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ADVOCATES FILE SUIT TO STOP ARBITRARY TERMINATIONS OF HOME HEALTH SERVICES

Charge that Certified Home Health Agencies are reducing and terminating care to disabled and elderly clients, putting them at risk of unnecessary institutionalization

(New York, NY – April 29, 2011.) --- The 2011-2012 New York State Budget Bill, effective April 1, 2011, changed the way payment to providers for Medicaid-funded home health care is calculated. Exactly how this change will affect the Certified Home Health Agencies (“CHHAs”) that provide home health services is not known, but the CHHAs are running scared. They are acting out their fear by arbitrarily cutting care left and right, without making mandated determinations about whether the care is medically necessary. As a result, CHHAs are illegally reducing and terminating care without adequate notice to recipients, leaving poor and disabled people without life-sustaining benefits and in imminent danger of being sent to nursing homes.

Citing multiple examples of disabled and elderly residents suddenly left without home care or with dangerously reduced amounts of home care, on April 20, 2011, the New York Legal Assistance Group (“NYLAG”) filed *Johnson, et al. v Shah, et al.*, 11-CV-1956 (KAM)(SMG) in the Eastern District of New York against the New York State Department of Health, the New York State Office of Temporary and Disability Assistance, the New York City Human Resources Administration, and Personal-Touch Home Care, Inc. On April 27, 2011, NYLAG filed an Amended Complaint adding eight additional Plaintiffs and two additional Defendants, Americare Certified Special Services, Inc., and Empire State Home Care Services, Inc.

CHHAs are reducing or terminating care even though their patients’ need for services has not decreased, and they are doing so without providing the notices or opportunity for Fair Hearing or Aid Continuing benefits required by federal law. The case alleges that the practices of the CHHAs violate the Medicaid Act and the Due Process Clause of the 14th Amendment to the United States Constitution. Plaintiffs further allege that these illegal reductions and terminations violate the Americans with Disabilities Act because they will force CHHA patients into nursing homes, even though these individuals could live safely in the community with the provision of appropriate care. The Complaint also alleges that the government Defendants are failing to prevent the illegal terminations, to ensure the provision of adequate care in the community, and to provide basic due process rights for Plaintiffs.

April 29, 2011

Press Release re: *Johnson, et al. v Shah, et al.*, 11-CV-1956 (KAM)(SMG)

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“Providers of Medicaid-funded CHHA services are putting their own fears about payment ahead of their legal obligations to their clients. CHHAs cannot be allowed to ignore the constitutional and statutory rights of the disabled and elderly in a scramble to protect themselves.” said Jane Greengold Stevens, NYLAG’s Director of Litigation.

Among the nine individual Named Plaintiffs are John Delmar, Olga Skibina, and Josef Itamari:

John Delmar is 87 years-old and suffers from advanced dementia, congestive heart failure, unsteady gait, incontinence and other ailments. He uses adult diapers that must be changed frequently at night, and he is awake for much of the night. For the last year and half, he has received CHHA services 24 hours per day, provided in two 12-hour shifts, so that there would be an aide awake to care for him in the night. In April, his CHHA, Personal-Touch, without giving him any notice, reduced his care to 12 hours per day, despite the fact that his condition had not improved. His daughter has been trying to care for him at night, but she has multiple medical problems of her own and cannot adequately assist him; he recently fell and she was unable to help him get up.

Olga Skibina is a 24 year-old woman who suffered multiple and near-fatal head injuries two years ago when she was hit by a car while walking. She spent many months in hospitals and rehabilitation centers, but remained in a near-vegetative state. In October, 2010, Ms. Skibina returned home with 24 hour care, provided in two 12-hour shifts. Since then, with the help of her family and her aides, she has made significant progress; she can now speak, she understands when spoken to, and she is beginning to gain some ability to move her limbs at will. In early April, her CHHA, Personal-Touch, informed her mother that Olga’s care would be reduced to 12 hours per day. The care has not yet been reduced, but Olga’s family, unable to provide nighttime care, is living in fear that it will be reduced abruptly any day.

Josef Itamari is a 90 year-old Holocaust survivor who lives alone in Brooklyn. He suffers from numerous physical ailments related to his advanced age including muscle weakness, shortness of breath, difficulty walking, and getting up and down from a chair or bed. For the last two years he has received 12 hours of CHHA care, seven days per week, from Americare. Recently, his care was terminated with no notice, despite the fact that his medical condition has not changed. He is now struggling to care for himself with great difficulty, and with the help of friends and family who are unable to provide the care he needs.