

*Indiana Home Care Task Force*  
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**Press Release** for April 6, 2011

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## **FSSA's Misrepresentations Regarding the CHOICE Home Care Program are Placing Senior Citizens and Persons with Disabilities in Jeopardy**

*--- Legislative Leaders Should STOP Using FSSA's Bad Data Now ---*

(State House, Indianapolis) On April 6, 2011, leaders representing United Senior Action, Indiana Alliance for Retired Americans, Hoosiers First, and other member organizations of the Indiana Home Care Task Force called on the Indiana General Assembly to stop basing budget and policy decisions on data presented by the Indiana Family and Social Services Administration (FSSA). The civic leaders believe the data presented by FSSA has been grossly misrepresented by the agency. In their view, the continued use of FSSA's "bad" data is causing legislators to make decisions, such as cuts in home care services that will place senior citizens and persons with disabilities in severe jeopardy according to the leaders.

*The leaders recommended a straight forward solution to the problems being created by FSSA: put in the 2011 state budget act the same language and funding levels regarding the CHOICE program that were in the 2009 budget law passed by the General Assembly. Those details appear at the end of this press release as a Joint Statement Regarding CHOICE from the Indiana Home Care Task Force.*

The leaders who spoke were **Elmer Blankenship**, President of the Indiana Alliance for Retired Americans; **Denny Lanane**, President of United Senior Action; and **John Cardwell**, President of Hoosiers First and chair of the Task Force.

**Elmer Blankenship** said: "Since the start of the 2011 General Assembly, the Indiana Family and Social Services Administration (FSSA) has presented testimony to the legislature that purposely uses data and statements that misrepresent the state's CHOICE In-Home Services and Medicaid aged and disabled waiver programs. As a result, the Indiana House of Representatives has passed in HB 1001, the state budget bill, provisions that will cut funding for the CHOICE program by nearly 60 percent in the first year of the new biennium that begins July 1, 2011, and by nearly 55 percent for the second year of the biennium that begins July 1, 2012."

Mr. Blankenship continued: "These cuts will immediately cause three bad outcomes for the state's most vulnerable citizens:

"One, place the lives of thousands of Hoosiers in jeopardy by forcing senior citizens and persons with disabilities out of their own homes into nursing homes.

“Two, many of the senior citizens and persons with disabilities that manage to stay at home will not receive enough care in order to live in a safe and humane manner.

“Three, these cuts will make it impossible for thousands of other Hoosiers to get home care services that are currently on waiting lists. Over 5,800 people are on official waiting lists for CHOICE services.”

Mr. Blankenship concluded: “Research by area agencies on aging in our state has long confirmed that the most frequent means for people to get off the official waiting lists for home care services is to die or be forced into a nursing home. It is clear that Indiana’s failure to provide home care for financially needy persons who need that care, is resulting in their premature death or forced incarceration in institutions, while sticking taxpayers with the bill.”

**John Cardwell** stated: “FSSA’s harmful misrepresentation must stop now. FSSA must stop telling legislators the Medicaid aged and disabled home care waiver costs only \$3,366 per year per person on average, a number created by the agency using a match rate that is no longer used by the federal government. In fact, that waiver costs over \$36,800 per year according to FSSA’s own data because every individual on the waiver is also legally entitled to Medicaid state plan services. Of the \$36,800 in total Medicaid waiver costs over \$12,000 is in state tax dollars and the rest is in federal tax dollars.

Mr. Cardwell continued: “FSSA must stop telling legislators that CHOICE costs \$7,092 per year per person on average when the agency recently reported to the state’s CHOICE Advisory Board the cost is \$3,994. Depending on the audience, FSSA changes the numbers for the cost of different categories of long term care. The agency needs to tell the General Assembly and the public the truth.

Mr. Cardwell concluded: “FSSA is also arbitrarily holding back 15 percent of the CHOICE program’s current budget, or \$7.3 million in funds for home care services. There is no legal basis for the agency’s action since the General Assembly put in law language that says dollars appropriated for CHOICE can only be used for CHOICE. The agency’s action is clearly intended to give the appearance that citizens no longer need CHOICE services. With nearly 6,000 Hoosiers on waiting lists for CHOICE services the legally groundless withholding of CHOICE funds is putting lives at risk.”

**Denny Lanane** stated: “FSSA must stop telling legislators that CHOICE is for middle class families when CHOICE clients are actually poor. In fact, everyone who is on the Medicaid aged and disabled waiver also qualifies for the CHOICE program. In reality, CHOICE was created to keep any Hoosier who cannot afford needed home care services from being inappropriately forced into a nursing home. The home care needs and impairment level of each CHOICE client is assessed by an area agency on aging case management professional. That assessment must prove each client is at risk of losing his or her independence because of the inability to perform basic activities of daily living, and must also prove the client does not have the means for paying for those services.”

Mr. Lanane added: “When an amendment was offered in the House to HB 1001 to fully fund CHOICE and to maintain the program’s integrity, State Representative Jeff Espich, the Republican chair of the Ways and Means Committee, argued against the amendment. Espich based his arguments on the bad information provided by FSSA. *If FSSA refuses to tell the truth to members of the General Assembly then how can anyone believe what is said by that agency?* Now, as a result of FSSA’s misinformation, the lives of Hoosiers that need home care will be placed in jeopardy if the bad language regarding CHOICE is not removed from HB 1001.”

Mr. Lanane continued: “If lawmakers are told the truth, the member organizations of the Indiana Home Care Task Force believe the Indiana General Assembly will fully fund the CHOICE home care program, and keep its fair and wise eligibility standards in place.”

Mr. Lanane concluded: “The General Assembly is charged by the state constitution to craft and enact a state budget act. That must be done by April 29<sup>th</sup> in order to avoid a special session. That legislation, HB 1001, will affect the lives of Indiana’s 6.3 million citizens. The entirety of that act should be based on the truth.”

In a statement issued by the Indiana Home Care Task Force, a voluntary alliance of over sixty organizations, the following recommendations were made:

**The Joint Statement of the Indiana Home Care Task Force regarding the CHOICE Home Care Program**

**The General Assembly must act now to put language in HB 1001 that truly meets the home care needs of the state’s citizens. That means doing three things:**

- (1) fully funding CHOICE at \$48,765,643 per year,**
- (2) limiting the use of CHOICE dollars for Medicaid match to \$12.9 million or less per year, and**
- (3) keeping the unique CHOICE eligibility standards that have protected tens of thousands of individuals and their families since 1987.**

**These are the things that were done in the 2009 state budget act and they have served senior citizens, persons with disabilities, families and taxpayers very well. These are the things that are needed in the 2011 state budget act in order to protect Indiana’s most vulnerable citizens when the new budget biennium begins on July 1<sup>st</sup>.**

*See the attached fact sheet regarding the CHOICE program.*

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## **2011 FACT SHEET**

March/April

### **Important Facts Regarding the CHOICE Program vs. Medicaid Waivers**

**One**, the real cost of CHOICE was mostly recently reported to be \$3,994 per person per year by the Indiana Division of Aging.

**Two**, the real taxpayer cost of the Medicaid aged and disabled waiver, according to the information that is available from FSSA (although many people feel this is an inflated number), is reported to be over \$36,800 per person per year because the waiver must include Medicaid state plan costs. Of that total, the state’s share of the A&D waiver is over \$12,000 but the entire amount is a taxpayer expense.

**Three**, HB 1001, as passed by the Indiana House of Representatives, will reduce CHOICE funding in year one of the new two year budget that begins on July 1, 2011 to just \$18,253,605, and in year two to just \$22,965,643 because of the doubling of the CHOICE dollars from \$12,900,000 to \$25,800,000 that will be taken away for Medicaid match.

**Four**, CHOICE is presently funded at \$48,765,643 per year. HB 1001, as passed by the House of Representatives, will cut away most of the CHOICE budget (see item three above) and leave most CHOICE clients without services or radically reduced services. As we know, if CHOICE service hours are substantially reduced the result will be disastrous for many people we know and love.

**Five**, both CHOICE and Medicaid waiver clients are poor. Most CHOICE clients fall beneath 150 percent of poverty, which is very poor. The CHOICE clients that are above 150 percent of poverty must pay cost share. For example a CHOICE client with an income of 250 percent of poverty pays 50 percent of the cost of CHOICE. A client at 350 percent of poverty pays 100 percent of the cost of CHOICE. In other words, if a middle class person is on the CHOICE program that person pays for the services.

**Six**, both CHOICE and A&D waiver clients have significant disabilities that place them at risk. CHOICE client eligibility begins with the inability to perform two **or more** activities of daily living, or ADLs. A&D waiver client eligibility begins with the inability to perform three or more ADLs. CHOICE only clients do NOT use Medicaid state plan services, while A&D waiver clients DO use Medicaid state plan services, which is why the A&D waiver is so expensive compared to CHOICE.. However, all A&D waiver clients are eligible for CHOICE, and when they cannot access the waiver then CHOICE should be available to cover their home care needs. By law, CHOICE clients must also be judged to be at risk of losing their independence, in other words, at risk of institutional placement.

**Seven**, without CHOICE services people will be driven into nursing homes (as high as 75% according to past estimates by Indiana University) and because of their low incomes they become Medicaid clients very shortly after nursing home placement. This means the human and the taxpayer costs of NOT funding the CHOICE program are very high.

**Eight**, according to the Division of Aging, as of March 17, 2011 there were 5,876 people on the CHOICE wait list, 5,825 people on the A&D waiver wait list, and 182 people on the traumatic brain injury wait list.

**Nine**, according to private industry sources, private pay nursing home care in Indiana costs on average \$75,000 per person per year. According to the Division of Aging, as of November 2010 Medicaid funded nursing home care cost \$40,860 per person per year. However, in the most recent Division of Aging annual report prior to November 2010, the state said Medicaid funded nursing home care cost \$54,910.60 per person per year. The \$40,860 number seems to be inconsistent with known cost trends for nursing home care.

**Ten**, FSSA and the Division of Aging have recently taken actions to harm the CHOICE program, citizens that use CHOICE services, citizens that use the Medicaid aged and disabled waiver, and the citizens on waiting lists for home and community based services. Note the following harmful actions:

- **The FREEZE on Medicaid Waiver Slots.** Since the first week of December 2009 there has been a freeze on new Medicaid aged and disabled waiver service slots. After considerable public and professional protests, FSSA released 250 slots for 250 specified individuals on the A&D waiver wait list. However, when many of those persons had died or had been forced into nursing homes the state refused to let the area agencies on aging use the freed up slots for other persons. Under pressure, in late December 2010 another 150 slots were released and on March 1, 2011 an additional 150 slots were released. However, because people have been on the waiting lists for so long many people had died or had been forced into nursing homes before a slot became available. Consequently, *it is not clear how many of the 550 service slots are actually being used.*
- **FSSA's Arbitrary Holding of CHOICE Service Dollars.** Since July 1, 2010, FSSA has held back 15 percent of the SFY 2011 CHOICE budget even though state law says CHOICE appropriated dollars can only be used for the purposes of the CHOICE program. However, the money being arbitrarily held back from CHOICE has all been taken from dollars designated for CHOICE services. Consequently, the cut in funding for services is about 23 percent. *The Indiana Home Care Task Force believes FSSA has already told policy makers that the utilization of the CHOICE program has dramatically dropped in 2011. Has FSSA told policy makers the drop is due to the agency's arbitrary holding of the service dollars?*
- **DOA's Letter to Drive People off the Waiting Lists.** On March 26, or before, the Division of Aging began mailing letters and a reply form to every person on waiting lists for home and community based services. The letter tells each individual the following: "Failure to return the completed form by April 30, 2011, will lead the DA (Div. of Aging) to remove your name from the wait list." This letter could result in thousands of people being dropped from the waiting lists without their knowledge and without their consent. Many seniors and persons with disabilities have relatives and legal guardians that handle their affairs. These relatives, guardians and caregivers many never see the letters prior to the deadline. Many seniors and persons with disabilities have vision, physical, medical and cognitive disorders that will prevent them from reading, seeing, processing or understanding the letters. Others will have changed their addresses. Others will be temporarily in a hospital, or staying with relatives, and some will be temporary nursing home residents. The Generations Project, which does research and policy analysis for the Indiana Home Care Task Force, believes thousands of people could be dropped

from the waiting lists through no fault of their own. If a person is dropped from the waiting list that person goes to the back of the line. *This means the well being of thousands of people could be placed in jeopardy. This also means FSSA may tell the General Assembly the need for CHOICE, Medicaid aged and disabled waiver, and traumatic brain injury waiver services has dropped when that is not true.*

- **Claims Medicaid nursing home utilization is not increasing.** FSSA and DOA have engaged in a number of activities to make the utilization of home and community based services (HCBS) difficult in Indiana. Many of those activities are identified in this document. Nonetheless, these agencies continue to claim there is little or no increase in the Medicaid daily census in nursing homes. Other states are aggressively using HCBS, similar to Indiana's CHOICE and A&D waiver programs, to lower nursing home utilization. The state of Washington, with a total population of 6.6 million people, uses a wide array of HCBS to lower Medicaid nursing home utilization. As a result, the daily Medicaid nursing home census in that state is only 10,500 and declining. In Indiana, with a population of 6.3 million people, the daily Medicaid nursing home census is 28,500. Additionally, the average cost of private pay nursing home care in Indiana is \$75,000 per person per year. FSSA is presently claiming the cost of Medicaid funded nursing home care in Indiana is only \$40,800 per person per year. That seems unlikely. *Given Indiana's limited commitment to HCBS it is highly probable the Medicaid nursing home daily census is still rising and the cost of Medicaid is rising even faster.*