



Michigan
Justice for All Commission

Regulatory and Practice Reform Committee
Nonlawyer Legal Services Subcommittee

**Report and Recommendations on Increased Access to
Justice Through Paralegal and Associated
Professionals Pilot Programs**

Approved by Commission:
September 2023

NOTICE OF DISCLAIMER:

The Michigan Supreme Court established the Justice for All Commission by Administrative Order 2021-1 to develop recommendations and projects to expand access to and enhance the quality of the civil justice system in Michigan. The opinions and recommendations contained in this document are those of the Justice for All Commission and do not necessarily represent the official position or policies of the Michigan Supreme Court or State Court Administrative Office.

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Introduction

"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."

– U.S. Supreme Court Justice Hugo Black (1964)

Where there is great need, the branch of government devoted to the pursuit of justice – the judicial branch – must rise to the challenge. The Regulatory and Practice Reform committee of the Justice for All Commission is pleased to offer a detailed blueprint for expansion, on a pilot basis, of legal services by paralegals and associated professionals, targeted at areas of greatest unmet need. The blueprint draws on the experiences of other states and jurisdictions that are pioneering the regulation of legal services by professionals other than lawyers, adapting the lessons of those jurisdictions to Michigan's unique needs and regulatory structure.

The blueprint has two complementary components: 1) a four-year paralegal licensing pilot to test more affordable options in high-need yet underserved areas of the legal services marketplace, and 2) a multi-faceted four-year initiative within the governmental and nonprofit sector to develop the expansion of timely legal information and limited law-related services to underserved populations, primarily through training of professionals who already serve those populations in governmental or nonprofit capacities, e.g. in governmental social services agencies and nonprofit organizations providing services to vulnerable populations. Together, the two components cover the waterfront, addressing both market struggles in the delivery of legal services to low-income populations, and challenges to addressing the unmet legal needs of people who are unable to reasonably afford legal help at any price. Both components have been designed to take advantage of Michigan's existing access to justice infrastructure and regulatory framework, and to be compatible with the work and developing recommendations of other JFA committees and workgroups.

Background

In 2021, the Legal Services Corporation's Justice Gap Survey¹ revealed that 3 in 4 low-income households across the U.S. experienced at least one civil legal problem within the previous year. Many are critical family problems such as housing issues involving the risk of eviction, access to public benefits, barriers to employment, parenting time or custody disputes, and elder abuse. Too often, people do not recognize that the legal system offers help for their problems, and even when they are aware, the market rate for an attorney's help is beyond their reach. Knowing that you have a legal problem and understanding the range of options for addressing it is a critical step in access to justice. Lack of information can lead to confusion and mistakes with life-altering consequences. Helping people get what they need when they need it to address their legal problems is essential to ensuring 100% access to justice.

Affordability and Accessibility of Legal Services

The need for affordable legal services exceeds the number of lawyers able to provide assistance. Over one in six Michiganders qualify for free legal aid,² but there is only one legal aid attorney available for every 5,401 qualifying individuals.

The State Bar of Michigan's [Modest Means Program](#), which connects moderate-income people with attorneys who offer reduced-cost legal assistance in limited areas of the law,³ is available to individuals whose income is at or below 250% of the federal poverty guidelines —\$31,900 for a single individual, or \$65,500 for a family of four. As with legal aid services, however, the number of participating attorneys and services does not meet the demand.

Many underserved individuals would benefit from additional kinds of legal services. These recommendations would expand upon the now well-established and well-regarded services to the public provided by legal self-help centers and self-help services across Michigan, such as those offered by [Michigan Legal Help](#). Self-help centers and services provide legal information, tools, forms, resources, guidance, and referrals to assist those without attorneys to understand basic legal issues and processes.

Addressing Nonlawyer Legal Services is the Next Major Step in Advancing Access to Justice in Michigan

In 2014, Chief Justice Robert P. Young Jr. challenged the State Bar of Michigan to address the hardest problems facing the legal profession. The work of the [21st Century Practice Task Force](#) was a major response to this challenge. The Task Force identified five key problems facing the legal profession, including a regulatory landscape that was not responsive to the changing environment and the emergence of nontraditional delivery methods and providers. As part of its plan to address the regulatory problem and its impact on access to legal services, the Task Force called for the "continuous review of the rules of professional conduct and regulations to eliminate unnecessary barriers to innovation, consistent with the highest standards of ethical obligations to clients and the public." While the Task Force noted the potential for expanding access to justice through the regulation of nonlawyer legal service providers, it chose instead to focus on advancing recommendations on a regulatory innovation believed to be more ripe for immediate implementation—limited scope representation (LSR), an initiative that has been accepted and implemented.⁴ Focus on how nonlawyers can play a role in advancing access to justice is now ready for advancement in Michigan.

The Regulation of Nonlawyer Legal Services Within the JFA Strategic Goals

In 2019, the Michigan Supreme Court established the Justice For All (JFA) Task Force to assess the current state of our civil justice system and develop a [strategic action plan](#) to ensure 100% access to justice. One of the four "strategic pillars" of the adopted plan is the goal of ensuring that people "can get what they need when they need it to resolve their problems" and that "a spectrum of easy-to-access affordable legal resources to match individual needs is available to everyone."⁵

In 2021, the Michigan Supreme Court [established](#) the Justice for All Commission to carry forward the work of the Justice for All Task Force and its strategic plan. The Commission established the Regulatory and Practice Reform: Filling Gaps in the Legal Marketplace Committee specifically as part of advancing Strategic Pillar 3.

Strategic Pillars (Goals)



A service culture is pervasive across the Michigan civil justice system: stakeholders are focused on serving and strengthening their communities.



Simplify and streamline processes, rules, and laws: the civil justice system is easy to navigate, understand, and use to address all legal problems.



People can get what they need when they need it to address their problems: a spectrum of easy-to-access affordable legal resources to match individual needs is available to everyone.



An inclusive collaborative network of diverse partners works together to solve problems: the civil justice system effectively works with and integrates local resources and community-based organizations.

from Michigan Justice for All Task Force, [Strategic Plan and Inventory Report](#) (2020)

The Blueprint

Paralegal Licensing Pilot

This pilot provisionally authorizes a limited form of law practice for qualified paralegals, in association with a licensed Michigan attorney, focusing on areas of the law with the highest unmet need for legal services.

Associated Professionals Pilot

This pilot engages professionals working in governmental and nonprofit service organizations in helping to address the legal needs of the people they are serving, in areas of the law with the highest unmet need.

Both aspects of the Blueprint were subjected to the following tests, using evidence from regulatory reforms in other jurisdictions:

- Does the recommendation hold promise to meaningfully increase the public's access to legal resources in areas where the need is greatest?
- Does the recommendation contain appropriate safeguards against the provision of "second-class" services, ensure that the public is informed about the nature of

services being accessed, and protect the public if services fall short of acceptable standards?

The Blueprint offers a basic framework for testing a potentially transformative change in the provision and regulation of legal services in Michigan. It contains both concrete, detailed recommendations and a process for addressing the many implementation decisions to come. We recommend that responsibility for the administration of both pilot programs be housed within the State Court Administrative Office, and that a pilot project manager be designated. We also recommend that the Supreme Court appoint an **Implementation Steering Committee**, with separate subcommittees for each pilot, and overlapping membership between the subcommittees.

Implementation Steering Committee

The role of the Implementation Steering Committee is to advise the Supreme Court on implementation plans for the two pilots, including a timetable for implementation; testing and curricula; details on authorized areas of law and practice activities; forms and templates; and data collection. The Steering Committee is responsible for overseeing and coordinating the activities of the paralegal pilot and the associated professionals pilot steering subcommittees, and for ensuring that implementation plans maintain focus on the goal of the pilots—to expand access to justice in areas where the need is greatest.

Paralegal Licensing Pilot

The purpose of the paralegal licensing pilot is to gather information on whether qualified paralegals, with appropriate and rigorous training and safeguards, including attorney affiliation, can provide legal services that promote access to justice by increasing affordability, without increasing the potential for harm to the public. This recommendation is designed to take advantage of Michigan's existing regulatory structure - the Board of Law Examiners, State Bar of Michigan, and the attorney discipline system. It envisions that if the pilot is successful, this new category of legal service provider would be formally integrated into the existing regulatory structure through amendments to court rules and the Revised Judicature Act.

Practice Areas and Practice Activities

We recommend pilot licensees be authorized to provide legal services in these **practice areas**, where self-representation statistics show that the access to justice need is greatest:

- Civil infractions
- Debt collection
- Criminal expungement / conviction set aside
- Family law, initially limited to matters involving:
 - uncontested divorce
 - post-judgment child support
- Probate minor guardianships under Estates and Protected Individuals Code

- Landlord-tenant.

We recommend that pilot licensees be authorized to engage in all **practice activities** within the authorized practice areas, except:

- addressing the Court, unless directed to do so by a judge
- conducting trials or evidentiary hearings, including examining or cross-examining witnesses
- appeals to the Court of Appeals and Michigan Supreme Court
- any other activities recommended for inclusion or exclusion by the Implementation Steering Committee.

Eligible applicants for pilot licensure should be required to pass a **comprehensive test** that demonstrates command of the basic legal principles, civil procedure, and ethics. Areas of the law requiring special expertise should require additional testing and certification before a pilot licensee can offer services in those areas. Specifically, we recommend that a licensee be required to pass a separate subject-matter certification test before being eligible to practice in any area recommended by the Implementation Steering Committee for separate certification. The separate certification testing should be offered as an option concurrently with the comprehensive test, and at least one other time annually for licensees who want to add an additional area of practice that requires certification.

Eligibility to Apply for Pilot Licensing

Individuals who are interested in applying for pilot licensing must show proof of the following:

- **Education:**
 - a Juris Doctor degree from an accredited law school;
 - a Bachelor of Arts (B.A.) or Science (B.S.) from an accredited college or university, or
 - a certificate or degree in paralegal studies from an accredited program.

Disbarred attorneys and attorneys under suspension should not be eligible for the pilot.

- **Experience:**

a requisite number of hours of field experience, through employment in qualified paralegal activities, or an accredited internship or practicum. We recommend that the Implementation Steering Committee establish the precise experience requirements, including whether different experience requirements should be required for candidates with different educational qualifications, and whether additional experience requirements should be applied for qualification in different areas of the law.

Licensing Requirements

Paralleling attorney licensure, eligible candidates for licensing must successfully pass:

- a character and fitness investigation;
- an ethics and professional responsibility examination (could be administered concurrently with the comprehensive examination);
- a comprehensive legal knowledge and skills examination.

Responsibility for Administration of Testing

The Michigan Board of Law Examiners (BLE) currently has responsibility for administering the Michigan Bar Exam, as well as reviewing the character and fitness investigations of individuals applying to take the exam performed by the State Bar of Michigan. We recommend the BLE be responsible for the administration of the examination for pilot licensee candidates, and for review of character and fitness investigations performed by the State Bar Michigan.

Preparation for Testing

Michigan already has a solid foundation of paralegal training through its colleges and community colleges, as well as an award-winning [Institute of Continuing Legal Education](#). These institutions should be invited to participate in a quick-start development of preparatory curricula. The State Bar of Michigan, especially state bar sections whose subject matter expertise includes areas of the law covered by the pilot, the Board of Law Examiners, and the Michigan State Planning Body, should be invited to be involved at all stages of development.

Pilot Licensure Costs

Typically, the administrative cost of licensing is borne by license applicants and licensees, and we anticipate that if the pilot is successful, this will be the case for future licensees. However, under the recommended pilot program, license applicants will be pioneers who will necessarily bear these two big risks: 1) that a legal practice with the recommended limitations will not prove to be a viable business model; and 2) that the pilot program will not ultimately be adopted as a new model of legal services, thus undermining their personal investment in the pilot license. To allow the Supreme Court to properly assess the success of the pilot, pilot licensees will also be required to shoulder an additional, ongoing responsibility to provide substantial information about their practice to the pilot program manager at least annually. For these reasons, we recommend that the cost of developing the curricula and admissions testing not be imposed on pilot applicants. If an applicant fee is required, it should be nominal.

Attorney Affiliation Requirement

We recommend that pilot licensure be conditioned on requiring proof of an affiliation agreement with a member in good standing of the State Bar of Michigan, and that the State Bar serve as a resource hub to match applicants and attorneys. The

affiliation could be as simple as employment within a firm, or an "on call" mentoring commitment, or as complex as a customized contractual agreement. The affiliation would have to be filed with the State Bar as a condition of licensure in the pilot, and be disclosed to potential clients in writing. For the duration of the pilot, unless otherwise provided in the terms of affiliation with a pilot licensee, affiliated attorneys should be granted immunity from client claims against the pilot licensee. Attorneys who establish an attorney-client relationship with a client of the pilot licensee would be governed by existing jurisprudence.

This recommendation represents an exploratory middle ground on the issue of attorney supervision.⁶ Nationally, there is no consensus on the question of whether licensed paralegals should be subject to "supervision" by an attorney, including when and how the supervision is carried out, or the disciplinary and malpractice implications of supervision. Proponents believe that supervision is a necessary safeguard against client harm. Pointing to studies indicating no increased consumer harm from properly trained nonlawyer professionals,⁷ opponents believe that rigorous vetting and testing standards provide sufficient protection, and that a supervisory requirement imposes an economic burden that could undermine the market viability of paralegal practice, defeating its promise as a vehicle for more affordable services for underserved populations. We believe that a relationship with an attorney is advantageous for pilot licensees and their clients, and potentially for supervising attorneys as well, but that for the duration of the pilot the nature of that affiliation should be determined between the license applicant and the affiliated attorney. A flexible affiliation requirement producing data from different models throughout the course of the pilot will provide valuable information.

Because there are so many variables and so much relevant data being generated in other states on the question of attorney supervision, the Pilot Steering Committee should continuously examine the question of attorney supervision and its efficacy. The exploration should include an inquiry into whether supervisory requirements are more or less desirable in certain practice areas and for some scope of practice activities, such as court appearances.

Ethical Standards of Practice

Pilot licensees should be tested on and subject to the same rules of professional conduct that apply to licensed Michigan attorneys.

Enforcement of Standards for Pilot Licensees

The [Attorney Grievance Commission of Michigan](#) and [Michigan Attorney Discipline Board](#) are responsible for enforcing the professional rules of conduct for Michigan attorneys. We recommend that for the duration of the pilot the responsibilities of these bodies include the complaint and discipline process for pilot licensees.

Public Transparency and Disclosure Requirements

Given that the provision of legal advice has historically been reserved to attorneys, the public may not readily understand that a pilot licensee is not a licensed attorney. Therefore, we recommend that:

- the State Court Administrative Office (SCAO) issue a user-friendly description of the pilot program and the scope of the authority of pilot licensees, in poster and digital form
- before the first pilot licenses are issued, a public service campaign be launched to inform the public about new program
- pilot licensees be required to display the SCAO provided pilot description in their offices and on their websites
- before a pilot licensee can provide services to a client, the prospective client must sign a written engagement that records that the prospective client understands:
 - that the pilot licensee is not an attorney
 - the scope of the services the pilot licensee is authorized to provide
 - whether the pilot licensee has malpractice insurance
 - that the pilot licensee is subject to IOLTA requirements
 - that free legal self-help and legal aid services may be available
 - that the terms of the agreement require the client to respond to survey questions from the State Court Administrative Office at the conclusion of the service

The engagement agreement should also contain the name of the pilot licensee's affiliated attorney.

Data Collection

The efficacy of the pilot depends on collecting reliable and meaningful data. We recommend that, at a minimum, the following data be collected on a confidential basis at least annually:

From pilot licensees, via an online secure automated questionnaire:

- number of clients they have served, in what areas of the law, by case code where applicable
- number of potential inquiries that did not result in engagement
- demographics of clients and jurisdiction
- number of potential clients and clients referred to a member of the bar
- outcome of case or service
- satisfaction with the pilot program and suggestions for improvement

From affiliated attorneys or employing law firms

- Observations on the pilot licensee's automated questionnaire responses
- Satisfaction with the pilot program and suggestions for improvement

In addition, the pilot should include an effective method or methods of capturing the views of the clients of pilot licensees about their experience.

Role of the Paralegal Pilot Implementation Steering Subcommittee

The role of the paralegal licensing pilot subcommittee is to make recommendations to the Implementation Steering Committee on:

- Experience requirements for eligibility for testing
 - what experience qualifies and the precise number of hours required
 - whether different experience requirements should be required for applicants with different educational qualifications, and
 - whether additional experience requirements should be applied for qualification in different areas of the law.
- **Scope of Practice**
 - further refinement of practice activities limitations and exclusions to ensure focus on vulnerable populations
 - whether specific attorney supervision requirements should be imposed for certain areas of the law and/or certain practice activities
- **Testing**
 - content of the comprehensive test
 - content of family law certification test and any other recommended certification tests
 - recommendations to the Board of Law Examiners on administration of the tests
- **Data Collection**
 - adjustments to the data collected from pilot licensees, affiliated attorneys, and clients
 - analysis of pilot data

In developing recommendations on **experience requirements**, we recommend that the subcommittee conduct at least one facilitated workshop involving the educational institutions in Michigan which offer legal studies and paralegal training. In developing recommendations on **scope of practice**, we recommend that the subcommittee conduct facilitated workshops involving attorneys who practice in the areas of law in which paralegal practice would be authorized, legal aid representatives, and former litigants, including self-represented litigants.

Associated Professionals Pilot

The primary objective of this pilot is to train nonlawyer professionals and supervised volunteers who work with vulnerable populations to recognize legal needs and the

range of available assistance options, and to explore ways to help them provide law-related assistance, short of the practice of law, in the areas of greatest need:

- debt collection,
- landlord/tenant,
- a limited set of family and domestic issues,
- civil infractions,
- expungement, and
- public benefits.

The pilot will test whether training can reduce missed opportunities for earlier or more durable resolution of legal issues, reduce the harm of misinformation, and maximize the use and efficacy of Michigan Legal Help resources.

Many other JFA committees and workgroups are pursuing similar objectives; our contribution relates to how the Michigan's regulatory system should be applied to these purposes.

An Immediate Jump Start

The work of Nonlawyer Legal Services subcommittee led to the realization that a simple clarification about the boundaries of the unauthorized practice of law in Michigan could lead to immediate improvement in access for many vulnerable people struggling with legal problems. Specifically, appropriately trained professionals working in or through self-help centers, libraries, and nonprofit community and social services agencies are not engaging in the practice of law when they assist self-represented individuals by:

- helping them use Michigan Legal Help resources
- accompanying them during court appearance to take notes on judge's orders; post-hearing, share notes to help them understand what happened and to undertake necessary follow-up
- accompanying them to meet with judges, court officers, or the other side's attorney (in hallway or in courtroom)
- taking notes to help them understand what factually happened in meetings and to assist them with factual inquiries
- accompanying them to the courtroom to be present and provide emotional support (including sitting at counsel table with or standing beside them)
- accompanying them during court appearances and answering factual questions as needed that are addressed to the self-represented person by the judge or court attorney
- providing factual based assistance (not legal advice) during negotiations with counsel on the other side in a conciliation conference.

To promote the quality of these activities and ensure they do not cross the line into the practice of law, we recommend that entities whose employees or volunteers engage in any of these activities register the activity with the State Court

For many years, observers believed that the principal source of the access to justice crisis was cost—the cost of lawyers' services and court proceedings—but contemporary research reveals deeper causes. One is the fact that many people do not recognize the legal aspects of their justice issues and often do not consider seeking any kind of assistance in handling them, including legal assistance. The second insight is that how legal services are regulated is a contributor to the access crisis. Even if the problem of access to justice is framed narrowly as a lack of access to legal services, traditional routes to tackling it—government-funded civil legal aid and pro bono service from attorneys—have been robustly ineffective at scaling up to meet widespread need. Sandefur, Rebecca L. and Denne, Emily, Access to Justice and Legal Services Regulatory Reform (October 2022). [Annual Review of Law and Social Science, Vol. 18, pp. 27-42, 2022](#)

Administrative Office, and that SCAO and the State Bar work together on helping with any training needs of the entities who are providing this form of assistance.

Training to Help Associated Professionals Deliver Relevant and Accurate Legal Information When, Where, and How It's Needed

Providing legal information is not the practice of law; giving legal advice is. But the question of “where to draw the line” is too often unclear. The operational answer differs from place to place, and even from courtroom to courtroom, sowing confusion that can frustrate attempts to provide help when and where it is needed. The pilot will help ensure not only that confusion does not thwart appropriate assistance, but that the assistance does not cross the line into the practice of law.

Assistance based on faulty information can be worse than no assistance. Spearheaded by the work of the Solutions on Self-Help Task Force, Michigan has already made an impressive start in disseminating accurate, relevant legal information through Michigan Legal Help, both online and in self-help centers and libraries. Creating high-quality legal information and assistance training material for organizations serving the populations who struggle most with access to justice will extend the reach of Michigan Legal Help to those most in need.

We recommend the use of facilitated workshops to explore ways in which associated professionals might appropriately assist the individuals they serve in identifying and responding to legal problems involving the targeted areas of the law: defense of consumer debt collection actions, housing, a limited set of family and domestic issues, expungement, and public benefits. The workshops should include governmental and nonprofit entities serving the targeted populations, trial court staff, public members with self-represented experience, and the State Bar of Michigan, especially the sections of the State Bar whose members practice in the targeted areas of the law.

Attorney Oversight

We recommend that entities with employees and volunteers trained to provide legal assistance identify a licensed Michigan attorney in good standing responsible for advising the entity.

Associated Professionals Pilot Steering Subcommittee

The role of the associated professionals pilot steering subcommittee is to make recommendations to the Implementation Steering Committee on:

- the appropriate training of associated professionals, including
 - necessary content
 - format
 - methods of training delivery
 - measures of effectiveness and collection of data
- quality assurance, including best practices and standards

- whether, and in what circumstances, any of the following forms of regulation should apply to legal assistance by associated professionals
 - registration
 - certification
 - licensing

Acknowledgements

At least 16 other states have adopted or are exploring legal regulatory innovations that would license, accredit, or otherwise authorize nonlawyer legal services. The subcommittee has greatly benefited from studying their efforts. For the paralegal licensing pilot component of the blueprint, the subcommittee's work focused for guidance especially on the experiences of the jurisdictions with the most developed programs: Arizona, Minnesota, Oregon, Utah, and Washington, as well as on the experience of our international neighbor, the province of Ontario, which has licensed paralegals since 2008. For the associated professional pilot component, the subcommittee focused especially on the experiences of Alaska, Arizona, and Utah.

In our review of the experience of other jurisdictions, we have been particularly aided by a collaboration with Stanford Law School's Rhode Center on the Legal Profession, which culminated in the Center's publication of [Legal Innovation After Reform: Evidence from Regulatory Change](#), and wish to particularly thank Lucy Ricca and David Engstrom. We are also very grateful to Stacy Butler, Director of the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law, and Nikole Nelson, Executive Director of Alaska Legal Services, for their generosity in sharing their insights and experiences with the Regulatory and Practice Reform committee and our invited guests.

Regulatory and Practice Reform Committee

We thank the following members of the Regulatory and Practice Reform Committee for their commitment and meaningful contribution to advancing access to justice in Michigan.

Justice Brian Zahra, Co-Chair

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ENDNOTES

¹ Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans*, <https://justicegap.lsc.gov/resource/executive-summary/>

² Michigan State Bar Foundation, *Civil Legal Aid in Michigan 2021 Report of Services*, <https://www.msbf.org/wp-content/uploads/2023/02/2021-Grantee-Services-Report.pdf>

³ Modest Means Program attorneys currently cover limited services in the following areas of law: bankruptcy, consumer, criminal, family, probate and estate planning, and real property.

⁴ The Task Force recommendations led to the Michigan Supreme Court's adoption of [court rule changes to advance limited scope representation](#), effective in January 2018. Limited scope representation is a helpful tool for more affordable attorney services, but it has not proved to be a breakthrough solution to meeting the legal needs of low income populations.

⁵ *Id.* at 11.

⁶ The proposed attorney affiliation requirement is an adaptation of the 2016 Michigan requirements for nurse practitioners and the collaborative agreement approach to independent nurse practitioner practice in several other states.

⁷ See, for example, Lucy Ricca, Graham Ambrose, & Maddie Walsh, *Legal Innovation after Reform: Evidence from Regulatory Change 7*, Stanford Law School Deborah L. Rhode Center on the Legal Profession (Sept. 27, 2022), <https://law.stanford.edu/publications/legal-innovation-after-reform-evidence-fromregulatory-change/>; see also Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 Stan. J. C.R. & C.L. 283 (2020).