

WHEN DELAY BECOMES HARM

How Prolonged Litigation Is Keeping Nursing Home Residents in Unsafe, Crowded Rooms

*The Case of River Terrace Operator LLC, et al. v.
Massachusetts Department of Public Health*

*Resident safety. Dignity. Infection control.
None should be optional.*

EXECUTIVE SUMMARY

When Delay Becomes Harm

Nearly four years after the Massachusetts Department of Public Health (DPH) issued a regulation limiting nursing home rooms to no more than two residents, thousands of nursing home residents continue to live in three- and four-bed rooms — conditions the Commonwealth itself has determined are unsafe, undignified, and harmful.

This report examines the prolonged litigation in *River Terrace Operator LLC, et al. v. Massachusetts Department of Public Health* and asks a simple but urgent question:

How can a regulation grounded in public health evidence, upheld as within DPH's authority, still remain unenforced years later — while residents continue to bear the risk?

The answer lies not in uncertainty about the evidence, but in a system that allows delay to function as a strategy.

More than 30 nursing home operators challenged the regulation, arguing that compliance would be costly and operationally burdensome. While the Superior Court has already affirmed DPH's authority to issue the rule, the case has continued through multiple amended complaints, motions to dismiss, and procedural disputes. Each additional month of litigation has had a predictable effect: the preservation of crowded rooms and the avoidance of compliance.

For operators who oppose de-densification, delay itself is a victory. Renovations are postponed. Higher-census rooms remain billable. The status quo — already deemed unsafe — continues uninterrupted.

The court's cautious, methodical approach to a statewide regulatory challenge, combined with COVID-era court backlogs and disputes over exemptions, has allowed the regulation to remain effectively in limbo. But for residents, there is no limbo. There is only daily life in overcrowded rooms.

The public health consequences of multi-bed rooms are well documented and were central to DPH's justification for the rule. Residents in three- and four-bed rooms face higher risks of infectious disease transmission, increased hospitalization and mortality, chronic sleep disruption, stress, and the loss of privacy and dignity at life's most vulnerable moments. These harms are not hypothetical. They are ongoing.

This delay is not neutral. It actively preserves conditions that the Commonwealth has already concluded should no longer exist.

When enforcement is stalled indefinitely, regulatory authority on paper fails to translate into real-world protection. The result is a system where residents continue to live in conditions deemed unsafe — not because the rule is invalid, but because litigation has outpaced accountability.

This report concludes that prolonged inaction in the face of known risk constitutes a failure to protect nursing home residents. When harm is foreseeable and preventable, failure to act is itself a form of neglect.

The case cries out for resolution — not in the abstract, but on behalf of the residents whose safety, dignity, and health depend on it.

Statement of the Case

River Terrace Operator LLC, et al. v. Massachusetts Department of Public Health

This case arises from the Massachusetts Department of Public Health’s effort to correct a long-recognized and well-documented harm in nursing homes: the routine placement of older adults and people with disabilities in three- and four-bed rooms. In 2021, following extensive review of public health evidence and decades of experience with infectious disease outbreaks in congregate care settings — most starkly during the COVID-19 pandemic — DPH promulgated a regulation limiting nursing home rooms to no more than two residents. The Commonwealth determined that multi-bed rooms are unsafe, undermine infection control, erode privacy and dignity, and expose residents to foreseeable and preventable harm.

Nearly four years later, that regulation remains largely unenforced. Thousands of nursing home residents across the Commonwealth continue to live in crowded rooms that the state itself has concluded should no longer exist. This outcome is not the result of scientific uncertainty, regulatory overreach, or judicial rejection of DPH’s authority. It is the product of prolonged litigation that has allowed delay itself to function as a strategy — one that preserves a disfavored status quo while residents bear the risk.

The Regulation and Its Public Health Purpose

The challenged regulation was grounded in well-established public health evidence. DPH relied on extensive research demonstrating that multi-bed rooms increase transmission of airborne and contact-based infections, elevate hospitalization and mortality risk, disrupt sleep, heighten stress, and strip residents of privacy during medical care, personal hygiene, family visits, and end-of-life moments. These risks extend far beyond COVID-19 and include influenza, norovirus, MRSA, and other infectious diseases that have repeatedly spread through overcrowded nursing facilities.

The regulation was neither abrupt nor inflexible. It provided for phased implementation and included a process for reasonable exemptions to address legitimate structural constraints. In doing so, DPH made clear that the rule was designed to be practicable and adaptive, not punitive.

Industry Acceptance and Demonstrated Feasibility

The plaintiffs' claims of unworkability are contradicted by the experience of the industry itself. **Most nursing homes in Massachusetts have accepted the two-person-per-room standard and demonstrated that compliance is feasible.** Many facilities already operated primarily with single- and double-occupancy rooms before the regulation was issued. Others adjusted census levels, phased renovations, or modified operations to meet the requirement.

The widespread calamities predicted by the plaintiffs — mass closures, catastrophic financial losses, and reduced access to care — have not materialized. Instead, the lived experience of the majority of nursing homes demonstrates that de-densification can be achieved without compromising care when resident safety and dignity are treated as baseline obligations rather than optional considerations.

This record makes clear that the plaintiffs do not speak for the nursing home industry as a whole. Their challenge reflects the interests of a subset of operators whose facilities and financial models rely heavily on maintaining higher-density rooms, not an inherent inability of nursing homes to comply with the regulation.

The Plaintiffs' Challenge

More than 30 nursing home operators, including River Terrace Operator LLC, challenged the regulation primarily on economic and operational grounds. Their filings emphasize renovation costs, reduced census capacity, and impacts on revenue. Notably, the plaintiffs do not meaningfully dispute the underlying public health evidence supporting the rule. Instead, they argue that compliance is too costly, too disruptive, or insufficiently flexible.

In 2022 and 2023, the Superior Court rejected the plaintiffs' central legal claim, affirming that DPH acted within its statutory authority to protect nursing home residents from unsafe and unhealthy conditions. That ruling resolved the fundamental question of regulatory power and confirmed that the regulation rests on lawful and evidence-based grounds.

Despite that determination, the litigation continued.

Litigation as a Mechanism of Delay

Following the court's affirmation of DPH's authority, the plaintiffs pursued multiple amended complaints, renewed legal theories, and procedural disputes concerning standing, ripeness, exemptions, and enforcement scope. Motions to dismiss were followed by partial dismissals and further filings, none of which altered the settled conclusion that DPH possessed the authority to issue the regulation.

This pattern has had a predictable effect. While many facilities adapted, operators opposing de-densification retained the financial benefits of delay. Renovations were postponed. Higher-census rooms remained billable. Capital investments that would reduce revenue per square foot were deferred.

Although the plaintiffs characterize this litigation as a legitimate exercise of legal rights, the cumulative real-world consequence has been consistent and one-sided: continued noncompliance and preservation of room configurations the Commonwealth has already deemed unsafe. When repeated procedural actions yield the same substantive outcome — avoidance of compliance — delay ceases to be incidental and becomes consequential.

Rebutting the Plaintiffs' Core Assertions

The plaintiffs contend that enforcement of the regulation would reduce access to care by forcing bed reductions. That argument rests on the premise that unsafe room configurations are necessary to maintain capacity. The experience of compliant facilities refutes that premise. Facilities across the Commonwealth have reduced density while remaining licensed, operational, and able to admit residents. Access to care cannot be measured solely by bed counts divorced from safety, quality, and dignity.

The plaintiffs also argue that the exemption process is unclear or inadequate. Yet many facilities have successfully navigated that process without resorting to litigation. Disagreement with the outcome of an exemption request does not render the regulation unenforceable. Rather than serving as a pathway to compliance, exemption disputes became an additional basis for delay.

Finally, the plaintiffs suggest that judicial caution is warranted because of the regulation's economic implications. While the court has proceeded carefully, economic impact alone does not justify indefinite non-enforcement of a public health regulation grounded in evidence and upheld as lawful. Courts routinely allow enforcement of regulations with significant economic consequences when the purpose is protection of health and safety. Continued delay disproportionately burdens residents — not operators — by preserving known risk.

The Human Consequences of Delay

For residents, there is no procedural pause and no strategic upside. There is only daily life in overcrowded rooms.

Residents in three- and four-bed rooms continue to face heightened exposure to infectious disease, increased stress and sleep disruption, and the loss of privacy for basic bodily care, medical treatment, and personal relationships. These harms are not speculative. They are the very harms DPH identified and that the court recognized were supported by evidence.

The delay therefore actively preserves conditions the Commonwealth has already determined should no longer exist — not because the regulation is invalid, but because enforcement has been stalled.

Regulatory Authority Without Real-World Protection

This case illustrates a systemic failure in which regulatory authority exists on paper but fails to translate into real-world protection. The plaintiffs' pursuit of injunctive relief, combined with a

cautious judicial approach, COVID-era court backlogs, and disputes over exemptions, has left the regulation effectively in limbo.

For residents, however, there is no limbo. Each day of delay perpetuates exposure to foreseeable and preventable harm.

Profits Over People

At its core, this case is not a close question of law or public health. It is a question of priorities. The plaintiffs ask, implicitly, that financial convenience and revenue preservation outweigh resident safety, dignity, and well-being — even as the majority of nursing homes have demonstrated that compliance is achievable when those values are placed first.

Allowing prolonged delay rewards operators who resisted reform and penalizes those who acted in good faith. It creates an uneven system in which resident safety depends not on statewide standards, but on ownership structure and litigation posture.

Conclusion

The continued existence of three- and four-bed rooms in Massachusetts nursing homes is not the result of regulatory overreach or industry-wide impossibility. It is the result of deliberate delay. When harm is foreseeable, preventable, and ongoing, prolonged inaction constitutes a failure to protect. In the context of nursing home care, it amounts to neglect.

This case cries out for resolution — not in the abstract, but on behalf of the residents whose health, safety, and dignity depend on timely enforcement of the law in every nursing home in the Commonwealth.

CALL TO ACTION

What Must Happen Now

The continued delay in enforcing the two-person per room rule is not merely a legal issue. It is a public health and human dignity issue. Action is both possible and necessary.

1. The Court Must Bring the Case to Resolution

The Superior Court should move this case toward final judgment without further unnecessary delay. The core question of DPH's authority has already been resolved. Continued procedural prolongation serves no public interest while residents remain exposed to harm.

2. The Department of Public Health Must Reassert Enforcement

DPH should take all available steps to enforce the regulation to the fullest extent permitted during litigation, including narrowing exemptions, increasing transparency, and prioritizing resident safety in all interim decisions.

3. Policymakers Must Close the Enforcement Gap

The Legislature should examine how industry litigation can effectively suspend public health protections for years and consider statutory mechanisms to prevent prolonged enforcement paralysis when regulations are grounded in clear evidence of harm.

4. Operators Must Be Held Accountable for Delay

Claims of cost and inconvenience cannot outweigh resident safety and dignity. Operators have had years to plan for compliance. Continued reliance on overcrowded rooms reflects a business choice — not an inevitability.

5. The Public Must Demand Better

Residents, families, advocates, and the public should demand that nursing home standards reflect what we already know: overcrowding increases risk, undermines dignity, and endangers lives.

No regulation meant to protect vulnerable people should be stalled indefinitely by those who profit from inaction.



DIGNITY ALLIANCE MASSACHUSETTS

This report was prepared for Dignity Alliance Massachusetts, a statewide, all-volunteer, non-profit organization advocating for older adults, people with disabilities and caregivers established in 2020. Dignity Alliance advocates through Information, Education, Legislation, and Litigation. DignityMA.org