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CONTACT:

AARP External Relations: Media@aarp.org, 202-434-2560

Nixon Peabody: Nicholas Braude, nbraude@nixonpeabody.com, (617) 838-0727

Federal judge allows lawsuit seeking protection for New Hampshire residents facing dangerous institutional placements in nursing facilities to proceed

CONCORD, N.H.— The U.S. District Court for the District of New Hampshire ruled that a class of New Hampshire residents may proceed with a lawsuit over their right to live independently instead of being placed in institutional care.

New Hampshire’s Choices for Independence (CFI) program is supposed to help certain older adults and people with disabilities live independently in the community. Instead, the residents in the lawsuit allege the state’s administration of the CFI program does precisely the opposite—it places them at risk of the unnecessary institutionalization that the program exists to prevent.

The court rejected the state’s attempt to dismiss the case, allowing the residents to pursue their claims under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Medicaid Act, and due process provisions of the U.S. Constitution.

New Hampshire residents who depend on the state to provide them with Medicaid-funded long-term support and services are eligible to receive this care in their own homes, avoiding the need for costly, restrictive, and potentially dangerous nursing facility placements. CFI services provide a generally less costly means of supporting older adults and people with disabilities in integrated settings. The residents allege that the state has been systematically depriving CFI participants of the home and community-based care to which they are entitled, placing them at risk of unnecessary institutionalization. The COVID-19 crisis has heightened the importance of preventing such placements.

Three CFI beneficiaries represented by Nixon Peabody, New Hampshire Legal Assistance (NHLA), the Disability Rights Center – New Hampshire (DRC-NH), and AARP Foundation filed the lawsuit in January 2021. The complaint names the New Hampshire Department of Health and Human Services and its commissioner, Lori Shibinette, as defendants.

“On behalf of residents who rely on these CFI services, we are extremely happy with the judge’s ruling,” said Nixon Peabody attorney Kierstan Schultz. “The decision brings us one step closer to holding the state accountable for providing fundamental support to CFI-eligible individuals, their

families, and their caregivers.” The Nixon Peabody team working on the case also includes partners Daniel Deane and Mark Knights, and paralegal Sharon Willier.

“Justice demands systemic change that enables older adults and people with disabilities to fulfill their right to live their lives as fully integrated members of their communities,” said William Alvarado Rivera, senior vice president for litigation at AARP Foundation. “This ruling enables us to continue to fight for that change in court.” The AARP Foundation team working on this case includes Geron Gadd, Susan Ann Silverstein, Kelly Bagby, and Joyce Wolfgang.

Cheryl Steinberg, Director of NHLA’s Justice in Aging Project, said: “By allowing this case to move forward, this decision will enable us to continue our fight to ensure that CFI participants receive the critical services they need to remain safe and healthy in their homes.” The NHLA team working on this case also includes Kay Drought.

“As the court recognized in its decision, the state bears the ultimate responsibility for the administration of the CFI waiver program,” said DRC-NH’s Litigation Director, Pamela Phelan. “So many New Hampshire residents who rely on the CFI waiver program face unjustified hardship and risk. This decision allows us to continue our work to secure much-needed improvements to the program.” Pamela Phelan is handling this matter for DRC-NH.

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 court’s [decision here](#).

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AARP Foundation

AARP Foundation works to end senior poverty by helping vulnerable people over 50 build economic opportunity. Our approach emphasizes equitable outcomes for populations that have faced systemic discrimination. As AARP’s charitable affiliate, we serve AARP members and nonmembers alike. Through vigorous legal advocacy and evidence-based solutions, and by building supportive community connections, we foster resilience, advance equity and restore hope. To learn more, visit aarpfoundation.org or follow [@AARPFoundation](https://twitter.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 <https://www.nixonpeabody.com>.

About Disability Rights Center-New Hampshire

DRC-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.