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AARP Foundation
For a future without senior poverty.

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Lawsuit Seeks Protection for New Hampshire Residents Facing Dangerous Institutional Placements in Nursing Facilities

CONCORD, N.H.—New Hampshire residents who depend on the state to provide them with Medicaid-funded long-term care are suing the state for its failure to properly administer its Choices for Independence (“CFI”) Medicaid waiver. New Hampshire Legal Assistance, Disability Rights Center – New Hampshire, AARP Foundation, and the Manchester office of Nixon Peabody LLP represent older adults and persons with disabilities enrolled in the CFI program who filed a lawsuit in federal court today on behalf of themselves and other CFI participants. They allege that New Hampshire’s failure to deliver CFI services places them at risk of unnecessary and dangerous institutionalization in nursing facilities.

“Some of our most vulnerable citizens are one crisis away from unnecessary institutionalization because they are not getting essential CFI services. Without these services, they linger for hours or days alone in bed or confined in their own homes, unable to attend to basic personal needs. The State has long been aware of these problems and we cannot wait any longer for a solution,” said Pamela Phelan, DRC-NH’s litigation director.

The suit names the New Hampshire Department of Health & Human Services (NHDHHS) Commissioner Lori Shibinette and NHDHHS as defendants and seeks to compel them to operate New Hampshire’s CFI waiver program in accordance with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Medicaid Act, and due process provisions of the Constitution of the United States.

New Hampshire’s CFI Waiver is designed to provide vital assistance to qualified people who choose to continue living in their homes, and to avoid the need for costly and restrictive nursing facility placements. However, the state is currently operating the CFI program in a manner that systematically deprives CFI participants of the home and community-based care to which they are entitled to under the provisions of the waiver program.

The COVID-19 crisis has heightened the importance of preventing unnecessary institutionalization. In New Hampshire, 80% of all COVID-19 deaths have involved residents of these facilities – double the national average.

“When CFI participants are deprived of the community-based long-term care that the state concedes they need and are entitled to, they face grave health risks,” said AARP Foundation Senior Attorney M. Geron Gadd. “Failure to properly administer the CFI Waiver not only deprives participants of their right to live as they choose, but also greatly increases their chances of exposure to COVID-19 in nursing homes and other long-term care facilities.”

“It’s crucial that the state live up to its promises to provide fundamental support to CFI-eligible individuals, their caregivers and families,” said Nixon Peabody attorney Kierstan Schultz. “These CFI services are a generally less costly means of supporting older adults and people with disabilities in integrated settings.”

If you or someone you know has struggled to get the services you need under the CFI waiver, please email us at litigation@aarp.org.

Please find the [Complaint here](#).

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About AARP Foundation

AARP Foundation works to end senior poverty by helping vulnerable older adults build economic opportunity and social connections. As AARP’s charitable affiliate, we serve AARP members and nonmembers alike. Bolstered by vigorous legal advocacy, we spark bold, innovative solutions that foster resilience, strengthen communities and restore hope. To learn more, visit www.aarpfoundation.org or follow [@AARPFoundation](https://www.instagram.com/AARPFoundation) on social media.

About Nixon Peabody

At Nixon Peabody, we see 21st century law as a tool to help shape our clients’ futures. Our focus is on knowing what is important to our clients now and next so we can foresee obstacles and opportunities in their space and smooth the way. We ensure they are equipped with winning legal strategies as they navigate the times we live in. Learn more at www.nixonpeabody.com.

About Disability Rights Center-New Hampshire

Disability Rights Center-NH is New Hampshire’s designated Protection and Advocacy system and is dedicated to eliminating barriers existing in New Hampshire to the full and equal enjoyment of civil and other legal rights by people with disabilities. More information about DRC-NH can be found at www.drcnh.org.

About New Hampshire Legal Assistance

NHLA’s mission is to fulfill America’s promise of equal justice by providing civil legal services to New Hampshire’s poor, including education and empowerment, advice, representation, and advocacy for systemic change. More information about NHLA can be found at www.nhla.org.