



## Summary of 2020 Change to Prioritization and Notice of Wait List for Individuals Applying for Florida's Long-Term Care Waiver

July 13, 2020

### Background:

Prior to 2020, all individuals who completed the screening process were entitled to written notice from the Department of Elder Affairs (DOEA) informing the individual of their waitlist placement. The notice was also required by rule<sup>1</sup> to include all of the following in addition to the priority rank:

- Contact information for the Aging & Disability Resource Centers (ADRC);
- Instructions for requesting an administrative fair hearing in accordance with Title 42, Code of Federal Regulations (CFR), Section 431, Subpart E<sup>2</sup>;
- Instructions for requesting a copy of the completed screening tool, which includes the priority score; and
- Instructions for requesting a rescreening. The individual, or their authorized representative, may request a rescreening due to a significant change in condition.

### Status:

In 2020, the Florida Legislature amended section [409.979 of the Florida Statutes](#) in an effort to avoid placing individuals with a “low priority score” on the waitlist. The amendment language stated that the DOEA mandated notice be sent upon completion of screening or rescreening, “**unless the individual has a low priority score.**” (emphasis added.)

The Legislature specified that individuals with a “low score” would, instead, be informed by Aging resource personnel of community resources available to assist them and that they may request a new assessment at any time if they experience a change in circumstances.<sup>3</sup>

### Unanswered Questions:

- The amended statute does not define “low priority score”.



- It is not clear what written notice is provided to individuals with a low priority score, or if that notice will include the right to appeal.
- The administrative rule has not yet been amended to reflect the statutory changes as of July 13, 2020.

**Suggested Next Steps for Individuals Who Do NOT Get a Notice After Screening:**

Contact the [Florida Health Justice Stories Project](#), local Aging Resource and Development Center ([ADRC](#)), or [local legal services program](#).

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<sup>1</sup> Fla. Admin. Code Rule 59G-4.193(3)(d).

<sup>2</sup> Fla. Admin. Code Rule 59G-4.193(3)(d)3. Pursuant to the administrative rule, instructions for requesting a hearing should conform with the Federal Medicaid regulation at 42 CFR 431.200 Subpart E governing fair hearings for applicants and recipients.

Prior to the date of this summary publication, July 13, 2020, advocates reported to the authors of the [Advocate's Guide to the Florida Long-Term Care Medicaid Waiver](#), that efforts to request a hearing, whether to AHCA (hearings or appeal), Department of Children and Families, or Department of Elder Affairs, have been unsuccessful. The authors have on file a Motion to Dismiss a fair hearing filed on behalf of an applicant for the LTC Waiver challenging his priority score ranking. The hearing was filed against the Medicaid Agency and the Department of Elder Affairs (DOEA). The Motion to Dismiss, filed by DOEA, argued that 42 CFR 431.200 does not apply with regard to challenge of a priority score. (Motion and other materials in this case are on file with Florida Health Justice Project).

<sup>3</sup> Ch. 2020-46, §1, Laws of Fla. (amending Fla. Stat. § 409.979 (2019)).