IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

BENJAMIN ALEXANDER et al.,

Plaintiffs,

v. CASE NO. 4:18cv569-RH-MJF

MARY MAYHEW et al.,

Defendants.

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ORDER GRANTING THE DEFENDANTS' FIRST MOTION FOR PARTIAL SUMMARY JUDGMENT

The plaintiffs are adults with physical disabilities or limitations. They need services that could be provided in a long-term-care facility—a nursing home—but they live and prefer to continue to live in the community. They allege they are eligible for home and community-based services through the State of Florida's Medicaid long-term-care waiver program. But they are on the program's waitlist; they are not currently receiving waiver services.

The plaintiffs say this puts them at risk of unnecessary institutionalization, violating the state's duty under the Americans with Disabilities Act, as interpreted in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999). That decision requires a

state to provide needed services in the community, not in a nursing home, when this can be done without fundamentally altering a state's programs.

The defendants are the Secretaries of the Florida Agency for Health Care Administration and the Florida Department of Elder Affairs, the agencies that administer the waiver program.

The state's long-term-care waiver program is capped at 62,000 participants. The Medicaid Act explicitly authorizes such a cap. *See* 42 U.S.C. §§ 1396n(c)(3)-(4), (9)-(10), 1396n(d)(3); 42 C.F.R. § 441.303(f)(6). The defendants have moved for partial summary judgment, asserting that the Medicaid Act's approval of caps trumps the ADA's requirement to provide services in the community.

The plaintiffs assert, with the support of the United States as amicus curiae, that the ADA and the Medicaid Act impose separate requirements and are both valid. Quite so. The ADA requires a state to provide reasonable accommodations for disabilities, including as necessary to avoid unnecessary institutionalization. But as *Olmstead* recognized, there is an exception: the ADA does not require such an accommodation if it would fundamentally alter a state's programs. *See* 28 C.F.R. § 35.130(b)(7)(i) ("A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate

that making the modifications would fundamentally alter the nature of the service, program, or activity.").

A state request for approval to increase the cap would likely garner federal approval and would constitute a reasonable accommodation of the plaintiffs' disabilities. But at least in the circumstances of this case, an injunction requiring the state to serve additional individuals through the waiver—to obtain an increase in or to exceed the cap—would fundamentally alter the state's program. This is so as a matter of law. The same is true of an order requiring the state to establish a new program outside the Medicaid system. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 603 n.14 (1999). Or to provide a service outside the Medicaid system that the state now provides only within the Medicaid system. Such fundamental alterations cannot properly be compelled.

Even so, this does not entitle the defendants to summary judgment across the board. The record does not exclude the possibility that the plaintiffs will be entitled to relief that can be provided under the waiver without exceeding the cap. And the record does not exclude the possibility that the plaintiffs will be entitled to relief through existing programs the state operates outside the Medicaid system. The bottom line: the state will be required to provide a service to a plaintiff who needs it to avoid institutionalization only if the state can do so without exceeding the waiver cap or through another existing program.

For these reasons and those set out on the record of the summary-judgment hearing on March 27, 2020,

IT IS ORDERED:

The defendants' first motion for partial summary judgment, ECF No. 72, is granted. I do *not* direct the entry of judgment under Federal Rule of Civil Procedure 54(b).

SO ORDERED on March 31, 2020.

s/Robert L. Hinkle
United States District Judge