



The Dignity Digest

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November 14, 2022

The Dignity Digest is information compiled by Dignity Alliance Massachusetts concerning long-term services, support, living options, and care issued each Monday.

*May require registration before accessing article.

Spotlight

Kaiser Family Foundation

November 14, 2022

KFF's Kaiser Health News Investigates Private Equity's Stealth Takeover of Health Care in the United States

A [new investigation by KFF's Kaiser Health News](#) (KHN) lays bare the sizeable efforts by private equity investors to take over large and lucrative parts of the U.S health care system in recent years. KHN found that private equity firms have invested nearly \$1 trillion through thousands of deals to acquire hospitals and specialized medical practices during the last decade alone. The deals, many of them unnoticed by federal regulators, typically result in a ratcheting up of providers' pursuit of profits – and higher prices for patients, lawsuits, and complaints about quality of care.

The investments range widely and include the acquisitions of physician practices, dental clinic management companies, companies that treat autism, drug addiction and other behavioral health care, and ancillary services such as diagnostic and urine testing labs and software for medical billing. Through other deals, companies tied to private equity have come to dominate specialized medical services such as dermatology, gastroenterology, and anesthesiology in certain markets around the country. All of it has come on top of better-publicized takeovers of hospital emergency room staffing firms as well as the buying up of entire rural hospital systems.

Federal regulators have been almost blind to the incursion. KHN found that more than 90 percent of private equity takeovers or investments fell below the \$100 million threshold that triggers an antitrust review by the Federal Trade Commission and the Justice Department.

Whistleblowers and injured patients, however, have turned to the courts to press allegations of misconduct or other improper business dealings. KHN found that companies owned or managed by private equity have agreed to pay fines of more than \$500 million since 2014 to settle at least 34 lawsuits filed under the False Claims Act. Most of the time, the private equity owners have avoided liability.

	<p>The latest story, published today in USA Today, is part of a broader ongoing series, “Patients for Profit: How Private Equity Hijacked Health Care” in which KHN has examined a wide range of private equity’s forays into the health care system. They include the marketing of America’s top-selling abortion pill, the establishment of “obstetric emergency departments” at some hospitals, investments in the booming hospice care industry and even takeovers of funeral homes and cemeteries. The series includes a video primer, “How Private Equity Is Investing in Health Care”.</p> <p><i>Sick Profit: Investigating Private Equity’s Stealthy Takeover of Health Care Across Cities and Specialties: new investigation by KFF’s Kaiser Health News</i></p>
<p>Quotes of the Week</p>	<p><i>“Everyday ageism refers to those sorts of minor comments, interactions, exposures that suggest that aging is undesirable. It's things like, you know, all the birthday cards making jokes about wrinkles and walkers. It's interactions where someone assumes that an older adult can't use their phone or other forms of technology. And it's also when older adults tend to believe some of these assumptions and prejudices about older adults themselves.”</i></p> <p>Julie Ober Allen, University of Oklahoma professor, <i>Fighting back against ageism</i>, CBS Sunday Morning, November 13, 2022, https://tinyurl.com/FightingBackAgainstAgeism</p> <p><i>As private equity extends its reach into health care, evidence is mounting that the penetration has led to higher prices and diminished quality of care, a KHN investigation has found. KHN found that companies owned or managed by private equity firms have agreed to pay fines of more than \$500 million since 2014 to settle at least 34 lawsuits filed under the False Claims Act, a federal law that punishes false billing submissions to the federal government with fines. Most of the time, the private equity owners have avoided liability.</i></p> <p><i>KFF’s Kaiser Health News Investigates Private Equity’s Stealth Takeover of Health Care in the United States, Kaiser Family Foundation</i>, November 14, 2022, new investigation by KFF’s Kaiser Health News</p> <p><i>“The main way of making the bottom line look good is decreasing visits.”</i></p>

Dr. [Joan Teno](#), an adjunct professor at Brown University School of Public Health, *Hospices Have Become Big Business for Private Equity Firms, Raising Concerns About End-of-Life Care*, **Kaiser Health News**, July 19, 2022, <https://tinyurl.com/HospicesBigBusiness>

“It is a little scary. There are people that have no business being in health care”

[Steve Larkin, CEO of Charter Healthcare](#), a hospice chain owned by the private equity firm Pharos Capital Group, *Hospices Have Become Big Business for Private Equity Firms, Raising Concerns About End-of-Life Care*, **Kaiser Health News**, July 19, 2022, <https://tinyurl.com/HospicesBigBusiness>

“You'll find that individuals are often coming up short by about \$1,000 a month in order to meet their true needs. As a result, many older people must make hard choices about whether to pay for daily needs such as food and medication or rent. Others simply can't stretch their money and must leave their homes.”

Ramsey Alwin, president and CEO of the National Council on Aging, *More older Americans become homeless as inflation rises and housing costs spike*, **WGBH**, November 10, 2022, <https://tinyurl.com/HomelessAsInflationRises>

“Folks who live in manufactured housing are especially vulnerable to displacement via eviction, via unreasonable imposition of new rules, or new fees or rent hikes.”

Zachary Lamb, assistant professor of city and regional planning at UC Berkeley, **WGBH**, October 20, 2022, *Fighting to keep mobile homes affordable*, <https://tinyurl.com/KeepMobileHomeAffordable>

“Neither the federal government nor the states can possibly investigate and remedy every violation of these rights that are given to people. Federal law speaks clearly that people have a right to go to court. Why shouldn't we just respect our precedent?”

Justice Sonia Sotomayor, *Supreme Court skeptical of rejecting civil rights precedent*, **AP News**, November 8, 2022, <https://tinyurl.com/SupremeCourtSkeptical>

Accommodation is a nondisabled world that taps its toes and drums its fingers while it waits for the disabled to

	<p><i>Speak, or walk, or behave like everyone else. But that is not a world my daughter wants any part of, and frankly, neither do I.</i></p> <p>Aimee Seiff Christian, 'You don't have to be like everyone else,' I tell my daughter. I hope she can believe me, WBUR Cognoscenti, November 8, 2022, https://tinyurl.com/NotLikeEveryoneElse</p> <p><i>"I think this is encouraging. We just need more people to get the darn booster."</i></p> <p>Eric Topol, director of the Scripps Research Translational Institute, commenting on promising results from Covid related studies, <i>Pfizer, BioNTech report new Covid booster is more protective against recent Omicron variants than original vaccine</i>, STAT News, November 6, 2022, https://tinyurl.com/BoosterMoreProtective</p>
<p>Olmstead Class Action Suit: Request for Input</p>	<p>1. Center for Public Representation</p> <p>Although the Commonwealth claims to provide community options for people with disabilities in nursing facilities, or those at serious risk of being admitted to nursing facilities, there is not reliable data on how many nursing facility residents could be transitioned to appropriate community living arrangements. If you know of any legislative or executive agency studies, analysis, reports, findings, recommendations, or Olmstead planning documents, including any data or data sources, that address the unnecessary institutionalization of people with disabilities in nursing facilities, please contact Jeni Kaplan (jkaplan@cpr-ma.org) or Steven Schwartz (sschwartz@cpr-ma.org). Information and data since 2010 are most useful.</p>
<p>Inspiration</p>	<p>2. Sunday Today November 14, 2022 <i>95-year-old nominated for 'Best New Artist' at Latin Grammys</i></p> <p>The best new artist of 2022 just might be a Cuban American grandmother living out her dream of being a professional musician at the age of 95. Angela Alvarez has loved music her whole life, learning to play guitar and piano as a young girl in Cuba and writing songs from the age of 14. But she never pursued her dream of singing and songwriting professionally, she told TODAY in June 2021, because her traditional father forbade it. Angela's story began in Cuba, where she learned to play guitar and started writing songs as a young teen. She eventually married and started a family. After the Cuban Revolution, she made the painful decision in 1962 to send her four kids to the United States as part of the mass exodus of 14,000 unaccompanied Cuban children fleeing communist oppression. . .</p> <p>[I]n September, she was nominated for a Latin Grammy — best new artist at the age of 95. She's scheduled to perform at the ceremony in Las Vegas on Nov. 17 with Carlos — finally making her dreams come true that her father couldn't have imagined all those years ago.</p> <p>https://tinyurl.com/AngelaAlvarezSundayToday</p>
<p>Dignity Votes 2022</p>	<p>3. Healey / Driscoll Transition Team https://healeydriscolltransition.com</p>

	<ul style="list-style-type: none"> • Get to know Maura & Kim • Transition Committees • Share Your Ideas • Join the Team
Reports	<p>4. U. S. Department of State August 2022 <i>Visibility on Widowhood: Analysis of the Reporting on Widow’s Rights by U.S.</i> Executive Summary: From 2016 to 2021, widows were mentioned in 55 of the US Department of State Country Reports on Human Rights, which represents 14.6 % of all reports. While 83% of these mentions directly addressed the rights of widows and described specific violations they faced, 17% were mentioned in an incidental context. This suggests that actual human rights violations perpetrated against widows represented only in 12% of all published State Department reports over the past 6 years. The Global Fund for Widows believes that human rights violations against widows occurs with a systemic ubiquity and impunity given evidence from its work with widows in Africa, Middle East, and Asia, suggesting that such violations remain largely unreported in Country Reports on Human Rights. This report analyzes the frequency and nature in which violations against widows have been reflected in the US Department of State Country Reports. Further, this report offers recommendations to the US Department of State on possible implementation strategies that can be used to increase the visibility and awareness of such violations through increased reporting requirements.</p> <p>Recommendations:</p> <p>Require all country human rights reports to include a section on widowhood within its greater gender and women’s rights frameworks.</p> <p>Require reports listing repeating violations to provide analysis on why progress is not being made on these issues, and also note where state or civil society action has taken place, if relevant. Anything that can be done to turn stagnant reporting into gender policy priorities for bilateral relations should be implemented.</p> <p>Enact internal gender policy priorities and measures that refer to and utilize the commitments made under United Nations General Assembly Resolution 76/252, “Addressing the Situation of Widows,” across diplomatic relations to encourage the adoption of all its provisions, including adding widows to their national action plans.</p> <p>https://tinyurl.com/VisibilotyOnWidowhood</p>
Events	<p>5. Special Ceremony Celebrating the Passage of Disability History Commission Bill Tuesday, November 22, 2022, 2:00 to 3:00 p.m. MetFern Cemetery, Waltham, MA Massachusetts has passed groundbreaking human rights legislation to create a disability-led commission to investigate the history of state institutions, including locating and identifying individuals buried in nameless and unmarked graves. Please join advocates on November 22 at 2 pm for remarks honoring former institutional residents and the passage of the Special Commission on State Institutions by Secretary of Health and Human Services Marylou Sudders, Assistant Senate Majority Leader Mike Barrett, and Representative Sean Garballey at MetFern Cemetery in Waltham, the final resting place for 296 people who once lived at the Metropolitan State Hospital and Fernald State School.</p>

	<p><i>Rain Location is Gann Academy, 333 Forest St., Waltham, MA 02452</i> Information: https://tinyurl.com/MetFernInfo Registration: https://tinyurl.com/MEtFermCemetaryEvent</p> <p>6. Carroll Center for the Blind Tuesday, November 22, 2022, 9:00 a.m.; to 5:00 p.m. <i>Live and Virtual Technology Fair</i> 770 Centre Street, Newton, MA A technology fair attendee tests out a portable video magnifier with a sales representative. Attend exciting and informative presentations, visit with assistive technology exhibitors in breakout rooms, and find the products and services you need to live as independently as possible. Discover innovative technology that can make an immediate impact on your life at the technology fair! Don't miss this opportunity to explore the latest products for individuals who are visually impaired. The Technology Fair is free and open to consumers, families, friends, and professionals. Register for Carroll Center for the Blind's Live and Virtual Technology Fair.</p>
<p>Webinars and Online Sessions</p>	<p>7. Elder Justice Coordinating Council Tuesday, November 15, 2022, 10:00 a.m. to 12:00 p.m. <i>EJCC Virtual Meeting</i> The Elder Justice Coordinating Council's next bi-annual meeting will be held on Tuesday, November 15. The meeting will feature two panels that will explore the reauthorization of the Elder Justice Act and how legislation in response to the COVID-19 pandemic has strengthened adult protective services programs around the country. Speakers include:</p> <ul style="list-style-type: none"> • Andrea Palm, Deputy Secretary, Department of Health and Human Services • Vanita Gupta, Associate Attorney General, U.S. Department of Justice • Alison Barkoff, Acting Assistant Secretary for Aging and Administrator, ACL • Sen. Ron Wyden • Sen. Chuck Grassley (invited) • Panel: Impact of CRRSA and ARPA funds on APS Program Investment <ul style="list-style-type: none"> ○ Kezeli Wold, Texas Department of Family and Protective Services ○ Tim Jackson, Missouri Department of Health and Senior Services, Division of Senior & Disability Services ○ Bill Benson, National Adult Protective Services Association • Panel: Significance of the Elder Justice Act <ul style="list-style-type: none"> ○ Dr. Heather Mutchie, Purdue University ○ Bob Blancato, Elder Justice Coalition <p>https://tinyurl.com/EJCCVirtualMeetingNov15</p> <p>8. Kaiser Family Foundation Tuesday, November 15, 2022, 12:00 p.m. <i>What's Next for Health Policy After the Election?</i> While full election results remain in flux, last week's midterm elections will bring changes to Congress and state legislatures in 2023. Democrats will retain the Senate majority, but Republicans may gain control of the House, leading to a shift from unified Democratic control of the White House and Congress to divided power. A split in political control of the federal government raises big questions around what can be feasibly accomplished to address health policy issues in the next two years.</p>

	<p>What can we expect for legislating in the next Congress? Are there health policy areas that are ripe for bipartisan solutions to overcome gridlock? What might be targets for oversight from a Republican-led House? What further progress can the Biden Administration make on health care through executive actions?</p> <p>On Tuesday, November 15 at 12p.m. ET, two experts join series moderator Larry Levitt in a 45-minute discussion looking at what's ahead for health policy on the Hill, in the Administration, and in the states after the election.</p> <p>Moderator</p> <ul style="list-style-type: none"> • Larry Levitt, Executive Vice President for Health Policy, KFF <p>Panelists</p> <ul style="list-style-type: none"> • Chris Jennings, Founder & President, Jennings Policy Strategies Inc. • Jennifer Young, Partner, Tarplin, Downs & Young, LLC (TDY) <p>Registration: https://tinyurl.com/HealthWonkShop</p> <p>9. Veterans with Disabilities: An Overview of Veteran Affairs (VA) Resources Supporting Independence and Inclusion</p> <p>Tuesday, November 15, 2022, 2:00 to 3:30 p.m.</p> <p>This presentation provides a general awareness of basic concepts and resources available to Veterans with disabilities that a Veteran, their family members, and service providers need to know. There will be time for participants to ask questions of the speaker following the presentation.</p> <p>Registration: https://tinyurl.com/VeteransNov15</p> <p>10. Carroll Center for the Blind</p> <p>Tuesday, November 22, 2022, 9:00 a.m.; to 5:00 p.m.</p> <p><i>Live and Virtual Technology Fair</i></p> <p>770 Centre Street, Newton, MA</p> <p>A technology fair attendee tests out a portable video magnifier with a sales representative. Attend exciting and informative presentations, visit with assistive technology exhibitors in breakout rooms, and find the products and services you need to live as independently as possible. Discover innovative technology that can make an immediate impact on your life at the technology fair! Don't miss this opportunity to explore the latest products for individuals who are visually impaired. The Technology Fair is free and open to consumers, families, friends, and professionals.</p> <p>Register for Carroll Center for the Blind's Live and Virtual Technology Fair.</p>
Previously posted webinars and online sessions	<p>Previously posted webinars and online sessions can be viewed at:</p> <p>https://dignityalliancema.org/webinars-and-online-sessions/</p>
Housing	<p>11. WGBH</p> <p>November 10, 2022</p> <p><i>More older Americans become homeless as inflation rises and housing costs spike</i></p> <p>Inflation and rising rents are leaving many older Americans on the brink of ruin. The poverty rate for people 65 and older rose from 8.9% in 2020 to 10.3% in 2021, according to Ramsey Alwin, president and CEO of the National Council on Aging.</p> <p>Alwin says people who rely on traditional retirement income, such as Social Security, are having trouble affording the basic necessities. "You'll find that individuals are often coming up short by about \$1,000 a month in order to meet their true needs," she says.</p> <p>As a result, many older people must make hard choices about whether to pay for daily needs such as food and medication or rent. Others simply can't stretch their money and must leave their homes.</p>

	<p>An upcoming 8.7% cost-of-living increase in Social Security benefits will help offset the effects of inflation, which was 8.2% for the 12 months that ended in September. But Alwin believes that won't be enough to stem the tide of seniors who are losing housing because of rising rental prices. https://tinyurl.com/HomelessAsInflationRises</p> <p>12. WGBH October 20, 2022 <i>Fighting to keep mobile homes affordable</i> Mobile homes have become a pawn for investors, threatening their affordability, but in Massachusetts and around the country, residents are fighting back. Mobile homes, also known as manufactured homes, are a critical source of affordable housing for some 35,000 people across Massachusetts and 22 million people nationwide. At a time when the federal government would like to see more people access this kind of housing, critics say an already-limited supply is under threat from investors more interested in turning a profit than housing low-income people. Investment in mobile home parks reached a record \$4.5 billion high last year nationally, according to the commercial real estate firm JLL. Mobile home parks hit a sweet spot for investors because they provide steady rents and have relatively few ongoing expenses. Since there's little to no new supply of mobile home parks, bidding has grown intense in Massachusetts and across the country. Massachusetts' 250 mobile home communities are relatively few compared to other states. Still, as intense competition among investors has driven up sale prices, residents are increasingly getting "priced out," Gosselin said. Professional investors have another leg up on resident groups: easier access to low-interest, government-backed loans to buy mobile parks. Mobile homes are not categorized as real estate like other homes, which makes such homeowners ineligible for affordable housing grants and tax credits. https://tinyurl.com/KeepMobileHomeAffordable</p>
Hospice	<p>13. Kaiser Health News July 19, 2022 <i>Hospices Have Become Big Business for Private Equity Firms, Raising Concerns About End-of-Life Care</i> Hospice care, once provided primarily by nonprofit agencies, has seen a remarkable shift over the past decade, with more than two-thirds of hospices nationwide now operating as for-profit entities. The ability to turn a quick profit in caring for people in their last days of life is attracting a new breed of hospice owners: private equity firms. That rapid growth has many hospice veterans worried that the original hospice vision may be fading, as those capital investment companies' demand for return on investment and the debt load they force hospices to bear are hurting patients and their families. . . According to a 2021 analysis, the number of hospice agencies owned by private equity firms soared from 106 of a total of 3,162 hospices in 2011 to 409 of the 5,615 hospices operating in 2019. Over that time, 72% of hospices acquired by private equity were nonprofits. And those trends have only accelerated into 2022. Hospice is an easy business to start, with most care provided at home and using lower-cost health workers. That allowed the entry of smaller hospices, many launched with the intent of selling within a few years. Private equity firms,</p>

	<p>backed by deep-pocketed investors, could then snatch up handfuls of smaller hospices, cobble together a chain, and profit from economies of scale in administrative and supply costs, before selling to an even larger chain or another private equity firm. . .</p> <p>With the U.S. population rapidly aging, hospice has become a boom industry. Medicare — the federal insurance program for people 65 and older, which pays for the vast majority of end-of-life care — spent \$22.4 billion on hospice in 2020, according to a Medicare Payment Advisory Commission report to Congress. That’s up from \$12.9 billion just a decade earlier. The number of hospices billing Medicare over that time grew from less than 3,500 to more than 5,000, according to the report.</p> <p>But with limited oversight and generous payment, the industry is at high risk for exploitation. Agencies are paid a daily rate for each patient — this year, about \$200 — which encourages for-profit hospices to limit spending to boost their bottom lines. For-profit hospices tend to hire fewer employees than nonprofits and expect them to see more patients.</p> <p>Many hospice nurses and social workers are booked for 30-minute appointment slots throughout the day, unable to spend more time with patients if needed. For-profit hospices hire more licensed practical nurses than registered nurses, who are more skilled, and rely more on nurse’s aides to further cut costs. One study found patients in for-profit hospices see doctors or nurse practitioners one-third as often as those in nonprofit hospices. The U.S. Government Accountability Office found in an analysis of federal data from 2014 to 2017 that patients in for-profit hospices were less likely than patients in nonprofit hospices to have received any hospice visits in the last three days of life. . .</p> <p>A 2019 report by the Milliman consulting firm found that 31% of patients in nonprofits had cancer, while 15% had dementia. At for-profit hospices, 22% of patients had cancer, and 22% had dementia, said the report, funded by the National Partnership of Hospice Innovation, a trade group of nonprofit hospices. Patients in nonprofits had more nursing, social worker, and therapy visits. For-profit hospices, the report found, had longer lengths of stay by patients, discharged more patients before death, and had profit margins nearly seven times higher.</p> <p>Other studies have found that for-profit hospices have higher rates of complaints and deficiencies, provide fewer community benefits, and have higher rates of emergency room and other hospital use.</p> <p>https://tinyurl.com/HospicesBigBusiness</p>
Covid	<p>14. Becker’s Hospital Review November 7, 2022 <i>COVID-19 cases to jump 39% by Nov. 17, Mayo forecasts</i></p> <p>COVID-19 cases are projected to increase by nearly 40 percent over the next two weeks, though it's still unclear whether hospitalizations and deaths may follow suit in November, according to national disease modeling.</p> <p>Three forecasts to know:</p> <p>Cases: Daily COVID-19 cases are projected to increase 39 percent in the next two weeks, according to modeling from Rochester Minn.-based Mayo Clinic. Forecasts suggest daily average cases will jump from 35,638.9 cases on Nov. 3 to 49,564 by Nov. 17.</p> <p>The nation's case rate is also expected to increase from 12.3 cases per 100,000 population to 15.1 over the same period.</p>

	<p>Hospitalizations: Daily COVID-19 hospital admissions are projected to remain stable or have an uncertain trend in the U.S. over the next four weeks, with 1,300 to 7,300 new admissions likely reported on Nov. 25, according to the CDC's ensemble forecast from 14 modeling groups. This figure is down from last week's projection of 1,400 to 7,400 new admissions likely reported on Nov. 18. The nation's seven-day average of new hospital admissions was 3,273 as of Nov. 4, down slightly from 3,350 the previous week, CDC data shows.</p> <p>Deaths: COVID-19 deaths are projected to remain stable or have an uncertain trend over the next month, according to the CDC's ensemble forecast from 13 modeling groups. The forecast projects 1,100 to 4,400 deaths likely reported in the week ending Nov. 26, which translates to a daily total of 157.1 to 628.6. The nation's current seven-day daily death average was 320 as of Nov. 6, down 11 percent in the last two weeks, according to data tracked by <i>The New York Times</i>.</p> <p>Full Story: Becker's Hospital Review</p> <p>15. STAT News November 6, 2022 <i>Pfizer, BioNTech report new Covid booster is more protective against recent Omicron variants than original vaccine</i> The bivalent COVID-19 booster from Pfizer/BioNTech showed fourfold higher protection levels against Omicron subvariants BA.4 and BA.5 in people ages 55 and older than the previous booster, according to data released by the companies. Previous small studies have shown mixed results regarding the booster's effectiveness. Full Story: STAT</p>
Social Isolation / Loneliness	<p>16. Hidden Brain (podcast) November 12, 2022 <i>Relationships 2.0: The Power of Tiny Interactions</i> As you're going about your day, you likely interact with family, friends, and coworkers. These relationships can help you feel cared for and connected. But what if there's a whole category of people in your life whose impact is overlooked? In the second episode of our "Relationships 2.0" series, psychologist Gillian Sandstrom reveals some simple ways to make your life a little more joyful and maybe even a little less lonely. https://tinyurl.com/PowerOfTinyIntreactions</p>
Civil Rights	<p>17. AP News November 8, 2022 <i>Supreme Court skeptical of rejecting civil rights precedent</i> The Supreme Court on Tuesday seemed unlikely to agree to overturn decades of precedent in a case about civil rights lawsuits, a result that would preserve the ability of individuals to use federal law to sue. The justices had been asked to use a case about a nursing home resident who claimed a violation of his rights to more broadly limit the right to sue. The justices were told that result could leave tens of millions of people who have rights under federal programs including Medicare and Medicaid without access to the courts. But members of both the court's six-justice conservative majority and three-justice liberal wing seemed to have little appetite to rule broadly in the case. . . The court was being asked to say that when states agree to accept federal money to provide services — so-called spending clause legislation for programs</p>

like Medicare and Medicaid — they shouldn't face lawsuits from individuals over civil rights violations unless the legislation itself gives states clear notice they're subject to lawsuits.

<https://tinyurl.com/SupremeCourtSkeptical>

18. SCOTUSBlog

November 7, 2022

In family's lawsuit against public nursing home, court revisits private rights of action and the spending clause

Background

The Constitution's spending clause gives Congress the power to collect taxes and spend money for "the general welfare of the United States." Through this power, Congress establishes programs and gives money to state, local, and private entities to manage those programs, with federal law establishing program rules that fund recipients must follow. Medicare and Medicaid represent two such spending clause programs. The Federal Nursing Home Reform Act of 1987 requires nursing facilities in those programs to "protect and promote the rights of each resident" as a condition of receiving funds. Facilities cannot impose physical or chemical restraints as disciplinary or convenience methods not required to treat medical symptoms and must allow a resident to remain at a facility, not transferring or discharging except for specified reasons.

Arguments of HHC

HHC urges the court to overrule precedent, including [Wright v. Roanoke Redevelopment and Housing Authority](#) (1987) and [Wilder v. Virginia Hospital Association](#) (1990), and hold that spending clause enactments are not enforceable through Section 1983. These statutes operate as contracts between the United States and those receiving funds—the United States offers money in exchange for recipients providing services to private individuals, who function as third-party beneficiaries of that contract. HHC argues that courts must read Section 1983 against the background of 1871 common law (when Congress enacted the KKK Act); common law at that time did not allow third-party beneficiaries to enforce contracts, particularly government contracts. It follows that a third-party beneficiary of a spending clause "contract" — such as the residents of a facility receiving federal funds and charged with protecting those residents — cannot enforce that contract through a Section 1983 action.

Arguments of Talevski

Talevski begins with Section 1983's text and the court's consistent understanding of that text. Section 1983 permits suits against "any person" acting under color of state law who deprives another of "any rights, privileges or immunities secured by the Constitution and laws." Because it uses "Constitution" and "laws," the latter means something distinct — federal statutes. And the absence of any modifier before "laws" captures all federal laws, regardless of the nature or basis for their enactment; the text offers no basis for treating spending clause legislation differently than legislation enacted under another power.

Arguments of the United States

The United States appears as amicus curiae, with argument time, although in support of neither party. The U.S. agrees with Talevski that the court should not overrule precedent allowing Section 1983 enforcement of spending clause enactments and that FNHRA creates enforceable individual rights through the necessary rights-creating language. The U.S. agrees with HHC that Congress

	<p>rebutted the presumption of Section 1983 enforcement as inconsistent with the congressionally created FNHRA scheme.</p> <p>The U.S. emphasizes the distinctive context in which FNHRA creates rights compared with other spending clause enactments enforced through Section 1983, such as the Social Security Act. The “vast majority” of nursing facilities participating in Medicare and Medicaid are private facilities — more than 90% when Congress enacted FNHRA. FNHRA creates a remedial scheme — with specific and detailed administrative enforcement and oversight mechanisms — to protect rights against private infringement, with little application to state and local entities. Congress did not authorize suits for damages against private nursing homes. And private nursing homes cannot be sued under Section 1983 because they do not act under color of state law.</p> <p>https://tinyurl.com/SCOTUSBlogTalevski</p>
Ageism	<p>19. CBS Sunday Morning November 13, 2022 <i>Fighting back against ageism</i> That's right: ageism is bad for us, mentally AND physically. As a source of chronic stress, it can lead to increased risk for a broad spectrum of different chronic diseases. "We've also found that ageism is associated with premature mortality; people who experience more ageism are much more likely to die at a younger age," Allen said. Conversely, according to one study, in the Journal of Personality and Social Psychology, people with an upbeat take on getting older actually live longer – an average of seven-and-a-half years longer. And there is research that shows positive attitudes can have positive health benefits. https://tinyurl.com/FightingBackAgainstAgeism</p> <p>20. This Chair Rocks <i>People are happiest at the beginnings and the ends of their lives. Only 2.5% of Americans over 65 live in nursing homes. Older people enjoy better mental health than the young or middle-aged. Dementia rates are falling, fast. So how come so many of us unthinkingly assume that depression, diapers, and dementia lie ahead? That the 20th century's astonishing leap in life expectancy is a disaster-in-the-making? Underlying all the hand-wringing is ageism: discrimination that sidelines and silences older people.</i> https://thischairrocks.com/</p>
Disability Topics	<p>21. WBUR Cognoscenti November 8, 2022 <i>'You don't have to be like everyone else,' I tell my daughter. I hope she can believe me</i> Let me tell you what it's like to have an adorable white, blonde, green-eyed girl in a pink walker or wheelchair. How people — even doctors — assume she will grow out of it, how they admire her ability to maneuver her wheelchair, congratulate her ability to take hesitant steps with her walker, leg braces, adaptive shoes, and deep breaths. Or they whisper about how serious her diagnosis is, clucking at us as we walk past, murmuring about us, calling her a warrior or a hero, but not inviting her for a playdate. The story I tell the most is about the time she walked down the street with her dad, one shaky step at a time, and a lady passed by and said, “Oh bless you, dear,” and my daughter looked at her and said, “But I didn't sneeze!”</p>

	<p>My daughter doesn't want pity, admiration, or congratulations for doing the things she does every day. She wants inclusion. To be seen as a person of value, who can read and do math and act, and who wants to be a teacher and a mother when she grows up. And she wants to play with other kids.</p> <p>The way the world treats disabled people like my daughter enrages me to the point of exhaustion. It's infantilizing and dismissive at best. And then I remember, it's still an ableist world, built by, and overwhelmingly for, nondisabled people. We change only when the disability community speaks up and claims their spaces. As they should. But why should they have to?</p> <p>Not long ago, there <i>was</i> no disability community. People like my daughter were sent away. Institutionalized. Before that, the Nazis would have sent her to the camps. Even now, expectant parents are given the option of prenatal testing to wipe out many disabled humans before they can be born. To some, this is modern science at its best. To others, this is eugenics. My daughter's medical condition was not detected in utero, but I knew from the moment she was born. I watched the recent debate between Mehmet Oz and John Fetterman, candidates for a U.S. Senate seat in Pennsylvania, and felt enormous compassion for Fetterman. The Oz campaign has mocked him endlessly, Oz insisted he had nothing to do with it, and all I could think about was Oz's political idol, Trump, mocking a disabled journalist for all the world to see and then lying about it later. My child, whose disability is neurological, speaks in a way not unlike Fetterman. She knows exactly what she wants to say but sometimes, she needs a moment to get it out. Sometimes prompting helps her. I could see my daughter, were she in a political debate, also saying something like, "I do not believe in supporting the Supreme Court," when that wasn't what she meant. But in our house, that isn't damning. We'd give her a moment to try again. . .</p> <p>The crux of the issue is that my daughter, Fetterman, and other disabled people are not asking for accommodations. That is asking for an exception. They are asking for inclusion, which is what every other human being wants. Equality is not the same as accommodation. Equality is a world that works equally well for the disabled as it does for the nondisabled.</p> <p>Accommodation is a nondisabled world that taps its toes and drums its fingers while it waits for the disabled to speak, or walk, or behave like everyone else. But that is not a world my daughter wants any part of, and frankly, neither do I.</p> <p>https://tinyurl.com/NotLikeEveryoneElse</p>
	<p>*May require registration before accessing article.</p>
<p>Dignity Alliance Massachusetts Legislative Endorsements</p>	<p>Information about the legislative bills which have been endorsed by Dignity Alliance Massachusetts, including the text of the bills, can be viewed at: https://tinyurl.com/DignityLegislativeEndorsements Questions or comments can be directed to Legislative Work Group Chair Richard (Dick) Moore at rmoore8473@charter.net.</p>
<p>Websites</p>	
<p>Previously recommended websites</p>	<p>The comprehensive list of recommended websites has migrated to the Dignity Alliance MA website: https://dignityalliancema.org/resources/. Only new recommendations will be listed in <i>The Tuesday Digest</i>.</p>
<p>Previously posted funding opportunities</p>	<p>For open funding opportunities previously posted in <i>The Tuesday Digest</i> please see https://dignityalliancema.org/funding-opportunities/.</p>
<p>Nursing Home Closures</p>	<ul style="list-style-type: none"> • Quincy Health and Rehabilitation Center LLC, Quincy

	<p>126 beds; current census: 77 Owner: Waschusetz Healthcare Star rating: 2 stars Target closure: December 7</p> <ul style="list-style-type: none"> • Attleboro Healthcare, Attleboro 120 beds Owner: Next Step Healthcare Star rating: Special Focus Facility Target closure: December 29 • Dedham Healthcare, Dedham 145 beds Owner: Next Step Healthcare Star rating: 1 star Target closure: December 29 • Gloucester Healthcare, Gloucester 101 beds Owner: Next Step Healthcare Star rating: 3 stars Target closure: December 30 • Chetwynde Healthcare, West Newton 75 beds Owner: Next Step Healthcare Star rating: 2 stars Target closure: December 30 <p>NOTE: Admission freezes have been initiated in all facilities with closure plans. Closure Notices and Relocation Plans available at: https://tinyurl.com/MANursingHomeClosures</p>
Pending nursing home change of ownership in Massachusetts	<ul style="list-style-type: none"> • Royal Health Cape Cod • Royal Health Cotuit • Royal Health Falmouth • Royal Health Megansett • Royal Health Meadow View – North Reading • Royal Health Wayland • Royal Wood Mill – Lawrence • Royal Health Fairhaven • Royal Health Braintree • Royal Health Norwell <p>https://www.royalhealthgroup.com</p>
Websites of Dignity Alliance Massachusetts Members	See: https://dignityalliancema.org/about/organizations/
Assisted Living Residences Closures	<ul style="list-style-type: none"> • Motif by Monarch (previously Landmark at Ocean View), Beverly, July 2022 • Connemara Senior Living, Brockton, Summer 2022 • Landmark at Longwood, Mission Hill, Boston, October 5, 2022
Nursing homes with admission freezes	<p>Massachusetts Department of Public Health <i>Temporary admissions freeze</i> On November 6, the state announced that it would require certain high risk nursing homes and rest homes to temporarily stop all new admissions to protect the health and safety of residents and prevent further COVID-19 transmission.</p>

Stopping admissions enables homes to focus resources such as staff and PPE on the health and safety of its current residents and enables the home to stabilize before taking on new residents. Homes that meet certain criteria will be required to stop any new admissions until the Department of Public Health has determined that conditions have improved, and the facility is ready to safely care for new residents. The Commonwealth will work closely with homes during this time and provide supports as needed to ensure resident health and safety. There are a number of reasons why a facility may be required to stop admissions, and the situation in each facility is different. Some of the factors the state uses to make this decision include:

- Number of new COVID-19 cases within the facility
- Staffing levels
- Failure to report a lack of adequate PPE, supplies, or staff
- Infection control survey results
- Surveillance testing non-compliance

Facilities are required to notify residents' designated family members and/or representative when the facility is subject to an admissions freeze. In addition, a list of facilities that are currently required to stop new admissions and the reason for this admissions freeze will be updated on Friday afternoons, and as needed when the Department of Public of Health determines a facility can be removed from the list.

Updated on November 9, 2022. Red font – newly added

Name of Facility	City/Town	Date of Freeze	Qualifying Factor
Attleboro Healthcare	Attleboro	8/31/2022	Closure notice
Cape Heritage Rehab and Health Cen.	Sandwich	10/26/2022	Infection Control
Care One at New Bedford	New Bedford	11/8/2022	New cases
Charwell House Health and Rehabilitation	Norwood	9/14/2022	Infection Control
Chetwynde	West Newton	9/1/2022	Closure notice
Dedham Healthcare	Dedham	7/6/2022	Infection Control
Elaine Center at Hadley	Hadley	11/1/2022	New cases
Glenridge Nursing Care Center	Medford	11/8/2022	New cases
Gloucester Healthcare	Gloucester	9/1/2022	Closure notice
Lanessa Extended Care	Webster	10/4/2022	Infection control
Parsons Hill Healthcare & Rehab Center	Worcester	11/1/2022	New cases
Quincy Health and Rehabilitation Center LLC, Quincy	Quincy	8/10/2022	Closure notice
Shrewsbury Nursing & Rehab Center	Shrewsbury	11/8/2022	New Cases
Southeast Health Care Center	Easton	10/26/2022	Infection control
Webster Manor Healthcare & Rehab	Webster	11/1/2022	Infection control
Worcester Nursing & Rehab Center	Worcester	11/8/2022	New cases

List of Special Focus Facilities

Centers for Medicare and Medicaid Services

List of Special Focus Facilities and Candidates

<https://tinyurl.com/SpecialFocusFacilityProgram>

Updated June 29, 2022

CMS has published a new list of [Special Focus Facilities](#) (SFF). SFFs are nursing homes with serious quality issues based on a calculation of deficiencies cited during inspections and the scope and severity level of those citations. CMS

publicly discloses the names of the facilities chosen to participate in this program and candidate nursing homes.

To be considered for the SFF program, a facility must have a history (at least 3 years) of serious quality issues. These nursing facilities generally have more deficiencies than the average facility, and more serious problems such as harm or injury to residents. Special Focus Facilities have more frequent surveys and are subject to progressive enforcement until it either graduates from the program or is terminated from Medicare and/or Medicaid.

This is important information for consumers – particularly as they consider a nursing home.

What can advocates do with this information?

- Include the list of facilities in your area/state when providing information to consumers who are looking for a nursing home. Include an explanation of the SFF program and the candidate list.
- Post the list on your program’s/organization’s website (along with the explanation noted above).
- Encourage current residents and families to check the list to see if their facility is included.
- Urge residents and families in a candidate facility to ask the administrator what is being done to improve care.
- Suggest that resident and family councils invite the administrator to a council meeting to talk about what the facility is doing to improve care, ask for ongoing updates, and share any council concerns.
- For long-term care ombudsmen representatives: Meet with the administrator to discuss what the facility is doing to address problems and share any resources that might be helpful.

Massachusetts facilities listed (updated July 27, 2022)

Newly added to the listing

- None

Massachusetts facilities not improved

- None

Massachusetts facilities which showed improvement

- Attleboro Healthcare, Attleboro
<https://tinyurl.com/AttleboroHealthcare>
- Marlborough Hills Rehabilitation and Health Care Center, Marlborough
<https://tinyurl.com/MarlboroughHills>

Massachusetts facilities which have graduated from the program

- None

Massachusetts facilities that are candidates for listing

- Parkway Health and Rehabilitation Center
<https://tinyurl.com/ParkwayHealthCenter>
- Plymouth Rehabilitation and Health Care Center
<https://plymouthrehab.com/>
- Revolution Charwell
<https://tinyurl.com/RevolutionCharwell>
- Savoy Nursing and Rehabilitation Center, New Bedford (added in June)
No website
- South Dennis Healthcare, South Dennis (added in July)
<https://www.nextstephc.com/southdennis>
- Tremont Health Care Center, Wareham

	<p>https://thetremontrehabcare.com/</p> <ul style="list-style-type: none"> • Vantage at South Hadley No website • Vero Health and Rehabilitation Center of Amesbury https://tinyurl.com/VeroAmesbury • Vero Health and Rehabilitation Center of Revere https://tinyurl.com/VeroRevere • Watertown Rehabilitation and Nursing Center, Watertown (added in June) No website https://tinyurl.com/SpecialFocusFacilityProgram 																				
<p><i>Nursing Home Inspect</i></p>	<p>ProPublica <i>Nursing Home Inspect</i> Data updated August 2022 This app uses data from the U.S. Centers for Medicare and Medicaid Services. Fines are listed for the past three years if a home has made partial or full payment (fines under appeal are not included). Information on deficiencies comes from a home’s last three inspection cycles, or roughly three years in total. The number of COVID-19 cases is since May 8, 2020, when homes were required to begin reporting this information to the federal government (some homes may have included data on earlier cases). Massachusetts listing: https://projects.propublica.org/nursing-homes/state/MA</p> <p>Deficiencies By Severity in Massachusetts (What do the severity ratings mean?)</p> <table border="0"> <thead> <tr> <th># reported</th> <th>Deficiency Tag</th> </tr> </thead> <tbody> <tr> <td>249</td> <td>B</td> </tr> <tr> <td>79</td> <td>C</td> </tr> <tr> <td>7,092</td> <td>D</td> </tr> <tr> <td>1,857</td> <td>E</td> </tr> <tr> <td>552</td> <td>F</td> </tr> <tr> <td>489</td> <td>G</td> </tr> <tr> <td>1</td> <td>H</td> </tr> <tr> <td>33</td> <td>J</td> </tr> <tr> <td>7</td> <td>K</td> </tr> </tbody> </table>	# reported	Deficiency Tag	249	B	79	C	7,092	D	1,857	E	552	F	489	G	1	H	33	J	7	K
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<p><i>Nursing Home Compare</i></p>	<p>Centers for Medicare and Medicaid Services (CMS) <i>Nursing Home Compare Website</i> Beginning January 26, 2022, the Centers for Medicare and Medicaid Services (CMS) is posting new information on the that will help consumers have a better understanding of certain staffing information and concerns at facilities. This information will be posted for each facility and includes:</p> <ul style="list-style-type: none"> • Staff turnover: The percentage of nursing staff as well as the number of administrators who have stopped working at a nursing home over the past 12-month period. • Weekend staff: The level of weekend staffing for nurses and registered nurses at a nursing home over a three-month period. <p>Posting of this information was required as part of the Affordable Care Act, which was passed in 2010. In many facilities, staffing is lower on weekends, often meaning residents have to wait longer or may not receive all the care they need. High turnover means that staff are less likely to know the residents,</p>																				

	<p>recognize changes in condition, or implement preferred methods of providing care. All of this contributes to the quality-of-care residents receive and their quality of life.</p> <p>https://tinyurl.com/NursingHomeCompareWebsite</p>																		
Data on Ownership of Nursing Homes	<p>Centers for Medicare and Medicaid Services <i>Data on Ownership of Nursing Homes</i> CMS has released data giving state licensing officials, state and federal law enforcement, researchers, and the public an enhanced ability to identify common owners of nursing homes across nursing home locations. This information can be linked to other data sources to identify the performance of facilities under common ownership, such as owners affiliated with multiple nursing homes with a record of poor performance. The data is available on nursing home ownership will be posted to data.cms.gov and updated monthly.</p>																		
Long-Term Care Facilities Specific COVID-19 Data	<p>Massachusetts Department of Public Health <i>Long-Term Care Facilities Specific COVID-19 Data</i> Coronavirus Disease 2019 (COVID-19) reports related to long-term care facilities in Massachusetts.</p> <p>Table of Contents</p> <ul style="list-style-type: none"> • COVID-19 Daily Dashboard • COVID-19 Weekly Public Health Report • Additional COVID-19 Data • CMS COVID-19 Nursing Home Data 																		
DignityMA Call to Action	<ul style="list-style-type: none"> • The MA Senate released a report in response to COVID-19. Download the DignityMA Response to Reimagining the Future of MA. • Advocate for state bills that advance the Dignity Alliance Massachusetts’ Mission and Goals – State Legislative Endorsements. • Support relevant bills in Washington – Federal Legislative Endorsements. • Join our Work Groups. • Learn to use and leverage Social Media at our workshops: Engaging Everyone: Creating Accessible, Powerful Social Media Content 																		
Access to Dignity Alliance social media	<p>Email: info@DignityAllianceMA.org Facebook: https://www.facebook.com/DignityAllianceMA/ Instagram: https://www.instagram.com/dignityalliance/ LinkedIn: https://www.linkedin.com/company/dignity-alliance-massachusetts Twitter: https://twitter.com/dignity_ma?s=21 Website: www.DignityAllianceMA.org</p>																		
<p>Participation opportunities with Dignity Alliance Massachusetts</p> <p>Most workgroups meet bi-weekly via Zoom.</p> <p>Please contact workgroup lead for more information</p>	<table border="1"> <thead> <tr> <th>Workgroup</th> <th>Workgroup lead</th> <th>Email</th> </tr> </thead> <tbody> <tr> <td>General Membership</td> <td>Bill Henning Paul Lanzikos</td> <td>bhenning@bostoncil.org paul.lanzikos@gmail.com</td> </tr> <tr> <td>Behavioral Health</td> <td>Frank Baskin</td> <td>baskinfrank19@gmail.com</td> </tr> <tr> <td>Communications</td> <td>Pricilla O’Reilly Samantha VanSchoick Lachlan Forrow</td> <td>prisoreilly@gmail.com svanschoick@cil.org lforrow@bidmc.harvard.edu</td> </tr> <tr> <td>Facilities (Nursing homes, rest homes, assisted living)</td> <td>Arlene Germain</td> <td>agermain@manhr.org</td> </tr> <tr> <td>Home and Community Based Services</td> <td>Meg Coffin</td> <td>mcoffin@centerlw.org</td> </tr> </tbody> </table>	Workgroup	Workgroup lead	Email	General Membership	Bill Henning Paul Lanzikos	bhenning@bostoncil.org paul.lanzikos@gmail.com	Behavioral Health	Frank Baskin	baskinfrank19@gmail.com	Communications	Pricilla O’Reilly Samantha VanSchoick Lachlan Forrow	prisoreilly@gmail.com svanschoick@cil.org lforrow@bidmc.harvard.edu	Facilities (Nursing homes, rest homes, assisted living)	Arlene Germain	agermain@manhr.org	Home and Community Based Services	Meg Coffin	mcoffin@centerlw.org
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	Housing	Bill Henning	bhenning@bostoncil.org
	Legislative	Richard Moore	rmoore8743@charter.net
	Legal Issues	Jeni Kaplan	jkaplan@cpr-ma.org
	Veteran Services	James Lomastro	jimlomastro@comcast.net
<i>The Dignity Digest</i>	<p>For a free weekly subscription to <i>The Dignity Digest</i>: https://dignityalliancema.org/contact/sign-up-for-emails/ Editor: Paul Lanzikos Primary contributor: Sandy Novack MailChimp Specialist: Sue Rorke</p>		
Note of thanks	<p>Thanks to the contributors to this issue of <i>The Dignity Digest</i></p> <ul style="list-style-type: none"> • Marianne DiBlasi • Margaret Morganroth Gullette • Dick Moore • Steve Schwartz <p>Special thanks to the MetroWest Center for Independent Living for assistance with the website and MailChimp versions of <i>The Dignity Digest</i>. <i>If you have submissions for inclusion in <u>The Dignity Digest</u> or have questions or comments, please submit them to paul.lanzikos@gmail.com.</i></p>		
<p><i>Dignity Alliance Massachusetts is a broad-based coalition of organizations and individuals pursuing fundamental changes in the provision of long-term services, support, and care for older adults and persons with disabilities. Our guiding principle is the assurance of dignity for those receiving the services as well as for those providing them. The information presented in "The Dignity Digest" is obtained from publicly available sources and does not necessarily represent positions held by Dignity Alliance Massachusetts.</i></p> <p><i>Previous issues of <u>The Tuesday Digest</u> and <u>The Dignity Digest</u> are available at: https://dignityalliancema.org/dignity-digest/</i></p> <p><i>For more information about Dignity Alliance Massachusetts, please visit www.DignityAllianceMA.org.</i></p>			