
Coates' Canons Blog: State-County Special Assistance Program – What Might the Future Hold?

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Last week the N.C. Department of Health and Human Services entered into a settlement agreement with the federal government (see press release here). Pursuant to the agreement, the state is committed to implementing fairly significant changes related to housing and community support services for individuals who have mental illnesses. Anticipating the possibility of this settlement agreement, the North Carolina General Assembly included several related provisions in the budget bill this past summer. I briefly discussed the changes during one of our recent Local Government Legislative Update webinars (on-demand versions now available here and here) and since then the story has continued to unfold. While I am not planning to work through all of the details of both the settlement agreement and the legislation, I do think it is worth highlighting some of the recent changes to the State-County Special Assistance program and considering whether additional changes may be coming in the future.

Why did all of this come about?

Quite a few people with mental illnesses are living in adult care homes. A Task Force convened by the North Carolina Institute of Medicine studied this issue and estimated that more than 60% of adult care home residents have a mental illness, intellectual or developmental disability, or Alzheimer disease/dementia diagnosis. Advocates have taken the position that adult care homes are intended to house older people who need basic personal care services and not individuals with these types of disabilities. They argued that, based upon the U.S. Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), the state must not place so many disabled individuals in adult care homes but rather it must try harder to support them as they live in the community, by providing housing assistance, mental health services, employment services and other supports. They also argued that North Carolina's system, including the state's Medicaid reimbursement policies, created an institutional bias that resulted in too many people with mental illness residing in adult care homes. Disability Rights of North Carolina filed a complaint with the U.S. Department of Justice in 2010 and the federal government subsequently initiated an investigation.

What did the new legislation do?

The state has been actively engaged in examining these issues for some time and, as a result, the General Assembly took steps to address some of them this past legislative session. Three key provisions were included in the budget bill (S.L. 2012-142 – see §§ 10.23 and 10.23A). The legislation:

- Created a “Blue Ribbon Commission on Transitions to Community Living” charged with examining “the State's system of community housing and community supports for people with mental illness, severe and persistent mental illness, and developmental disabilities” and developing “a plan that continues to advance the State's current system into a statewide system of person-centered, affordable services and supports that emphasize an individual's dignity, choice, and independence.”
- Established a \$50 million reserve fund. \$10.3 million is to be used to support NC DHHS efforts to transition people with mental illness into community living, which includes paying for rental housing. The remainder is to be used as temporary bridge funding for adult care homes that are losing Medicaid funding for some services provided to existing residents with mental illnesses.
- Made changes to the State-County Special Assistance Program.

While all of these changes are worthy of discussion, I want to focus on the changes to the State-County Special Assistance Program. The program is a means-tested program administered by county departments of social services that provides cash assistance to certain elderly or disabled adults (see G.S. 108A-40 et seq.) Assistance may be available to

adults who either (1) live in adult care homes or (2) live at home but, without the assistance available through the program, would need to be in an adult care home (“in-home” assistance).

The in-home assistance may be used for daily necessities such as food, shelter, and clothing. Each county is allotted a certain number of Special Assistance “slots” and the state pays for half of the total costs. Only 15% of the total statewide Special Assistance caseload may be used for in-home assistance.

The legislation changed the program in a few ways:

- Counties were previously not required to participate in the in-home assistance program (91 of the 100 counties chose to participate). Participation is now mandatory.
- The in-home payments were limited to 75% of the amount that would have been paid if the person resided in an adult care home. Those payments have now been equalized – in-home assistance must be equal to the payment for residential placement unless a local case manager determines that a lower amount is appropriate.
- Counties are required to fill in-home slots allotted to them by the state. The law provides that “By February 15, 2013, the Department shall establish a formula to determine the need for additional ... in-home slots for each county. Beginning July 1, 2014 and each July 1 thereafter, the Department shall review and revise the formula as necessary.” (see S.L. 2012-142, § 10.23)
- Beginning in 2013, the Secretary has the option of waiving the 15% cap on in-home assistance.
- New maintenance of effort requirements apply for both the State and the counties. The state must maintain funding at the FY 2012-13 level and the counties must maintain funding at the FY 2011-12 level.

As a result of the changes, some counties are rethinking their Special Assistance programs a bit and focusing new energy on the in-home assistance program. The changes go into effect February 15, 2013.

What does the settlement agreement do?

The settlement agreement requires that the N.C. Department of Health and Human Services implement dramatic changes to various programs related to community living, including significant increases in housing and employment supports and community based mental health services. For example, the state must provide at least 100 new housing slots by July 2013 and at least 3,000 new slots over the next eight years. A housing slot is defined as “State or federal housing vouchers and/or rental subsidies for community-based supported housing” and it a slot “a package of tenancy support, transition support and rental support.” (Settlement Agreement, § II.A.).

The agreement also includes detailed provisions about the state’s duty to educate adult care home residents about their options and help them to transition into the community if they choose to do so. In addition, it requires the state to establish a better process for screening individuals for placement in adult care homes to minimize the number of residents who may have a serious mental illness.

What might the future hold?

With more of these individuals moving out of adult care homes and into the community over the coming years and fewer new disabled residents being directed to adult care homes, it seems to me that there will be some pressure to expand the in-home assistance component of the State-County Special Assistance program in the near future. This could happen in a couple of different ways. The state could, for example, remove the 15% cap entirely (recall that the Secretary of NCDHHS will have the authority to waive it beginning next year). The state could also increase the state appropriation for the whole Special Assistance program or perhaps only the in-home assistance program. Now that counties are *required* to participate in the program and *required* to fill the in-home slots assigned to them by the state, they would need to be prepared to absorb half of the costs tied to any increase in the program. It will be interesting to see how the program develops in the years to come.

Links

- www.justice.gov/opa/pr/2012/August/12-crt-1040.html
- www.sog.unc.edu/resources/microsites/resource-no-longer-exists



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- www.nciom.org/publications/?colocationadultcarehomes
 - www.law.cornell.edu/supct/html/98-536.ZS.html
 - www.disabilityrightsn.org/
 - www.ncleg.net/Sessions/2011/Bills/House/PDF/H950v7.pdf
 - www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_108A/GS_108A-40.html
 - www.ncdhhs.gov/aging/adultsvcs/afs_special.htm
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 - www.justice.gov/iso/opa/resources/172012823125624712136.pdf