Health Law at the Supreme Court:
A Review and Preview

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Review: October 2021 Term
October 2021 Term

COVID-19 Cases
October 2021 Term

Abortion Not a Constitutional Right
In *Dobbs v. Jackson Women’s Health Organization*, the Court rejected nearly 50 years of precedent to hold that women (and other people who can become pregnant) no longer have a constitutionally protected right to a pre-viability abortion. The Court fully overturned *Roe v. Wade* and *Planned Parenthood v. Casey*, leaving the availability of abortion to be determined by each state.

June 24, 2022
October 2021 Term

COVID-19 Cases
Petitioners challenged the 10- and 25- person capacity limitations imposed by the Governor’s Executive Order on religious services. The Court enjoined enforcement of the limitations on attendance at religious services. Court concluded that a temporary injunction is proper where the petitioner is likely to succeed on the merits and would suffer irreparable harm if not granted temporary injunction.

November 25, 2020
South Bay United Pentecostal Church v. Newsom, 209 L. Ed. 2d 22, 141 S. Ct. 716 (2021)

Case involved a challenge to restrictions on indoor worship services including a capacity limitation and a ban on indoor singing and chanting. The Court enjoined the prohibition on services, but declined to enjoin the other limitations.

February 5, 2021
Biden v. Missouri, 211 L. Ed. 2d 433, 142 S. Ct. 647 (2022)

The Court held that the Secretary of Health and Human Services had the authority to issue an Interim Final Rule providing that healthcare facilities participating in the Medicare and Medicaid programs must ensure that all employees are vaccinated against COVID-19, with exceptions for medical and religious considerations. The Court further held that the rule was executed properly with a showing of good cause to bypass the notice and comment process.

January 13, 2022
National Federation of Independent Business v. Department of Labor, Occupational Safety & Health Administration, 211 L. Ed. 2d 448, 142 S. Ct. 661 (2022)

In this case, the Court held that the Department of Labor and OSHA did not have the authority to require employees working at firms with 100 or more employees to be vaccinated against COVID-19 or to undertake weekly testing. The Court stated that Congress would need to authorize the agency to adopt a policy of this magnitude or impose the requirement itself.

January 13, 2022
October 2021 Term

Criminal Violation of Controlled Substances Act
In this case, two medical doctors were prosecuted under a provision of the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. § 841, for distribution of a controlled substance without authorization. The Court held that, once a defendant has produced evidence of authorization, the burden shifts to the Government to prove knowledge of lack of authorization beyond a reasonable doubt.

June 27, 2022
October 2021 Term

Workers’ Compensation and Supremacy Clause

In this case, the Court held that a state statute may not create an automatic presumption of causation in workers’ compensation claims related to Federal cleanup sites, because such a statute violates the Supremacy Clause by impermissibly abrogating governmental immunity.

June 27, 2022
October 2021 Term
Eligibility for SSI and Public Charge Rule
United States v. Vello Madero, 212 L. Ed. 2d 496, 142 S. Ct. 1539 (2022)

The Court held that a congressional statute providing that only residents of the 50 states and the District of Columbia may receive Supplemental Security Income (SSI) benefits, thus barring residents of Puerto Rico from collecting such benefits, 42 U. S. C. §1382c(a)(1)(B)(i), does not violate the equal-protection component of the Fifth Amendment’s Due Process Clause.

April 21, 2022
The Court dismissed a case known as Arizona v. City and County of San Francisco as improvidently granted. The case involved challenges to the Department of Homeland Security’s rule for testing whether an applicant for admission into the country or adjustment to lawful permanent resident status is “likely at any time to become a public charge.” This action preserves a decision from the Ninth Circuit that Arizona could not intervene in litigation to defend the Trump era rule. Several justices took time to file a concurrence that criticized the Biden administration's actions in not defending and then withdrawing the 2019 rule without providing an opportunity for notice and comment.

June 15, 2022
The Court held that New York’s “proper cause” standard requiring gun license applicants to show a greater than average need for self-defense to obtain a gun license unconstitutionally violates the Second and Fourteenth Amendments.

June 23, 2022
October 2021 Term

Clean Power Plan and “Major Questions” Doctrine
The Court held that Congress did not grant EPA in Section 111(d) of the Clean Air Act the authority to devise emissions caps based on the generation shifting approach the Agency took in the Obama-era Clean Power Plan. According to the Court, the “history and the breadth of the authority that [the agency] has asserted,” and the “economic and political significance” of that assertion, provide a “reason to hesitate before concluding that Congress” meant to confer such extensive authority.
October 2021 Term
Medicare and Medicaid Program Cases
American Hospital Association v. Becerra, 213 L. Ed. 2d 251, 142 S. Ct. 1896 (2022)

The Court held that absent conducting a survey of hospitals’ acquisition costs, the Department of Health and Human Services (HHS) may not vary the reimbursement rates only for 340B hospitals, invalidating HHS’s 2018 and 2019 rules setting reimbursement rates for 340B hospitals. As a result, safety net and other hospitals that participate in the Section 340 program will receive billions of dollars more in Medicare funding for outpatient prescription drugs than the cost of the drugs.

June 15, 2022
Marietta Memorial Hospital Employee Health Benefit Plan v. DaVita, Inc., 213 L. Ed. 2d 376, 142 S. Ct. 1968 (2022)

The Court ruled that the Marietta Memorial Hospital Employee Health Benefit Plan did not violate the Medicare Secondary Payer statute even though it had no in-network dialysis providers. As a result, any plan participant needing dialysis had to use an out-of-network provider which led to higher patient cost sharing. The plan also capped reimbursement for dialysis at 87.5 percent of the Medicare rate and imposed utilization management restrictions, such as claims audits and reviews.

June 21, 2022
The Court upheld a rule adopted by the Department of Health and Human Services (HHS) in 2004 establishing the formula for payments for disproportionate share hospital adjustments (DSH payments) under the Medicare program. DSH payments are designed to offset the cost of uncompensated care for hospitals that serve a higher proportion of low-income patients. The Court held that in calculating the payments, HHS could consider that all individuals “entitled to [Medicare Part A] benefits” are all those qualifying for the Medicare Part A program, regardless of whether they receive Medicare payments for part or all of a hospital stay.

June 24, 2022
In *Gallardo v. Marstiller*, the Court held that state Medicaid programs are not limited to recovering past medical expenses from a patient’s settlement; recovery can extend to future medical expenses as well. Here, the Court considered Florida’s efforts to recover parts of a settlement owed to the family of Gianinna Gallardo, a then-13-year-old girl who remains in a persistent vegetative state after being struck by a truck while stepping off her school bus in 2008. Florida’s Medicaid program paid nearly $863,000 to cover her initial medical expenses and continues to pay her medical expenses because of her permanent disability.

June 6, 2022
In *Cummings v. Premier Rehab Keller*, the Court Emotional distress damages are not recoverable in a private action enforce either Section 504 of the Rehabilitation Act of 1973 or Section 1557 of the Affordable Care Act. Premier Rehab is subject to these statutes, which apply to entities that receive federal financial assistance, because it receives reimbursement through Medicare and Medicaid for the provision of some of its services.

April 28, 2022
Rehearing denied, on June 21, 2022
Preview: October 2022 Term
Talevski by next friend Talevski v. Health & Hosp. Corp. of Marion County, 6 F.4th 713 (7th Cir. 2021), cert. granted sub nom. Health & Hosp. Corp. of Marion Cnty. v. Talevski, 212 L. Ed. 2d 761, 142 S. Ct. 2673 (2022)

This case presents the issue of whether 42 U.S.C. § 1983 is a mechanism for private enforcement of the requirements of the Medicaid program.
(1) Whether spending-clause statutes ever give rise to privately enforceable rights under 42 U.S.C. § 1983, and if so, what the proper framework is for deciding when they do; and (2) whether, assuming spending-clause statutes ever give rise to privately enforceable rights under Section 1983, the Medicaid Act’s any-qualified-provider provision creates a privately enforceable right to challenge a state’s determination that a provider is not qualified to provide certain medical services.
Preview: October 2022 Term

Issues Percolating in the Lower Courts and the States
This case involves a challenge to the Affordable Care Act’s preventive services coverage mandate. The court ruled that self-funded health plans and insurers are not required to cover services recommended by the U.S. Preventive Services Task Force because its members are not properly appointed under the Constitution’s Appointments Clause. In addition the court ruled that requiring employers to provide insurance that covers pre-exposure prophylaxis (PrEP) for HIV prevention violates the rights of employers under the Religious Freedom Restoration Act (RFRA).
This litigation presents the issue of whether Section 504 of the Federal Rehabilitation Act and Section 1557 of the Affordable Care Act provide a disparate-impact cause of action for disability discrimination.
In *Arizona v. City & County of San Francisco*, the Court held that interested States cannot step in to defend a rule or case that the Federal government has abandoned. This litigation involves challenges to the Department of Homeland Security public charge rule.
Challenges to CMS EMTALA Guidance Post-Dobbs


Challenges:


- Texas v. Becerra, No. 5:22-CV-185-H, 2022 WL 3639525 (N.D. Tex. Aug. 23, 2022) (HHS may not enforce the Guidance and Letter’s interpretation of EMTALA—both as to when an abortion is required and EMTALA’s effect on state laws governing abortion—within the State of Texas or against the members of the American Association of Pro Life Obstetricians and Gynecologists (AAPLOG) and the Christian Medical and Dental Association (CMDA)).
Sources and Other Resources


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