

50,000 and Counting: Justice on Aging Sues Florida for Stranding The Aged and People with Disabilities on the Long Term Care Waitlist

By Jason Bloome

In December 2018 Justice on Aging (JOA) filed a class action lawsuit against Florida's Agency of Health Care Administration (AHCA) asserting that the state's management of the long term care (LTC) waiver is in violation of Title 22 of the Americans with Disabilities Act.

Florida's LTC program, called the Statewide Medicaid Managed Long Term Care Program (SMMC), pays for long term support and services (LTSS) at home and community-based care settings (HCBS) which includes assisted living facilities (ALFs). The lawsuit claims Florida's LTC funding priority is for skilled nursing facilities (SNFs) and SNF entry and that the SMMC LTC waitlist for HCBS is one of the longest in the nation. In 2017, the state was ranked 46 out of 50 by the AARP/SCAN LTSS Report Card for HCBS vs. SNF spending with only 22.5% of LTSS expenditures spent for HCBS vs. the nationwide average of 45.2%.

According to Florida's Agency for Health Care Administration, as of November 2018 there were 110,000 SMMC LTC participants. Of these, 88% (96,435) were 60 or younger and 12% (12,690) were older than 60. 42% of SMMC LTC participants resided in SNFs, 42% resided at home and 16% resided in ALFs.

As of August 2018, there were more than 53,000 people on the SMMC LTC waitlist. Most individuals on the waitlist are the elderly (60+ years old): with more than 1/2 of them 74+ and 1/4 of them over 85. The JOA lawsuit includes plaintiffs on the SMMC LTC waitlist for more than 4 years.

SMMC level of care categories (Level 1-5) which sets priority status is determined by a phone conversation by a SMMC applicant with a representative at a regional Aging and Disability Rights Center in which participants are asked a series of questions from the 701s assessment tool to determine their level of risk of nursing home placement. The JOA lawsuit claims certain risk factors are not considered when determining SMMC LTC priority level. These include: whether the survey was completed by someone other than the applicant, memory loss, cognitive decline or dementia, the presence of Parkinson's Disease, full paralysis, previous nursing facility stay, the age of the caregiver, financial strain on the caregiver and history of falls. In addition, the JOA lawsuit asserts the SMCC level of care assessment process is faulty when it relies on volunteer caretaker involvement but does not take into account caretaker age (oftentimes an elderly spouse), availability, time or willingness to provide care.

According to Florida's Department of Elder Affairs statistics, 1/4 of SMMC individuals at Level 3 and 1/2 of those at Level 4 are considered "in crisis". The average wait times for people at Level 1 is 42 months, Level 2 is 43 months, Level 3 is 40 months, Level 4 is 30 months and Level 5 is 3 months. Between July 2016 and March 2018, 8,600 people died while on the SMCC LTC waitlist.

The JOA lawsuit claims Florida has no effective Olmstead plan in effect to keep people out of SNFs and that even though fiscal incentives are built into SMMC to reward managed care organizations for transitioning individuals from SNFs to HCBS settings there are no incentives to transition people from the waitlist. This creates a dysfunctional system that encourages waitlist participants to migrate from home to SNFs, reside there for 60 days to move up to SMMC priority level 5 in order to bypass lower priority level participants. Moving into a SNF is difficult, traumatic and oftentimes creates hardships in continuing to pay rent or a mortgage: individuals who gamed the SMMC priority level system oftentimes no longer had a home or apartment to return to after the 60 day SNF stay.

The lawsuit concludes Florida's ill-conceived LTC program perpetuates institutionalization, overly relies on SNFs, underfunds community-based care and fails to provide alternative community-based care settings options for people with disabilities. The lawsuit asks the court to permit class-action status, provide HCBS options for SMMC waitlist individuals, requires Florida to develop an adequate SMMC assessment tool and mandates the state report on a quarterly basis the progress of compliance.

Jason Bloome is owner of Connections- Care Home Referrals: an information and referral placement agency for care homes in Southern Florida. More information at: www.carehomereferrals.com .

Sources:

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