration projects encouraged by the Affordable Care Act. We also strive to expand home and community-based services for low-income older adults and to decrease health disparities impacting those who have limited English proficiency or are disadvantaged because of their race or sexual preference.

To achieve these objectives, in 2012, NSCLC was:

- **The leading advocate for consumers and a primary information source for advocates on the dual eligible demonstration projects.**

As states submitted proposals to the federal Centers for Medicare and Medicaid Services (CMS) to move dual eligibles into managed care plans, NSCLC's administrative advocacy

was in high gear. NSCLC created a website clearinghouse on the 26 state projects that advocates nationwide use to track proposals, stay informed, and remain involved in the process. NSCLC organized an advocate's workgroup of 130 people from 20 states and worked with national organizations to generate many comments and influence final proposals. One focus of this national advocacy has been a call for an ombudsman office in every demonstration state to help beneficiaries navigate the new system and CMS listened, calling on each state to create such an office.

California's proposal seeks to move as many as 700,000 people into private plans. NSCLC co-chaired a working group on Beneficiary Notices and Protections, testified several times before the state legislature and filed hundreds of pages of specific comments on proposal details, generating a commitment from state and federal authorities for stronger protections and oversight. NSCLC also pointed out in frequent testimony and in comments that the state's proposal was on too fast a track. As a result, the state moved its proposed implementation date back so that enrollment timeframes would be more realistic.

In 2013, NSCLC will continue this kind of advocacy as California and other states receive federal approval for the demonstrations and begin implementation.

Deputy Director Kevin Prindiville, who frequently testifies and presents on health care issues, addresses the National Health Policy Forum.



Corazon came close to losing her adult day health care benefits because of a problem with managed care related to the need for heart surgery. NSCLC used its connections to solve the problem and she was able to keep her benefits and have her surgery. “NSCLC is a great resource. It was life or death for Corazon,” said her advocate Asako Okuma of AmeriCare Adult Day Health Care in San Marcos, CA.

- **A vocal advocate for more home and community-based services as an alternative to nursing facilities for those with Medicaid.**

Many in the aging and legal services field are concerned by state proposals to move hundreds of thousands of low-income older adults needing long-term services and supports into managed care plans. A major worry is that many plans are unfamiliar with home and community-based services (HCBS) and that access may be jeopardized as a result. NSCLC issued reports, hosted the *LTSS in a Managed Care Environment* webinar

with over 500 attendees and presented to a standing-room only audience at a national HCBS conference. In the fall, NSCLC published an *Advocates Guide to Medicaid LTSS*, a primer on the law that impacts Medicaid-funded HCBS. In addition, staff tracked and shared analysis of new regulations governing Affordable Care Act programs such as the Balancing Incentive Payments Program and Community First Choice, programs designed to improve access to HCBS. NSCLC continues to monitor state plans in this arena and to encourage advocacy that expand access and protects beneficiaries.

Litigation

- **A leading defender of the Affordable Care Act’s individual mandate.**

In its amicus brief on the individual mandate joined by 14 other national disability and consumer advocacy groups, NSCLC argued that it fell “squarely within Congress’ authority to regulate interstate commerce.” In addition, NSCLC led an effort to prepare an amicus brief by five aging groups to describe programs of “vital importance” to older adults that should not be affected by a Supreme Court decision on the mandate. The Court subsequently ruled that the mandate was constitutional.



NSCLC played a leading role in defending the Affordable Care Act such as drafting friend of the court briefs for the Supreme Court.

- **A defender of the rights of older adults to better nursing home care, full Medicare benefits for hospital care and ensuring that settlement with the state on California’s adult day health program is not ignored.**

NSCLC used the courts to protect low-income older adult’s access to health care and LTSS. Early in the year, NSCLC joined with AARP and submitted an amicus brief to ensure adequate staffing levels in 19 California nursing homes; the court found that the plaintiffs could enforce minimum levels (*Shuts v Covenant Holdco LLC*). In a lawsuit brought with lead counsel Center for Medicare Advocacy (*Bagnall v Sebelius*), NSCLC challenged an illegal practice that denies Medicare beneficiaries placed on “observation status” access to Medicare Part A hospital benefits. The case has been widely publicized in the media. NSCLC also monitored the implementation of the settlement in the

“They (NSCLC staff) have a practical hands-on approach and they understand and pick up on the direct service component.”

—*Aileen Harper, Center for Health Care Rights, Los Angeles, CA*

case that prevented the state of California from eliminating its adult day health care program for people with Medi-Cal (*Darling et al v Douglas*). NSCLC joined as co-counsel once again to block cuts to home care in California for seniors and persons with disabilities (*Oster v Lightbourne*). NSCLC was also a driving force in a case that sought to protect access to the courts by the elderly poor (*Douglas v Independent Living Center*).

NSCLC strives to expand home and community-based services for low-income older adults and to decrease health disparities impacting those who have limited English proficiency or are disadvantaged because of their race or sexual preference.



Economic Security

NSCLC strives to preserve, strengthen, expand and improve access to programs such as Supplemental Security Income (SSI) and Social Security that provide income security to millions of older adults and people with disabilities.

The income team uses administrative and legislative advocacy in combination with the education and counseling of advocates to improve income security programs. It effectively uses litigation to challenge administrative policies that have made access to benefits difficult for thousands of elderly poor.

In 2012, NSCLC:

- **Launched a campaign to update the SSI program.** Throughout the year, NSCLC made SSI modernization a priority, raising awareness of the fixes needed with key audiences including advocates, policymakers and the media. Because of those efforts including outreach at the Democratic convention, a White House visit, education of key policymakers on and off Capitol Hill, we believe cuts to SSI are less likely to be part of any action taken to reduce the nation's deficit. At year's end, NSCLC had identified a champion in the U.S. House of Representatives who will introduce a bill to improve SSI in early 2013.



- **Ensured that at least 140,000 people may receive a total of \$1 billion in back Social Security benefits.** In April, a federal judge issued a final order in *Clark v Astrue*, a case in which NSCLC successfully challenged the Social Security Administration's policy of suspending or denying Social Security and Supplemental Security Income (SSI) benefits whenever someone had an outstanding warrant for an alleged violation of probation or parole. Under the order, 140,000 class members whose benefits were suspended or denied because of this policy since October, 2006 may receive full retroactive reinstatement if they continue to otherwise be eligible. Payment of back benefits has begun and will continue through March, 2014. Plaintiffs in the case were represented by NSCLC, the Mental Health Project of the Urban Justice Center and pro bono counsel from Proskauer Rose LLP.
- **Initiated a special project to fix the broken SSI appeals system that currently denies due process rights to many low income older adults.** In December, NSCLC added a staff attorney to work on a special project related to fixing the process for appealing SSI suspensions and reductions. The project follows up a 2011 NSCLC study which identified widespread failure by SSA to provide minimum due process rights in these appeals.

Staff, including Directing Attorney Gerald McIntyre, participated in some 50 trainings or presentations in 2012.

- **Educated advocates about the potential benefit for individuals who would qualify for Social Security spousal or survivor benefits based on same sex marriage were it not for the Defense of Marriage Act (DOMA).** About 200 advocates attended a webinar in which they were advised to help their clients that are in a same sex marriage to apply for Social Security spousal and survivor

benefits now. In addition, staff also authored articles and presented at conferences on the topic. Applications for spousal or survivor benefits will be denied, but if appeals are filed and DOMA is ruled unconstitutional by the U.S. Supreme Court, either in *Windsor v United States* or a subsequent case, many could get retroactive benefits based on the date of their application.

Ramon Gonzalez is a member of the plaintiff class in *Clark v Astrue*. Left disabled after he was hit by a truck, Ramon is eligible for Social Security Disability Insurance, but has yet to get a penny. He contacted Sandra Susse at Community Legal Aid in Springfield, MA for help in applying for SSI benefits who worked with NSCLC to resolve his issues. "I didn't know where to turn. If it wasn't for her," Gonzalez said, "I don't know what I'd have done."

Ramon with his caregiver and friend Reina Santana.



NSCLC effectively uses litigation to challenge administrative policies that have made access to benefits difficult for thousands of elderly poor.



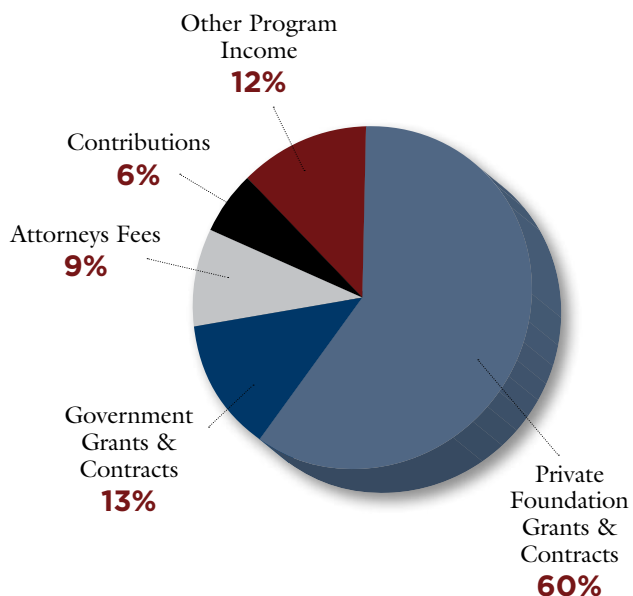
Financials

In the fiscal year that ended on June 30, 2012 NSCLC received revenue amounting to \$1,865,766 and incurred expenses amounting to \$1,935,278, resulting in an overall decrease of net assets amounting to -\$69,512. Unrestricted net assets increased by \$85,771, to a total of \$262,841. Temporarily restricted net assets, which represent grant funds received to support programs in future fiscal years, decreased by \$155,283 to a total of \$1,494,845. Total net assets at the end of the year amounted to \$1,757,686.

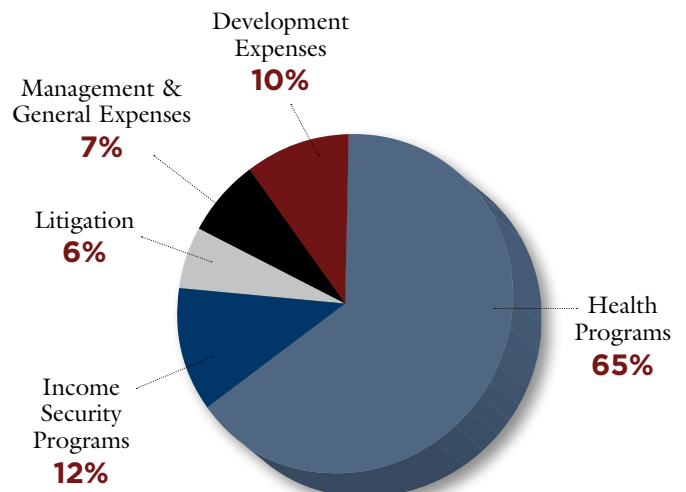
Private foundation and government grants continued to be the principal support for NSCLC's programs, providing 73% of total revenue. Contributions, publication sales, attorneys fees, and other income provided 27% of total revenue.

NSCLC's program services continued to be focused on issues affecting the elderly poor, primarily health-related issues and also income security and court access issues. Program services were 83% of NSCLC's expenditures, 7% were for management and general expenses, and 10% were for development expenses.

FY2012 Revenues By Category



FY2012 Expenses By Category



Supporters

The National Senior Citizens Law Center Board of Directors and Staff express their sincere thanks to those who fund our work.

Grants

In 2012, these foundations and organizations provided support for projects and programs (in alphabetical order):

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