

Inside Report for May 13, 2010

State treatment of disabled, old being watched

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At the end of 2009, Louisiana got out from under federal court scrutiny in a case involving the state's failure to provide home- and community-based services for the elderly and developmentally disabled.

That lawsuit, known as the Barthelemy case, alleged the state violated the constitutional rights of the elderly and disabled by not allowing them to live in the least restrictive environment possible.

Too many people were ending up in nursing homes, developmental centers and other institutions. With some community services they could stay at home, the lawsuit alleged.

Louisiana entered into a settlement agreement in 2001 agreeing to expand home and community-based services that advocates for years had unsuccessfully lobbied in the State Capitol hallways to get.

The state began investing more health-care dollars into the programs, which advocates said not only was the right thing to do for people but also was less costly than institutional care.

Nearly 14,000 people now are getting help.

Costs are skyrocketing in violation of federal rules under which the programs were approved. The cost of community support is supposed to be less than that spent on institutional care.

There's also a long waiting list of people seeking services that won't be erased anytime soon. That waiting list remains in the thousands.

Meanwhile, Louisiana remains out of sync with the rest of the nation in its balance of funds invested in institutional care versus home and community services for its elderly, disabled and developmentally disabled.

The Public Affairs Research Council of Louisiana recently reported the state has increased the share of its long-term care budget that supports home- and community-based services from 1.4 percent in 2002 to 29 percent by 2010.

The national average is 40 percent.

PAR said if Gov. Bobby Jindal's proposed \$24.2 billion budget is approved, spending on the "high demand" community programs would dip to 24 percent.

Today, the Jindal administration is grappling with the situation amid a budget crisis.

To combat escalating community program costs, state health officials are implementing new assessment tools that will determine the level of care a person needs.

State health chief Alan Levine said the aim is to get people the support they need — not what they might think they need.

That can help two ways: by bringing individual care costs down to federally acceptable levels and by allowing some savings to help people on the waiting list.

A number of advocates for the developmentally disabled joined Levine recently to show their support for the administration's plan to use \$1.8 million in savings to help another 150 people who qualify for the New Opportunities Waiver program.

Many of those personally affected by the new assessments are crying foul, alleging it is fueled by money problems, with the concerns of the elderly and developmentally disabled taking a back seat.

The assessment tool already has been challenged both in court by one developmentally disabled man and in hundreds of appeals to the health agency, most of which have been unsuccessful.

David Ferleger, the Pennsylvania attorney who filed the initial lawsuit, said he has another in the works.

The Advocacy Center, whose attorneys filed the Barthelemy lawsuit, is watching the situation closely.

"If it's sending people into institutions, that violates the rights people have to choose where they are going to get their services," Advocacy Center lawyer Nell Hahn said.

The challenge for the Jindal administration is a big one in a sensitive area that is loaded with land mines.