I n *Hilibrand v. Levy* plaintiffs sued the state of Missouri to obtain coverage of medically necessary adult incontinence briefs (adult diapers). The case was a collaboration among a legal services program, a national public interest legal organization, a law school clinic, and a civil rights law firm. The U.S. Department of Justice also filed a statement of interest in support of the plaintiffs. This case demonstrates how, while obtaining significant resources through attorney fees, legal services programs, in collaboration with key partners, can use affirmative litigation to achieve systemic policy changes that benefit their clients and other low-income individuals without the need for a class action. The litigation I discuss here also shows how programs can use the Americans with Disabilities Act (ADA) creatively to improve services for their clients even in tight budgetary times.

Plaintiffs were individuals who were living in the community and had a variety of severe disabilities, including cerebral palsy, multiple sclerosis, liver disease, and brain damage. All of the plaintiffs suffered from incontinence as a result of their disabilities. Their physicians had prescribed incontinence briefs as medically necessary to prevent skin breakdowns and infections and to be able to continue living in the community. However, the state refused to cover medically necessary adult diapers for noninstitutionalized individuals over 20 years old on the grounds that the diapers were “personal hygiene” items. It refused coverage even though it covered these items for individuals aged 4 through 20 simply on a showing of “medical necessity” and covered diapers as part of the “per diem rate” for individuals residing in nursing homes.

Because they were incontinent and unable to obtain diapers through the Medicaid program while living in the community, plaintiffs were at risk of institutionalization. The *Hilibrand v. Levy* litigation successfully challenged this unlawful state policy.

Genesis of the Litigation and Collaboration

Missouri legal services programs were contacted by several clients who were denied adult diapers on the basis that the diapers were “personal hygiene items.” For example, one individual had moved to St. Louis from a state that had covered these items through Medicaid, while another client in Southwest Missouri lost coverage of his diapers when he turned 61. The client who had relocated to Missouri chose not to pursue his case, but the mother of the other severely disabled individual did seek review. At an administrative hearing, the hearing officer simply applied the state’s official policy, that is, that the diapers were not covered for individuals over 60 because they were considered “personal hygiene” items, even though the state had covered those very items as “medically necessary” before the individual turned 61. Members of Missouri legal services programs’ public benefits task force discussed this case at a statewide legal services conference in October 2010. As the legal aid attorney representing this individual considered potential next steps for her client, task force members discussed how to remedy the harm to other individuals subject to the same policy. “Affirmative litigation” ultimately became the preferred approach for remediating this client’s problem. Other affected individuals came forward as well, and a case was eventually filed on behalf of four Missourians who had disabilities and needed adult incontinence briefs.

Legal Services of Eastern Missouri took the lead on the case and engaged several other law offices to assist in the effort. The National Health Law Program, the nation’s preeminent public interest health law firm, was brought in for additional Medicaid expertise and litigation support. Law students at the St. Louis University School of Law’s Legal Clinic conducted research and gathered information from clients, health care providers, and experts. A local private law firm (the Law Offices of Thomas E. Kennedy III) assisted in drafting declarations from clients and from their treating physicians. These same legal entities were part of the litigation team in Lankford v. Sherman, a case that successfully challenged cuts in Missouri’s durable equipment program in 2006. Paraquad, a local center for independent living and disability rights organization that serves individuals needing incontinence briefs because of their disabling conditions, assisted plaintiffs’ counsel on factual development of the case and led counsel to an expert witness who submitted another key declaration.

Much of the critical work—drafting and sending public records requests (“prefiling discovery”), locating and communicating with experts, and researching and drafting key pleadings—took place before the litigation was filed. Public records requests to the state Medicaid agency uncovered documents containing crucial facts about Missouri’s policy and practice concerning adult diapers. Plaintiffs also informally obtained state budget docu-

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2Individuals aged 6 through 20 could obtain coverage of adult diapers through prior authorization in which their doctor established that the diapers were “medically necessary.”

3John Bowman, president of the Sargent Shriver National Center on Poverty Law, gave the keynote speech at that conference and described the importance of using a wide variety of advocacy strategies (including litigation and other forms of broad-based advocacy) to “solve the problems” of legal services clients (see John Bowman, “Expanding Horizons: Thoughts on Agenda Setting and a Full Advocacy Toolbox for Legal Services,” 43 COUNCILHOUSE Review 354 (March–April 2010)). The Missouri litigation demonstrates how legal services programs use litigation as a critical advocacy tool for solving their clients’ problems, while achieving systemic relief for thousands of other clients.

4Missouri’s lengthy appeals process seemed like a particularly time-consuming and inefficient way to challenge the state’s potentially illegal policy for this one client, yet alone the many other legal services clients facing the same legality.

5In addition to drafting and submitting public records requests and cataloging documents, the students compiled two large binders of research, helpful documents, and other information related to the lawsuit, including judicial and administrative agency decisions demonstrating the inadequacy of incontinence care in nursing homes and the dire consequences for patients who do not receive proper incontinence care.

6See Lankford v. Sherman, 451 F.3d 496 (8th Cir. 2006).

7David B. Gray testified on the importance of durable medical equipment and supplies in achieving “community integration” and discussed the cost savings that would result from providing adult diapers in the community as opposed to nursing homes and other institutions (Declaration of David B. Gray, Ph.D., ¶¶ 9–13, Hillibrand v. Levy, No. 10–4165–CV–C–NKI (W.D. Mo. filed Aug. 23, 2010)).
ments showing the high cost of nursing home coverage compared to serving Medicaid beneficiaries in the community.

Plaintiffs' counsel worked with the clients and their treating providers to prepare declarations documenting the medical necessity of adult diapers and their role in preventing unnecessary institutionalization. For instance, the declaration of one plaintiff’s mother, who cared for her severely disabled son at home, detailed her financial struggle to pay the cost of her son’s diapers when his coverage was terminated after he turned 21 and her fear of having to place him in a nursing home. Another plaintiff was forced to wear used diapers because she struggled to "pay for diapers and also meet all of [her] other basic needs." She worried constantly about her severe risk of infection, was humiliated at having to go out in public without diapers to deal with her incontinence, and also lived in fear of having to enter a nursing home. All of the plaintiffs’ treating physicians testified (in declarations) to their patients' medical need for adult diapers to prevent skin deteriorations and infections.

Detailed declarations from health care providers and experts were as critical as our clients’ declarations in establishing both the medical necessity of adult diapers and the "irreparable harm," caused by the state’s failure to cover them in its Medicaid program. Medical experts from Washington University and St. Louis University discussed the severe health risks and the potentially life-threatening consequences of the state’s policy. The experts also described the serious and unnecessary risk of institutionalization caused by the state’s failure to cover medically necessary adult diapers for adults living in the community.

Role of the U.S. Department of Justice

About three weeks before filing the case, plaintiffs’ counsel contacted San Bagenstos, then the principal deputy assistant attorney general in the Civil Rights Division of the Justice Department, to see if the Justice Department was interested in participating in the case. The Justice Department has played an active role in Olmstead litigation and has special jurisdiction over the ADA. Justice Department attorneys have filed "statements of interest" or intervened in a wide variety of Olmstead cases or both and have been instrumental in advancing the rights of people with disabilities to live in the most integrated settings appropriate to their needs. They have also issued helpful guidance regarding the ADA and Olmstead. Plaintiffs’ counsel explained to Bagenstos that this case presented a novel issue wherein the Justice Department would seek coverage of a service not previously covered for adults in the state—keeping people in the community and out of institutions. By the next day, Bagenstos had assigned an at-

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9Adult incontinence briefs are critical for protecting skin integrity and preventing the health complications that result from a breach of skin integrity, including pressure sores (Declaration of Amy Nguyen Huy, M.D., ¶¶ 5–13, Mihlbirn v. Levy, No. 10-4185-CV-C-NKL (W.D. Mo., filed Aug. 23, 2010); Declaration of M. Vardia Hurley, M.D., ¶¶ 2–8, id.). The briefs help prevent skin breakdowns and infections that can cause sepsis, a systemic inflammatory response to infection characterized by fever, a raised heart rate, rapid breathing, and a decrease in blood pressure, sometimes leading to septic shock and death (Hurley Declaration ¶ 8).

10One of plaintiffs' experts stated that "incontinence is a leading cause of institutionalization, and individuals suffering from incontinence are at serious risk of institutionalization. However, it is also a condition that can be treated effectively in the community with effective modalities, such as adult diapers" (Hurley Declaration ¶ 24).

1128 U.S.C. § 317 gives the attorney general authority to enforce Title II of the Americans with Disabilities Act (ADA), including the proper interpretation and application of the integration mandates (see Statement of Interest of the United States of America at 1, Mihlbirn v. Levy, 299 F. Supp. 2d 1108 (W.D. Mo. 2011); Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; Olmstead v. L.C., 527 U.S. 581 (1999)). Based on this authority, the U.S. Department of Justice often files statements of interest in Olmstead cases rather than requesting leave to file amicus briefs.


Argued that the state’s exclusion of medically necessary adult diapers was similarly unreasonable.

On December 27, 2010, the court preliminarily enjoined the state from denying Medicaid coverage of incontinence supplies for people 21 and older. The court held that the plaintiffs were likely to succeed on the merits of their claim that denying coverage for adult diapers violates the reasonable standards provision of the Medicaid statute, the mandatory home health services requirement of the Medicaid Act, and the integration mandates of the ADA and the Rehabilitation Act.

Reasonable Standards Violation. Relying on Lankford and other Eighth Circuit precedent, the court held that the exclusion of adult diapers was “likely” arbitrary and therefore violated Medicaid’s reasonable standards provision. The policy did not “account for recipients’ diagnosed conditions, prescribed treatment, and the medical community’s knowledge” but instead “would deny medically necessary incontinence briefs to participants based on their age and living situation.” The state’s “irrebuttable presumption” that adult diapers were “personal hygiene” items denied the plaintiffs a meaningful procedure for requesting noncovered items.

Before turning 21, when their coverage was discontinued per the state’s policy, three of the four plaintiffs received coverage for adult diapers through the Missouri Medicaid program.

Lankford, 451 F.3d at 501.

Id. at 511.


Id. at *3–*5.

Id. at *3; Medicaid Act, 42 U.S.C. § 1396a(a)(17). Because the Eighth Circuit found “reasonable standards” claims unenforceable under Section 1983, we brought this claim using a preemption theory, i.e., that under the supremacy clause of the U.S. Constitution, federal law preempted Missouri’s regulation: “Under the preemption doctrine state laws that ‘interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution’ are preempted” (see Lankford, 451 F.3d at 510). The U.S. Supreme Court is considering whether individuals and providers have a private right of action under the supremacy clause to enjoin a state law that violates a federal Medicaid provision requiring states to establish adequate provider payments. See Monroe v. Independent Living Center of Southern California, 2010 U.S. App. LEXIS 4540 (9th Cir. 2010), cert. granted, 131 S. Ct. 952 (2011). Unlike the “reasonable standards” claim, plaintiffs alleged that their Medicaid “home health” claim was enforceable under Section 1983 as well as the supremacy clause. The National Health Law Program maintains a docket on the enforceability of different provisions of the Medicaid statute under Section 1983 (for more information or to obtain a copy, contact Jane Perkins, perkins@healthlaw.org, or Sarah Somers, somers@healthlaw.org). Advocates should analyze this issue carefully before filing any affirmative litigation to enforce provisions of the Medicaid Act.

Hellbronn, 2010 WL 6825306, at *3.

Id. The court relied heavily on the Eighth Circuit’s opinion in Lankford.
In making these findings, the court rejected the state’s argument that such precedent was inapplicable. In an effort to distinguish *Landford*, the defendants argued that adult diapers were “single-use” items, not durable medical equipment, because a state regulation defined durable medical equipment as “equipment that can withstand repeated use.” However, the court noted that the state’s manuals and bulletins classified diabetic supplies and oxygen supplies as durable medical equipment, even though those were not used repeatedly. Of course, plaintiffs noted that one plaintiff was forced to “repeatedly use” her own diapers because she could not afford to purchase a sufficient amount. Plaintiffs also argued that defendants’ contention that they did not have to cover incontinence briefs because they were “supplies” rather than durable medical equipment was merely a “litigation position” that the court should reject. Ultimately whether adult diapers were labeled durable medical equipment did not matter because the Medicaid category under which they are covered is “equipment, supplies and appliances”; defendants had no authority to pick and choose which medically necessary items to cover within this Medicaid service category.

**Home Health Violation.** The court further held that the Missouri policy violated the Medicaid statute’s home health services requirement, which includes “[m]edical supplies [and] equipment.” Because adult diapers fall under medical equipment and supplies, the defendants violated the mandatory home health provisions of the Medicaid Act. The court cited a letter from the federal Centers for Medicare and Medicaid Services stating that denying home health services to Missouri Medicaid beneficiaries violates the federal Medicaid statute and further noted that state Medicaid plan language supported plaintiffs’ position. The court rejected the state’s contentions (in direct contradiction to federal regulations) that the plaintiffs did not qualify for diapers because they did not meet the requirement for receiving other types of home health services (such as skilled nursing or home health aid services) inapplicable to medical equipment and supplies and that home health services were available only for temporary recovery from episodic conditions rather than as an ongoing provision of medical equipment or supplies.

**“Olmstead” Violation.** The court also held that covering adult diapers only for adults residing in nursing homes violated the “integration mandate” of the ADA and Section 504 of the Rehabilitation Act, as established in *Olmstead v. L.C.* The Supreme Court held in *Olmstead* that the unnecessary segregation of individuals with disabilities may constitute discrimination based on disability. The integration mandate of the ADA requires public entities to provide services “in the most integrated setting appropriate to

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22Id.
23Id.
24Id. at *2.
26Hilibrand, 2010 WL 6825306, at *4; 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(10)(B), 12 C.F.R. §§ 440.70(b)(3), 441.15, 440.210 (2010). Under the Medicaid Act, states must provide “home health services” to all those entitled to nursing facility services. The state Medicaid agency must provide “home health services,” including “[m]edical supplies, equipment, and appliances suitable for use in the home” (42 U.S.C. § 1396a(a)(10)(B); 42 C.F.R. § 440.70(b)(3); see also 42 C.F.R. § 441.15 (2010); id. § 440.210). In Missouri all Medicaid recipients are categorically needy and thus entitled to home health services.
27Id. at *4.
28Id. at *6 (citing *Olmstead*, 527 U.S. 581 (1999)). The ADA prohibits public entities from discriminating against individuals with disabilities by, for example, violating the “integration mandate” (42 U.S.C. § 12132). Section 504 of the Rehabilitation Act applies the same standards to entities that receive federal financial assistance (29 U.S.C. § 794(a)). The court explained that “[t]he rights, procedures, and enforcement remedies under Title II are the same as under section 504” (Hilibrand, 2010 WL 6825306, at *4).
29Olmstead, 527 U.S. at 597–98.
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their needs" and gives states a defense only where they can show that doing so would be a "fundamental alteration" of their service systems. Courts have found that persons at risk of institutionalization may make an integration mandate challenge without having first been placed in an institution. In assessing the Hilldrum plaintiffs' risk of institutionalization, the court pointed to the significant percentage of their monthly income that plaintiffs were forced to spend on adult diapers and noted that this cost was between 12 percent and 43 percent of plaintiffs' monthly incomes, which ranged from $547 to $694. The court compared these figures to those in the Fisher case from the Sixth Circuit, where 36.6 percent of a $547 monthly income was found to be a severe financial burden that could force a plaintiff into a nursing home. The court observed that the plaintiffs obtained adult diapers through donations from charity and family members, and one reused her diapers because she could not afford an adequate supply. The plaintiffs further established that there was no "fundamental alteration" in the state's service system since the cost of their diapers—ranging from $30 to $300 per month—is far below the $3,333 monthly cost of care in a nursing home. Thus, plaintiffs argued, providing them with diapers represented significant savings to the state when compared to nursing home care. The court concluded that, "under Olmsted, Defendants are required to provide incontinence briefs to non-institutionalized adults if they provide briefs to institutionalized adults." The court also rejected defendants' claims that there was no risk of institutionalization because plaintiffs could obtain diapers through state-administered "waiver" programs. All of the plaintiffs had attempted to obtain coverage of diapers through various state and local case managers and were unsuccessful in securing them through a waiver or any other method.

Other Preliminary Injunction Requirements. The court held that the plaintiffs had met all the other requirements for a preliminary injunction. Plaintiffs established irreparable harm based on the risk of skin deterioration and infections as well as a serious risk of institutionalization. The court found that the balance of hardships tipped in plaintiffs' favor given that the severe harm facing them outweighed any administrative burden or cost to the state. The court found that an injunction was appropriate because of the public interest in enforcing federal law.

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9Id. at 591–92, 603; Townsend v. Quinsim, 328 F.3d 511, 516–17 (9th Cir. 2003); Radziewski v. Mass., 383 F.3d 599, 607 (1st Cir. 2004); Fisher v. Oklahoma Health Care Authority, 335 F.3d 1175, 1183 (10th Cir. 2003); Disability Advocates Incorporated v. Peterson, 653 F. Supp. 2d 184, 191 (E.D.N.Y. 2009); Mango M. v. Cantor, No. 5:09-CV-535-BO, 2010 U.S. Dist. LEXIS 34235, at *5–6 (E.D.N.C. Jan. 17, 2010).

10Hilldrum, 2010 WL 6825306, at *4; Fisher, 335 F.3d at 1185. The Supreme Court held in Olmstead that public entities must provide community-based services to persons with disabilities when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities (Olmstead, 527 U.S. at 607). The Hilldrum court found that the plaintiffs met each of these requirements (Hilldrum, 2010 WL 6825306, at *4–*5).

11Id. at *5.

12Id. (citing Fisher, 335 F.3d at 1185).

13Id.

14See Fisher, 335 F.3d at 1183, where that court found that "the cost of institutional care is nearly double that of community-based care."


16Id. at *6.

17Id.

18Id. at *7.

19Id.
Following the preliminary injunction, the defendants provided incontinence supplies to all of the plaintiffs and issued a special notice requiring that adult incontinence supplies be provided through an exceptions process based on a determination of medical necessity by a participant's treating physician.41

**Summary Judgment**

The slow pace of settlement negotiations following the preliminary injunction decision led plaintiffs to move for summary judgment less than two months after obtaining preliminary relief.42 To show that trial on the merits was unnecessary, plaintiffs filed a detailed proposed statement of undisputed material facts and argued that summary judgment was appropriate because none of the substantive legal issues had changed since the court awarded a preliminary injunction. Defendants' arguments were similar to those they had advanced in response to the preliminary injunction motion.43 Several months passed without any word from the court until, with only a few days notice, it set the motion for oral argument on May 24, 2011. The court stated at the outset that it was most interested in arguments regarding the home health claim and the reasonable standards claim, including defendants' contentions that adult incontinence briefs were not durable medical equipment. The court asked questions about the specific legal authority for coverage of diapers and whether it had to find that they were durable medical equipment in order for plaintiffs to prevail. It challenged the defendants on whether diapers were "med-ical items" or personal hygiene items, whether their manuals referred to diapers as durable medical equipment, and whether waiver programs were available to everyone who needed diapers. The Justice Department participated in oral argument in support of plaintiffs' position on the "instead" issues.44

The court granted, on June 24, 2011, plaintiffs' motion for summary judgment on all three claims and permanently enjoined the state defendants from applying their unlawful policies.45 The court ordered defendants to establish a fair process, in accordance with its order and federal law, whereby all adult Missouri Medicaid recipients could obtain medically necessary incontinence briefs.46 The legal rationale for the decision was substantially similar to the court's earlier decision on the preliminary injunction, with slight modifications of additional points raised in summary judgment briefing and during oral argument—namely, that waiver programs were not available for all plaintiffs and that coverage through such programs was not guaranteed.47 Besides proving success on the merits, plaintiffs demonstrated that they continued to meet the other factors necessary for injunctive relief.48

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41 HealthNet Division, Missouri Department of Social Services, Adult Diapers Notice (Nov. 7, 2011), http://f1.sas.gov/RRSBK.

42 The parties engaged in very limited discovery (i.e., making initial disclosures required by the federal Rules of Civil Procedure) and brief but unsuccessful settlement discussions.

43 Issuing the preliminary injunction, the court rejected defendants' arguments that incontinence supplies could be excluded because they were "single-use" or "personal hygiene" items (Wisconsin, 2010 WL 8625306, at 6, *8). Adjusting their tack, defendants argued on summary judgment that they covered "single-use" supplies only if these supplies were necessary to make medical equipment functional, a new but unsupported in law or policy (Defendants' Opposition to Plaintiffs' Motion for Summary Judgment at 7-8, id.).

44 During the litigation one of the plaintiffs was accepted into a waiver program. During oral argument, the court questioned whether the waiver program would be available to all Medicaid recipients who needed diapers. Defendants responded that they would not. Thus, despite defense arguments to the contrary, this did not defeat plaintiffs' claims (see Wisconsin, 793 F. Supp. 2d at 1116).

45 See id. at 1116-17.

46 Id.

47 Id. at 1116.

48 The standard for permanent injunction is the same as for a preliminary injunction except that the plaintiff must show actual success on the merits (id. at 1113; see also Windsor v. Natural Resources Defense Council, 555 U.S. 7, 11 (2009)).
Following the decision on the merits, defendants issued a new policy for obtaining coverage of medically necessary adult diapers and developed a draft regulation specifying the clinical criteria for coverage of adult incontinence briefs. Plaintiffs continue to work with defendants in developing and improving the specific clinical criteria under which diapers are approved.

Attorney Fees

Plaintiffs filed a motion for attorney fees pursuant to Section 1988 of the Civil Rights Act, Section 12205 of the ADA, and Section 794 of the Rehabilitation Act. The court awarded fees and costs in the amount of $174,629. In its fees decision, the court ruled in plaintiffs' favor on most legal issues, including whether it should award St. Louis rates or lower central Missouri rates (based on where the case was filed), whether the case presented novel legal issues, whether the requested hourly rate was appropriate, whether declarations from local private attorneys and a Missouri Lawyers Weekly survey of rates charged by large private law firms were relevant in determining fees, and whether appropriate time was expended on briefing by plaintiffs' counsel. The court also awarded fees for substantial hours expended prior to the filing of the case on drafting public records requests, reviewing documents, and developing key declarations from medical experts, Medicaid patients, and treating physicians. This aspect of the fees award is important because the critical legal and factual development work performed before filing helped achieve a positive result on summary judgment and avoid a costly trial. Moreover, plaintiffs successfully argued that they were entitled to a substantial fee award even though the case involved little discovery and no trial. Plaintiffs persuaded the court that all of their up-front work and extensive briefing was justified and should be compensated.

The fees were a significant boost to plaintiffs' legal services attorneys, in light of the cuts in federal Legal Services Corporation (LSC) funds, and were by far the most substantial fee award for legal services of Eastern Missouri since Congress and the president lifted the attorney-fee restriction in December 2009. For LSC programs, pursuing fees in appropriate cases as another source of program revenue is critical.

Conclusions and Observations

The Hillbran litigation was highly successful in several respects. It achieved a favorable result for the individual plaintiffs, enjoined a statewide policy, established important legal principles, and attained significant, sorely needed funds for public interest law firms through attorney fees. The case demonstrated the importance of substantial up-front work and factual development to complement and support strong legal theories, and such efforts were appropriately compensated in the determination of the attorney-fees awarded.

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51Plaintiffs requested fees commensurate with the general private market rate for the St. Louis area (id. at *2). Defendants argued that this rate was too high and should instead be based on the market rate for civil rights attorneys (id.). However, following Bum v. Jenson, the court found that the general market rate was appropriate because fees awarded under Section 1988 were to “be governed by the same standards which prevail in other types of equally complex federal litigation, such as antitrust cases, and not be reduced because the rights involved may be nonpecuniary in nature” (Bum v. Jenson, 465 U.S. 886, 893-94 (1984)).

52In determining a proposed fee for its work on the case, the litigation team appropriately exercised “billing judgment,” reducing the hours by 5 percent per attorney, to eliminate any duplicative work (Hillbrian, 2011 WL 5008018, at *1). The court applied an additional percentage reduction on the grounds that, although the hours requested were not unreasonable, a private client in this economic climate might expect a “volume discount” for the work of senior attorneys on issues that overlapped in the motions (see id. at *5).

53Federally funded legal services programs were prohibited from requesting or receiving attorney fees from August 1996 until December 16, 2009 (see Attorneys' Fees: Fee-Generating Cases: Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity, 75 Fed. Reg. 6816 (Feb. 1, 2010)). Now that this prohibition has been lifted, legal services programs are entitled to the prevailing market rate in the relevant community, just like any other private or nonprofit counsel (Bum, 465 U.S. at 900).
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The case was a successful collaboration among a legal services program, a national public interest legal organization, a law school clinic, and a local civil rights firm. Such collaboration is needed in these times when programs’ resources are stretched thin and subject to multiple competing needs.

The litigation was also significant in that, rather than simply fighting against another budget cut, plaintiffs were successful in securing coverage of a Medicaid service that the state had not covered. Moreover, the litigation achieved a change in policy that will both keep people out of institutions and save the state money. Furthermore, the case achieved systemic reform without the need for a class action. Surely, filing individual appeals in cases in which diapers were denied would have been inefficient and unsuccessful at least at the hearing level and would simply have enforced current state policy—the very policy which needed to be challenged. Through affirmative litigation, however, plaintiffs were able to eliminate an illegal policy and help low-income Medicaid clients with severe disabilities across the state. 

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