

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

WILLIAM LONG, CHARLES TODD LEE,
RODNEY PETERSON,
JOHN BOYD, CLAYTON L. GRIFFIN,
MARGARET WASHINGTON,
and LOUISE SEYMOUR,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

Case No. 4:08-cv-26-RH-WCS

DR. ANDREW AGWUNOBI, in his official
capacity as Secretary, Florida Agency for
Health Care Administration, and
DOUGLAS BEACH, in his official capacity
as Secretary, Florida Department of
Elder Affairs,

Defendants.

_____ /

**AMENDED CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. This is a statewide class action brought on behalf of Florida residents who currently, or at any time during this litigation, are Medicaid eligible adults with disabilities; are unnecessarily confined to a nursing facility that receives Medicaid funds; desire to reside in the community instead of a nursing facility; and could reside in the community with appropriate services. Class members are being

unnecessarily institutionalized because of Defendants' failure to cover services and support in appropriate, integrated community settings.

JURISDICTION

2. This is an action for declaratory and injunctive relief under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132 and the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) (Section 504).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 & 1342. Plaintiffs' claims for declaratory and injunctive relief are authorized under 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 1983. At all times relevant to this action, Defendants have acted under color of state law.

VENUE

4. Venue lies in the Northern District pursuant to 28 U.S.C. § 1391(b), and in the Tallahassee Division, because the Defendants officially reside there. N.D. Fla. R. 3.2(A).

NAMED PLAINTIFFS

5. Named Plaintiff WILLIAM LONG is a thirty-four year old man who is currently unnecessarily confined to a nursing facility located in Jacksonville, Florida. He is a person with a disability. He is eligible for Medicaid, which covers all or part of the nursing facility's services. He wishes to live in the community with appropriate health care and personal care services.

6. Named Plaintiff CHARLES TODD LEE is a sixty-six year old man who is currently unnecessarily confined to a nursing facility located in Plant City, Florida. He is a person with a disability. He is eligible for and receives Medicaid, which covers all or part of the nursing facility's services. He wishes to live in the community with appropriate health care and personal care services.

7. Named Plaintiff RODNEY PETERSON is a sixty year old man who is currently unnecessarily confined to a nursing facility located in Jacksonville, Florida. He is a person with a disability. He is eligible for Medicaid, which covers all or part of the nursing facility's services. He wishes to live in the community with appropriate health care and personal care services.

8. Named Plaintiff JOHN BOYD is a forty-nine year old man who is currently unnecessarily confined to a nursing facility located in Jacksonville, Florida. He is a person with a disability. He is eligible for Medicaid, which covers all or part of the nursing facility's services. He wishes to live in the community with appropriate health care and personal care services.

9. Named Plaintiff CLAYTON L. GRIFFIN is a fifty-four year old man who is currently unnecessarily confined to a nursing facility located in Jacksonville, Florida. He is a person with a disability. He is eligible for Medicaid, which covers all or part of the nursing facility's services. He wishes to live in the community with appropriate health care and personal care services.

10. Named Plaintiff MARGARET WASHINGTON is a seventy-four year old woman who is currently unnecessarily confined to a nursing facility located in

Jacksonville, Florida. She is a person with a disability. She is eligible for Medicaid, which covers all or part of the nursing facility's services. She wishes to live in the community with appropriate health care and personal care services.

11. Named Plaintiff LOUISE SEYMOUR is a sixty-four year old woman who is currently unnecessarily confined to a nursing facility located in Jacksonville, Florida. She is a person with a disability. She is eligible for Medicaid, which covers all or part of the nursing facility's services. She wishes to live in the community with appropriate health care and personal care services.

DEFENDANTS

12. Defendant DR. ANDREW AGWUNOBI is Secretary of Florida's Agency for Health Care Administration (AHCA) and is sued in his official capacity. AHCA is the chief health policy and planning entity for the state and is responsible for administering Florida's Medicaid Program. § 20.42(3), Fla. Stat. (2006). AHCA is the "single state agency" that operates Florida's Medicaid program, see 42 U.S.C. § 1396a(a)(5), and is the state agency responsible for administering Florida's nursing home and community-based long-term care system for people with disabilities. Secretary Agwumobi is responsible for the oversight, supervision and control of AHCA and its divisions, and is ultimately responsible for ensuring that AHCA's services for people with disabilities are provided in conformance with federal law.

13. Defendant DOUGLAS BEACH is Secretary of Florida's Department of Elder Affairs (DOEA), and is sued in his official capacity. DOEA is the primary

state agency responsible for administering human services programs for the elderly and developing policy recommendations for long-term care. § 430.03, Fla. Stat. (2007). It recommends legislative budget requests for programs and services for the state's elderly population. *Id.* Among other duties, DOEA prepares, submits to the Governor and the Legislature, and monitors implementation of a master plan for policies and programs in Florida that relate to aging. § 430.04, Fla. Stat. (2007). DOEA funds a community care service system the primary purpose of which is the prevention of unnecessary institutionalization of functionally impaired elderly persons through the provision of community-based core services. § 430.204, Fla. Stat. (2007).

14. At all times relevant to this Complaint, Defendants were acting under color of state law and knew or should have known of the policies, practices, acts and conditions alleged herein.

CLASS ACTION ALLEGATIONS

15. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the Named Plaintiffs bring this action on behalf of themselves and all other persons similarly situated.

16. The proposed class consists of:

Florida residents who currently, or at any time during this litigation: (1) are Medicaid eligible adults with disabilities; (2) reside in a nursing facility that receives Medicaid funds; and (3) would reside in the community with appropriate community-based services.

17. Numerosity: The Plaintiff class is so numerous that joinder of all its members is impracticable. According to the Center for Medicare and Medicaid

Services (CMS), the federal agency that administers the Medicaid program, nearly 8,500 nursing facility Medicaid residents in Florida have said they would rather live in the community. Joinder is also impracticable because class members lack the knowledge and financial means to maintain individual actions.

18. Commonality: There are questions of law or fact that are common to all Named Plaintiffs, as well as to all putative class members, including:

- a. Whether Defendants violate the “integration mandate” of the ADA and Section 504 by requiring Named Plaintiffs and class members to be confined to nursing facilities in order to receive long-term care services, rather than providing those services in appropriate settings in Plaintiffs’ homes and communities; and
- b. whether Defendants fail to inform and provide Named Plaintiffs and class members with meaningful choice of community-based long-term care alternatives to nursing facilities.

19. Typicality: The claims of the Named Plaintiffs are typical of the claims of the class as a whole in that the Named plaintiffs and class members currently are unnecessarily confined to Medicaid-funded nursing facilities and desire to live in the community with appropriate health care and personal care services.

20. Adequate representation: The Named Plaintiffs will fairly represent and adequately protect the interests of members of the class as a whole. The Named Plaintiffs do not have any interests antagonistic to those of other class members. By filing this action, the Named Plaintiffs have displayed an interest in

vindicating their rights, as well as the claims of others who are similarly situated. The relief sought by the Named Plaintiffs will inure to the benefit of members of the class generally. The Named Plaintiffs are represented by counsel who are skilled and knowledgeable about civil rights litigation, disability discrimination, Medicaid law, practice and procedure in the federal courts and the prosecution and management of class action litigation.

21. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class as a whole under Fed. R. Civ. P. 23(b)(2). Although the specific disabilities of the class members vary, they share a common need for Medicaid services. A class action is superior to individual lawsuits for resolving this controversy.

STATEMENT OF FACTS

Named Plaintiffs' Allegations

William Long

22. Named Plaintiff WILLIAM LONG is a thirty-four-year-old man who currently is unnecessarily confined to a nursing facility located in Jacksonville, Florida. He is a person with a disability. He is eligible for and receives Medicaid for the nursing facility's services. He wishes to live independently in the community with appropriate health care and personal care services.

23. In 2000, he became a quadriplegic and uses a motorized wheelchair for mobility. Despite his disabilities, Mr. Long does not require extensive nursing

care or oversight. For example, he requires assistance transferring from bed, dressing, toileting, showering, and meal preparation.

24. Medicaid covers the services Mr. Long receives in the nursing facility.

25. Many persons who have quadriplegia and who have the same or similar daily living activity impairments and needs as Mr. Long reside in the community and their own apartments, with appropriate community-based long-term care services.

26. The Medicaid-funded personal care services Mr. Long receives in the nursing facility could be provided in the community, as they are for many persons with disabilities similar to Mr. Long's.

27. Any health care services Mr. Long requires could also be provided in the community.

28. The Defendants cover personal care and health care services in the community for only a very limited number of people situated similarly to Mr. Long.

29. Before moving to the nursing facility, Mr. Long was employed and worked laying underground utilities for nearly nine years.

30. He has several children, including a ten year old daughter and a six year old son, both of whom visit him in the nursing facility only once a month.

31. At the nursing facility, Mr. Long must share a room with another adult and accordingly has little personal privacy or any space to call his own.

32. Like other residents of the nursing facility, Mr. Long is confined to his room after the nursing facility staff transfers him to bed at whatever time they decide

they are ready to transfer him. Watching television in common areas and walking in the halls after that time is impossible.

33. Mr. Long must shower only when the staff provide for it and he is offered a shower only twice a week.

34. Although Mr. Long has requested community-based long-term care services, to his knowledge no one at the nursing facility has followed up on his requests.

35. Mr. Long wishes to live independently in the community with appropriate health care and personal care services.

36. Mr. Long is capable of living in the community with appropriate health care and personal care services.

37. Residing in the community in his own apartment or house is the most integrated setting appropriate to his needs.

38. Defendants have offered Mr. Long Medicaid-funded personal care and health care services only in a nursing facility setting.

Charles Todd Lee

39. Named Plaintiff CHARLES TODD LEE is a sixty-six year old man who is currently unnecessarily confined to a nursing facility located in Plant City, Florida. He is a person with a disability. He is eligible for and receives Medicaid, which covers the nursing facility's services. He wishes to live in the community with appropriate health care and personal care services.

40. In 2003, he became paralyzed on one side as a result of suffering two strokes. From the hospital, Mr. Lee was discharged directly to a nursing home without being offered to live in the community with appropriate services.

41. He uses a manual wheelchair for mobility. Despite his disabilities, Mr. Lee does not require extensive nursing care or oversight. For example, he requires assistance transferring from bed, dressing, toileting, and showering, but brushes his own teeth and draws with his right hand.

42. Medicaid covers the services Mr. Lee receives in the nursing facility.

43. Many persons who are similarly paralyzed and who have the same or similar daily living activity impairments and needs as Mr. Lee reside in the community and their own apartments, with appropriate community-based long-term care services.

44. The Medicaid-funded personal care services Mr. Lee receives in the nursing facility could be provided in the community, as they are for persons with disabilities similar to Mr. Lee's.

45. Any health care services Mr. Lee requires could also be provided in the community.

46. Mr. Lee's treating physician agrees that he can reside in the community with appropriate community-based services.

47. The Defendants provide personal care and health care services in the community for only a very limited number of people situated similarly to Mr. Lee.

48. Before his strokes, Mr. Lee worked for nearly 40 years as a professional photographer, including for LIFE and Rolling Stone magazines.

49. He has several adult children, who visit him on weekends.

50. At the nursing facility, Mr. Lee must share a room with another adult and accordingly has little personal privacy or any space to call his own.

51. Mr. Lee draws and takes paratransit services once a week to swim with a friend in a community pool.

52. Other than swimming at a community pool, he rarely leaves the nursing facility.

53. Mr. Lee must shower only when the staff provide for it, and he is offered a shower only once or twice a week.

54. Mr. Lee has requested community-based long-term care services and has applied for these services. He and his family have been told he was placed on Defendants' waiting list for community-based Medicaid services.

55. Defendants have offered Mr. Lee Medicaid-funded personal care and health care services only in a nursing facility setting.

56. Mr. Lee wishes to live independently in the community with appropriate health care and personal care services.

57. Mr. Lee is capable of living in the community with appropriate health care and personal care services. He wishes to reside with one of his daughters, who has agreed that he could live with her and her husband, both of whom work and cannot stay at home with him to provide these services.

58. Residing in the community in his own apartment or house is the most integrated setting appropriate to his needs. In the nursing facility, Mr. Lee must reside with only older frail persons and other persons with disabilities. He wants to reside with younger people and with nondisabled persons.

Rodney Peterson

59. Named Plaintiff RODNEY PETERSON is a sixty year old man who currently is unnecessarily confined to a nursing facility in Jacksonville, Florida.

60. Mr. Peterson is a person with a disability due to both severe seizures and ruptured discs in his spinal cord.

61. As a result of his disability, he cannot walk without a wheelchair, which he has used since 1997.

62. Despite his disabilities, Mr. Peterson can take his medications, toilet, and feed himself without assistance.

63. He is permitted to shower only three times a week and at the specific times the nursing facility staff require.

64. Medicaid covers the services Mr. Peterson receives in the nursing facility.

65. Many persons like Mr. Peterson who have the same or similar daily living activity impairments and needs as Mr. Peterson reside in the community and their own apartments, with appropriate community-based long-term care services.

66. The Medicaid-funded personal care services Mr. Peterson receives in the nursing facility could be provided in the community, as they are for many persons with disabilities similar to Mr. Peterson's.

67. Any health care services Mr. Peterson requires could also be provided in the community.

68. The Defendants cover personal care and health care services in the community for only a very limited number of people situated similarly to Mr. Peterson.

69. Before moving to the nursing facility, Mr. Peterson was employed and worked as a manager of a restaurant, drove a taxicab, and was in sales. Although Mr. Peterson has requested community-based services, to his knowledge no one at the nursing facility has followed up on his requests.

70. Mr. Peterson wishes to live independently in the community with appropriate health care and personal care services.

71. He is capable of living in the community with appropriate health care and personal care services.

72. Residing in the community in his own apartment or house is the most integrated setting appropriate to his needs.

73. Defendants have offered Mr. Peterson Medicaid-funded personal care and health care services only in a nursing facility setting.

John Boyd

74. Named Plaintiff JOHN BOYD is forty-nine-year old man who is unnecessarily confined to a nursing facility located in Jacksonville, Florida. He has resided there since 1999.

75. Mr. Boyd is a person with a disability. He has been a quadriplegic since he was fourteen years old when he fell off a wall and was paralyzed. He uses a motorized wheelchair for mobility.

76. Medicaid covers the services Mr. Boyd receives in the nursing facility.

77. Despite his disability, Ms. Boyd does not require extensive nursing care or oversight. For example, he requires assistance transferring from bed, dressing, toileting, showering, and meal preparation, and turning at night to prevent bed sores.

78. These personal care services he receives in the nursing facility could be provided in the community, as they are for many persons with disabilities.

79. Any health care services Mr. Boyd requires could also be provided in the community.

80. Persons who have quadriplegia and who have the same or similar daily living activity imparments and needs as Mr. Boyd are capable of residing in the community and in their own apartments, with appropriate community-based long-term care services.

81. Defendants provide funding in the community for services similar to what the nursing facility provides to Mr. Boyd only for a very limited number of people.

82. In order for Mr. Boyd to receive the personal care and health care services he needs, Defendants have conditioned them on his being in a nursing facility.

83. Mr. Boyd has worked for a number of years for Red Lobster, where he answered their 800 telephone inquiries.

84. Mr. Boyd currently attends the Florida Community College four times a week, where he studies computer program and where he will obtain an associate's degree in 2008. He has studied JAVA, Oracle SQL, college algebra, and business data processing among other courses. After college, he would like to work as a computer programmer.

85. With adaptive equipment, Mr. Boyd types on his computer, uses the Internet and can brush his teeth.

86. Mr. Boyd seeks to live in the community, preferably with a friend and caretaker, and with periodic nursing services.

87. Mr. Boyd is capable of living in the community with appropriate supports and services.

88. Residing in the community or in his own apartment or house is the most integrated setting appropriate to his needs.

89. Defendants have offered Mr. Boyd Medicaid-funded personal care and health care services only in a nursing facility setting.

Clayton L. Griffin

90. Named Plaintiff CLAYTON L GRIFFIN is a fifty-four-year-old man who currently is unnecessarily confined to a nursing facility located in Jacksonville, Florida.

91. Mr. Griffin is a person with a disability.

92. In 2004, he had a stroke which paralyzed his left side.

93. Medicaid covers the services Mr. Griffin receives in the nursing facility.

94. Currently, he uses a manual wheelchair for mobility with difficulty and has requested a motorized wheelchair, but has not received one.

95. Despite his disabilities, Mr. Griffin transfers out of bed on his own.

96. Mr. Griffin does not require extensive nursing care or oversight.

97. He feeds himself but does requires assistance showering, dressing and toileting.

98. Mr. Griffin requires personal care only in the morning and at night.

99. The personal care services Mr. Griffin receives in the nursing facility could be provided in the community, as they are for many persons with disabilities similar to Mr. Griffin's.

100. Any health care services Mr. Griffin requires could also be provided in the community.

101. Persons like Mr. Griffin who have the same or similar daily living activity impairments and needs are capable of residing in the community and their own apartments, with the appropriate community-based long-term care services

102. Mr. Griffin has worked since he was 12 years old.

103. Before his stroke, Mr. Griffin received a certificate in electronics. He was employed as a copier technician, worked with mailing and folding machines, as well as general labor in power plants.

104. Mr. Griffin attends church and goes to Wal-Mart and Winn Dixie.

105. Mr. Griffin has told various personnel at the nursing facility that he wants to leave and reside in the community.

106. No one has ever informed him about any Medicaid long-term care services in the community. To his knowledge, no one at the nursing facility has followed up on his requests.

107. Defendants have never offered Mr. Griffin community-based Medicaid-funded personal care and health care services similar to those he currently receives in the nursing facility.

108. Mr. Griffin wishes to live independently in the community with periodic nursing services and other appropriate personal care supports.

109. With appropriate personal care and health care services, Mr. Griffin is capable of living in the community, which is the most integrated setting.

Margaret Washington

110. Named Plaintiff MARGARET WASHINGTON is a seventy-four year old woman who currently is unnecessarily confined to a nursing facility in Jacksonville, Florida.

111. Ms. Washington is a person with a disability who receives dialysis three times a week.

112. As a result of her disability, she has difficulty walking and uses a a wheelchair for mobility.

113. Ms. Washington needs personal care services to assist her with personal hygiene.

114. She is able to get into and out of bed by herself.

115. Medicaid covers the services Ms. Washington receives in the nursing facility.

116. Many persons like Mr. Washington who have the same or similar daily living activity impairments and needs as Ms. Washington are capable of residing in the community and their own apartments, with appropriate long-term community-based services.

117. The Medicaid-funded personal care services Ms. Washington receives in the nursing facility could be provided in the community, as they are for many persons with disabilities similar to Ms. Washington's.

118. Any health care services Ms. Washington requires could also be provided in the community.

119. The Defendants cover personal care and health care services in the community for only a very limited number of people situated similarly to Ms. Washington.

120. Before moving to the nursing facility, Ms. Washington has worked since she was seventeen years old. She has worked making flower arrangements, a laundry presser, and a housekeeper.

121. Ms. Washington wishes to live independently in the community with appropriate health care and personal care services.

122. She is capable of living in the community with appropriate health care and personal care services.

123. Residing in the community in his own apartment or house is for her the most integrated setting appropriate to her needs.

124. Defendants have offered Ms. Washington Medicaid-funded personal care and health care services only in a nursing facility setting.

Louise Seymour

125. Named Plaintiff LOUISE SEYMOUR is a sixty-four year old woman who currently is unnecessarily confined to a nursing facility in Jacksonville, Florida.

126. Ms. Seymour is disabled due to a severe heart problem which necessity surgery and a pacemaker.

127. As a result of her disability and her operation, she could not walk without a wheelchair.

128. Despite her disabilities, Ms. Seymour can without assistance take her medications, perform most personal hygiene and feed herself.

129. Medicaid covers the services Ms. Seymour receives in the nursing facility.

130. Many persons like Ms. Seymour who have the same or similar daily living activity impairments and needs as Ms. Seymour reside in the community and their own apartments, with appropriate long-term community-based services.

131. The Medicaid-funded personal care services Ms. Seymour receives in the nursing facility could be provided in the community, as they are for many persons with disabilities similar to Ms. Seymour's.

132. Any health care services Ms. Seymour requires could also be provided in the community.

133. The Defendants cover personal care and health care services in the community for only a very limited number of people situated similarly to Ms. Seymour.

134. Ms. Seymour attends Florida Community College and is earning a certificate in special education. She goes to college twice a week.

135. Between 1986 and when she had her heart operation in 2000, Ms. Seymour worked as both a housekeeper and a home-health aide.

136. Although Ms. Seymour has requested community-based services, to her knowledge no one at the nursing facility has followed up on her requests.

137. Ms. Seymour wishes to live independently in the community with appropriate health care and personal care services.

138. She is capable of living in the community with appropriate health care and personal care services.

139. Residing in the community in his own apartment or house is the most integrated setting appropriate to her needs.

140. Defendants have offered Ms. Seymour Medicaid-funded personal care and health care services only in a nursing facility setting.

The State-Federal Medicaid Program

141. Medicaid is a joint federal and state program that covers medical services to low-income persons pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v.

142. Florida participates in the Medicaid program and receives 57 cents in federal reimbursement for every dollar it spends on Medicaid services.

143. States are not required to participate in Medicaid, but if they do, they must comply with the requirements of Title XIX and its implementing regulations promulgated by the U.S. Department of Health & Human Services (“HHS”). States which participate must further submit to HHS a state Medicaid plan that fulfills the requirements of Title XIX. 42 U.S.C. § 1396a(a).

144. One of the primary purposes of Medicaid is “to furnish ... rehabilitation and other services to help families and individuals attain or retain capability for independence and self care” 42 U.S.C. § 1396. Each participating State’s

Medicaid plan must contain reasonable standards to determine the extent of services needed to obtain these objectives. 42 U.S.C. § 1396a(a)(17).

145. Individuals are eligible for Medicaid if they are either “categorically needy” or “medically needy.” Individuals who, for example, receive Supplemental Security Income (“SSI”) benefits are deemed “categorically needy.”

146. Coverage of certain services is mandatory under Title XIX for all persons considered “categorically needy.” 42 U.S.C. § 1396a(a)(10)(A)(i) (incorporating 42 U.S.C. § 1396d(a)(1)-(5), (17), (21)). “Mandatory” services include services in a skilled nursing facility. *Id.*

147. States must also cover home health services for “any individual who, under the state plan, is entitled to nursing facility services.” 42 U.S.C. § 1396a(a)(10)(D). Coverage for home health services must include, among other things, durable medical equipment, supplies and appliances suitable for use in the home. 42 C.F.R. § 440.70(b).

148. Medicaid also allows states to provide for coverage of in-home and community services, including private-duty nursing, home and community care for functionally disabled elderly individuals, personal care services, and any other medical and remedial care recognized under state law. 42 U.S.C. § 1396d(a). Once a state elects to cover an optional service, it becomes part of the state’s Medicaid plan and is subject to the requirements of Title XIX. 42 U.S.C. § 1396a(a)(1).

149. Additionally, Medicaid allows states to waive certain requirements in order to enable people with disabilities to avoid institutionalization and receive long-term care services in the community. 42 U.S.C. § 1396n(c). These programs are known as Home and Community Based Services (HCBS) “waivers.”

Florida’ Medicaid Long-Term Care System for People with Disabilities

150. Through its Medicaid program, Florida covers nursing facility services for Medicaid-eligible people with disabilities who qualify for long-term care.

151. Defendants provide for coverage of these services through contracts with privately owned and operated nursing facilities, many of which are for-profit businesses.

152. Defendants also provide for coverage of in-home and community services to persons who would otherwise qualify for nursing facility services. These services are also funded under Medicaid, either as home health services or through a HCBS waiver program.

153. Defendants have also chosen to include a number of optional categories of services, including personal care services.

154. With the support of these community-based supports and services, people with disabilities are able to live independently with community-based supports and services.

155. For some people with disabilities served in the community, Defendants contract with private home health agencies to provide in-home community long-term

care. Other people with disabilities served in the community hire their own care givers and attendants, whose wages are paid by Defendants.

156. The cost of these Medicaid-funded community programs is far below the average annual nursing home cost.

157. Currently, Florida's Medicaid average nursing home annual expenditure is approximately \$ 65,072 per year per person.

158. Despite the fact that many, perhaps most, seniors and people with disabilities prefer to live in the community, Defendants have allocated the vast majority of Florida's Medicaid long-term care funding – approximately 87% – to nursing facility services – the tenth-highest rate in the nation. The remaining 13% goes for community-based services. The national average expenditure on nursing facility services in 2006 was approximately 70% of the total long-term care expenditures.

159. For people with physical disabilities, Florida's per person spending for nursing facilities is nearly thirteen times that for home and community-based care. In FY 2006, of Florida's total \$ 2.7 billion in expenditures for Medicaid long-term care services for the aged and disabled (*i.e.*, both institutional and community-based services), Florida spent approximately \$ 2.4 billion Medicaid dollars on nursing facilities and only \$ 346 million on community-based services.

160. Since 1999, Florida has increased its Medicaid expenditures on nursing facility services by more than \$ 994 million, but only increased Medicaid expenditures for community-based services by \$ 170 million.

161. As a result, Medicaid-funded community-based long care services are unavailable to many who need and want them, effectively compelling institutionalization of people with disabilities.

162. Once Medicaid-eligible individuals are admitted to nursing facilities, they must turn over most of their assets and income, including Supplemental Security Income from Social Security, to the state and nursing facility. Residents receive an allowance of approximately \$ 30.00 per month.

163. As a result, residents are often unable to continue paying rent or mortgages and accordingly lose the home they had before entering the nursing facility. Residents also lack resources to obtain community services and housing on their own.

164. They often cannot afford even basic transportation costs to leave the facility, whether to pursue community services or for any other purpose.

165. Nursing facilities are not real homes or even home-like, but rather are segregated institutions housing large numbers of unrelated persons, both elderly and non-elderly, in congregate settings, where residents must share bedrooms, bathrooms and living spaces with strangers.

166. Nursing facility residents are, for the most part, neither integrated into nor part of the communities in which they live.

167. Residents have limited access to the community and it is difficult, if not impossible, for them to participate in community activities such as government, churches or clubs.

168. Nursing facility residents are often denied meaningful access to employment opportunities by virtue of the congregate environments in which they live and the limited supports that are provided to them.

169. Many nursing facilities resemble hospitals. They have nurses' stations and often have locked doors, curfews and, at times, guards posted to monitor persons entering and leaving the facility.

170. There is little, if any, privacy for nursing facility residents who share rooms and bathrooms with up to five residents whom they did not know previously and with whom they did not choose to live. In some facilities, entire wards share bathrooms and shower facilities. Medications are often dispensed publicly, with residents waiting in line.

171. Nursing facility residents often lack their own telephones, and are often restricted in the use of the nursing facility telephones.

172. Nursing facilities offer few places for residents to gather or safeguard their personal belongings. Many residents report that their personal property has been stolen or damaged.

173. Nursing facility residents have little, if any, choice on what to eat, when to eat, or with whom to eat.

174. Defendants administer their Medicaid program in a manner that perpetuates the segregation of persons with disabilities. These methods of administration arbitrarily limit access to integrated, community support services by

persons with disabilities in nursing facilities. Specifically, limitations on the availability of Medicaid-funded, community-based services results from:

- a. the lack of information provided to persons in nursing facilities about community-based services, including waivers;
- b. the failure to provide nursing facility residents with a meaningful choice of community as well as institutional services;
- c. the failure to offer meaningful access to community-based services;
- d. decisions and actions that intentionally limit the number and availability of community-based long-term care Medicaid services; and
- e. inadequacies in the funding of community-based Medicaid funded services that Defendants are authorized to cover for Medicaid-eligible individuals.

Residents' Desire and Ability to Live in the Community

175. CMS publishes quarterly data on nursing facility residents. This data, called the "Minimum Data Set" ("MDS"), is collected by nursing facilities and sent to each state's Medicaid single state agency, which then sends it to CMS. See 42 C.F.R. § 483.20(c).

176. The MDS reports that in 2007 in Florida 26.2% of nursing facility residents have expressed or indicated to their nursing facility that they want to live in the community instead of a nursing facility. About half of these residents are Medicaid-eligible.

177. The percentage of nursing facility residents who have expressed or indicated that they want to reside in the community instead of a nursing facility has consistently increased for four years. In 2003, it was 23.9%; 24.7% in 2004; 25.2% in 2005; and 26% in 2006.

178. Many nursing facility residents could be served safely and appropriately in the community if long-term care and services were available there. When appropriate supports and services have been provided, persons with disabilities, of all ages and multiple levels of disability, have successfully moved into or remained in the community in order to live more independently.

COUNT 1

AMERICANS WITH DISABILITIES ACT

179. Paragraphs 1 through 178 are incorporated by reference.

180. Title II of the Americans with Disabilities Act provides that “no qualified individual with a disability shall, by reason of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.” 42 U.S.C. § 12132.

181. Each Named Plaintiff and class member is a “qualified individual with a disability” within the meaning of the ADA in that they (1) have a physical impairment that substantially limits one or more major life activities; and (2) meet the essential eligibility requirements for long-term care under Florida’s Medicaid program

182. Defendants are public agency directors responsible for operation of a public entity, pursuant to 42 U.S.C. §§ 12131(1)(A) & (B).

183. Regulations implementing Title II of the ADA require that a public entity administer its services, programs and activities in “the most integrated setting appropriate” to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d).

184. The ADA’s implementing regulations further provide that “a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration: (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the entity’s program with respect to individuals with disabilities” 28 C.F.R. § 35.130(b)(3).

185. Defendants have required that Named Plaintiffs and class members be confined unnecessarily in institutions, *i.e.*, nursing facilities, rather than permit them to reside in the community in order to obtain long-term care services in violation of the ADA’s integration mandate.

186. Further, Defendants have utilized criteria and methods of administration that subject Plaintiffs and class members to discrimination on the basis of disability, including unnecessary institutionalization, by (1) failing to assess properly the services and supports that would enable Named Plaintiffs and class members to live in the community, (2) failing to inform Named Plaintiffs and class members, upon admission and thereafter, of community long-term care options, and

(3) allocating resources for institutional long-term care contrary to the desires and needs of people with disabilities.

187. Defendants' actions are in violation of Title II of the ADA.

COUNT II

Section 504 of the Rehabilitation Act

188. Paragraphs 1 through 178 are incorporated by reference.

189. Section 504 of the Rehabilitation Act states that “[n]o otherwise qualified person with disabilities shall, solely by reason of his or her disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 29 U.S.C. § 794(a).

190. Defendants direct state agencies that receive federal financial assistance.

191. Each Named Plaintiff and class member is a “qualified person with disabilities” within the meaning of Section 504, because they (1) have physical and/or mental impairments that substantially limit one or more major life activities; and (2) meet the essential eligibility requirements for long term care under Florida’s Medicaid program and are thus “qualified.”

192. Regulations implementing Section 504 require that a public entity administer its services, programs and activities in “the most integrated setting appropriate” to the needs of qualified individuals with disabilities. 28 C.F.R. § 41.51(d).

193. Section 504's regulations prohibit recipients of federal financial assistance from:

utiliz[ing] criteria or methods of administration ... (i) [t]hat have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons.

45 C.F.R. § 84.4(b)(4); 28 C.F.R. § 41.51(b)(3)(I).

194. Defendants have required that Named Plaintiffs and class members be confined unnecessarily in institutions, *i.e.*, nursing facilities, rather than the community in order to obtain long-term care services, in violation of Section 504's integration mandate.

195. Further, Defendants have utilized criteria and methods of administration that subject Named Plaintiffs and class members to discrimination on the basis of disability, including unnecessary institutionalization, by (1) failing to assess properly the services and supports that would enable Named Plaintiffs and class members to live in the community, (2) failing to inform Named Plaintiffs and class members, upon admission and thereafter, of community long-term care options, and (3) allocating resources for institutional long-term care contrary to the desires and needs of people with disabilities.

196. Defendants' actions are in violation of Section 504 of the Rehabilitation Act.

REQUEST FOR RELIEF

WHEREFORE, Named Plaintiffs and class members respectfully request that this Court:

- a. Certify this action as a class action.
- b. Declare that Defendants' failure to provide Named Plaintiffs and class members with services in the most integrated setting appropriate to their needs violates Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act.
- c. Enter a permanent injunction requiring Defendants to:
 - i. inform Named Plaintiffs and class members that they may be eligible for publicly-funded community services and that they have the choice of such services; and
 - ii. ensure coverage of, as appropriate, long-term care services and supports in the most integrated setting appropriate for Named Plaintiffs and class members and refrain from providing unnecessary and unwanted long-term care only in institutional settings.
- d. Award Named Plaintiffs and class members their reasonable attorneys' fees, litigation expenses and costs.
- e. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Jodi Siegel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by CM/ECF transmission to GEORGE WAAS, Special Counsel, Office of the Attorney General, PL-01 The Capitol, Tallahassee, FL 32399-1050 this 19th day of February, 2008.

By: /s/ Jodi Siegel
ATTORNEYS FOR PLAINTIFFS