

EXCERPT

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

**ADRIANA PARRALES, JANET CRAMER,
SALLY GILLEY, and JOSEPHINE HOLLISTER,**

Plaintiffs,

v.

Case No. 4:15-cv-424-RH/CAS

JUSTIN SENIOR,
In his Official Capacity as
Interim Secretary for the Florida Agency for
Health Care Administration,

Defendant.

_____ /

SETTLEMENT AGREEMENT

The Plaintiffs, Adriana Parrales, Janet Cramer, Sally Gilley, and Josephine Hollister (“Plaintiffs”) and Defendant, Justin Senior, in his official capacity as Interim Secretary of the Florida Agency for Health Care Administration (the “Secretary” and “AHCA”), enter into and hereby stipulate to this Settlement Agreement to resolve all claims set forth in the Complaint and encompassed in the Action on the following terms and conditions:

I. Introduction

1. Plaintiffs filed this action under the Americans with Disabilities Act (“ADA”) for violation of the “integration mandate,” as explained by the Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999). Plaintiffs are enrollees in the Home and Community Based Services (“HCBS”) portion of Florida’s Long-Term Care (“LTC”) Managed Care Program (the “LTC Program”), which is administered by AHCA in conjunction with private health plans that were

selected by AHCA through a competitive solicitation process. Plaintiffs have alleged that Defendant's implementation and oversight of the HCBS portion of the LTC Program have left them at risk of unnecessary institutionalization.

2. AHCA and the Secretary specifically deny that the LTC Program has been mismanaged and that any of the Plaintiffs has been placed at risk of institutionalization due to any conduct on the part of AHCA or the Secretary.

3. Notwithstanding the differences in the positions of the parties, Plaintiffs and the Secretary have agreed to an amicable resolution of this Action.

II. Definitions

As used in this Settlement Agreement and its exhibits, the following terms mean:

"The Action" refers to case of Parrales et al. v. Senior (Case No. 4:15-cv-00424) filed on August 27, 2015 in the Northern District of Florida.

"Plaintiffs" refer collectively to Adriana Parrales, Sally Gilley, Janet Cramer and Josephine Hollister, unless specifically referenced by name.

"AHCA" or the **"Agency"** refers to the Agency for Health Care Administration, including its officers, directors, and agents.

"The Secretary" refers to Justin Senior in his official capacity as Interim Secretary of AHCA, and any successors in that capacity.

"HCBS" means home and community-based services provided to individuals age 18 years and older who have functional limitations and/or chronic illnesses that have the primary purpose of supporting the individual to live or work in the setting of their choice, which may include the individual's home, a worksite, or a provider-owned or controlled residential setting, such as an assisted living facility or adult family care home.

"LTC Program" is the portion of Florida's Statewide Medicaid Managed Care ("**SMMC**") program through which eligible Medicaid recipients enrolled in managed care plans may be authorized to receive long-term care services. The program is divided into two parts: nursing facility services and HCBS.

"MMA Program" or "**Managed Medical Assistance Program**" refers to the portion of Florida's SMMC program through which eligible Medicaid recipients enrolled in managed care plans may be authorized to receive primary and acute medical assistance and related services.

“Managed Care Plan” refers to an entity that has contracted with AHCA to provide Medicaid services under Florida’s SMMC MMA and/or LTC Programs to enrollees, such as Plaintiffs.

“Mixed Services” refers to services that are available through both the LTC Program and the MMA Program, but differ in scope and coverage limitations. These include nursing services, personal care assistance, therapies (occupational, physical, speech and respiratory), durable medical equipment (DME), medical supplies and non-emergency transportation.

“State Plan” refers to a comprehensive written statement that describes the scope and nature of Florida’s Medicaid program. The Florida Medicaid State Plan outlines current Medicaid eligibility standards, policies and reimbursement methodologies to ensure the state receives matching federal funds for medical assistance services.

“LTC Contract” or **“Long-term Care Contract”** refers to the agreement between AHCA and managed care plans to provide services described in section 409.98, Florida Statutes to eligible enrollees. The LTC Contract is comprised of Attachment I – Scope of Services, Attachment II – Core Contract Provisions, and Attachment II, Exhibit II-B – Long-term Care (LTC) Managed Care Program.

“LTC Waiver” refers to the application approved by the Centers for Medicare and Medicaid Services under §1915(b) & (c) of the Social Security Act.

“LTC Policy” refers to a policy document incorporated in a state administrative rule that contains coverage information about Florida Medicaid LTC Waiver services.

III. Terms

1. **LTC Policy:** AHCA has determined that it will promulgate a LTC Policy that will contain policy directives of general applicability, applicable to all health plans participating in the LTC Program. The intent of the parties is that the LTC Policy contain terms materially similar to the draft LTC Policy attached as Exhibit A to this Agreement.

- i. No later than December 31, 2016, AHCA shall publish in the Florida Administrative Register a Notice of Proposed Rule 59G-4.192 which incorporates by reference Exhibit A.
- ii. The parties recognize, however, that the LTC Policy must be adopted by AHCA as a rule and, as such, is subject to the provisions of chapter 120, Florida Statutes, relating to notice and comment rulemaking. Because AHCA intends to fulfill its obligations under chapter 120 in good faith, the parties recognize that the precise form of the LTC Policy cannot be determined prior to the periods provided by AHCA for public notice and comment.

- iii. The parties further recognize that AHCA shall not be precluded from amending the LTC Policy from time to time after its adoption to incorporate changes required by federal law, other federal directives, or as otherwise deemed necessary by the Agency.

2. **SMMC Contract:** AHCA agrees to amend various provisions of the LTC Contract, as reflected in Exhibit B to this Agreement. The parties further recognize that AHCA shall not be precluded from amending the LTC Contract from time to time to incorporate changes required by federal law, other federal directives, or as otherwise deemed necessary by the Agency.

3. **Disseminating Settlement Agreement:** Within five days of signing this Agreement, Defendant shall disseminate this Settlement Agreement and exhibits (with the redaction of the individual relief to each Plaintiff) to, at a minimum, the Managed Care Plans. Defendant shall meet with the Managed Care Plans to discuss the terms of this Settlement Agreement, including the incorporated exhibits.

4. **Training and Consumer Education:**

- i. The Agency agrees to implement a comprehensive training and consumer education strategy that targets multiple stakeholder groups (managed care plans, enrollees, internal Agency staff, relevant Department of Elder Affairs (“DOEA”) staff, fair hearing officers, advocates, etc.) and covers a wide array of topics related to the LTC program. Training will be developed with input from Plaintiffs' counsel. The Agency agrees to post training materials on its website and to send out alerts to notify stakeholders of upcoming training sessions.
- ii. AHCA will provide instruction on its website and through other outreach opportunities on how to file a complaint with AHCA, how to utilize the Independent Consumer Support Program operated by DOEA to file a complaint, and how to file an ADA complaint/concern with AHCA or the federal Department of Health and Human Services (“HHS”).

5. **Fair Hearings:**

- i. The Agency will train Department of Children and Families (“DCF”) hearing officers to ensure that Managed Care Plan decisions are in compliance with the amended LTC Contract and LTC Policy.

- ii. The Agency will ensure that when assessment and service authorization decisions have been made using erroneous interpretations of the LTC Contract or LTC Policy requirements, per a Final Order, a review will be completed by the Agency to ensure the interpretation did not impact other enrollees.
- iii. The Agency will publish on its website a summary of compliance actions taken against the Managed Care Plans.
- iv. The Agency will ensure that policy clarifications are transmitted to all Managed Care Plans.
- v. The Agency agrees to provide to the Plaintiffs on or before December 15, 2016 a training schedule on topics to be published.

6. **Exchanging information:** Whenever Defendant is required to provide information for review by Plaintiffs' counsel, Plaintiffs' counsel agree to respond in writing with any objections or suggested language changes within ten (10) days.

7. **Oversight:**

- a. The Agency agrees to review any plan developed assessment tools and care plan template(s) (as described above) and to review the managed care plan's administrative procedures for approval and denial of LTC services.
- b. The Agency agrees to accompany Managed Care Plans on a sample of person centered planning visits to evaluate the extent to which the member's true goals are captured and the member directs the process with necessary information and support.
- c. The Agency agrees to work toward producing meaningful data to show the connection between ADLs /IADLs and service utilization.
- d. The Agency will increase the number of case file reviews completed each year.
- e. The Agency will make the findings identified through the case file reviews available to the public annually, at a minimum.
- f. The Agency will include the following scenarios in the case file reviews: High level acuity LTC enrollees, as determined by the Agency, enrollees that lived in the community but moved into a nursing facility, and enrollees that received a denial, reduction, or termination.
- g. The Agency will ensure Managed Care Plan compliance with the following components of the LTC Program in the case file review process:

- Use of the 701b assessment, the LTC supplemental assessment and any additional assessments and forms in creation of the care plan
- Use of the Freedom of Choice form when there is a change in an enrollee's living arrangement
- Application of the appropriate service authorization time period
- Use of LTC medical necessity criteria
- Use of the Caregiver Assessment form (as part of the LTC Supplemental Assessment)
- Use of personal goals and corresponding services in person- centered care planning

8. Monitoring/Reporting (Enrollee Surveys): The Agency agrees to pilot a new LTC survey utilizing questions that address the conceptual framework in the domains /subdomains contained in the following report published by the National Quality Forum:

*"Quality in Home and Community-Based Services to Support Community Living:
Addressing Gaps in Performance Measurement"*

The Agency will contract with an NCQA- certified CAHPS Survey Vendor to administer the survey according to the NCQA mixed mode protocol (mail with telephone follow-up). The Agency agrees to begin utilizing /administering the survey to LTC enrollees by July 2017. This initial pilot of the new LTC survey items would be using a sample of 1700 enrollees with a target of 411 completed surveys. The sample size and target number of completed surveys are aimed at having a statistically valid sample at the LTC program level, not individual plan- level.