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Health Law at the Supreme Court: A Review and Preview

Presented by

The Health and Biomedical Law Concentration

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Review: October 2021 Term

October 2021 Term

COVID-19 Cases

October 2021 Term

Abortion Not a Constitutional Right

Dobbs v. Jackson Women's Health Organization, 213 L. Ed. 2d 545, 142 S. Ct. 2228 (2022)

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

Roman Catholic Diocese of Brooklyn v. Cuomo, 208 L. Ed. 2d 206, 141 S. Ct. 63 (2020)

Petitioners challenged the 10- and 25- person capacity limitations imposed by the Governor's Executive Order on religious. 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

Ruan v. United States, 213 L. Ed. 2d 706, 142 S. Ct. 2370 (2022)

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

United States v. Washington, 213 L. Ed. 2d 336, 142 S. Ct. 1976 (2022)

In 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. Vaello 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

Arizona v. City & County of San Francisco, 211 L. Ed. 2d 243, 142 S. Ct. 417 (2021)

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

October 2021 Term

Second Amendment

New York State Rifle & Pistol Association, Inc. v. Bruen, 213 L. Ed. 2d 387, 142 S. Ct. 2111 (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

West Virginia v. Environmental Protection Agency, 213 L. Ed. 2d 896, 142 S. Ct. 2587 (2022)

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.

June 30, 2022

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

Becerra v. Empire Health Foundation, for Valley Hospital Medical Center, 213 L. Ed. 2d 685, 142 S. Ct. 2354 (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

Gallardo By & Through Vassallo v. Marstiller, 213 L. Ed. 2d 1, 142 S. Ct. 1751 (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

Cummings v. Premier Rehab Keller, P.L.L.C., 212 L. Ed. 2d 552, 142 S. Ct. 1562, reh'g denied, 142 S. Ct. 2853 (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 2022Term

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.

Planned Parenthood South Atlantic v. Kerr, 27 F.4th 945 (4th Cir. 2022), *cert. pending*, May 6, 2022

(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

Braidwood Mgmt. Inc. v. Becerra, No. 4:20-CV-00283-O, 2022 WL 4091215 (N.D. Tex. Sept. 7, 2022)

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).

Doe v. CVS Pharmacy, Inc., 982 F.3d 1204 (9th Cir. 2020), *cert. granted in part*, 210 L. Ed. 2d 990, 141 S. Ct. 2882 (2021), and *cert. dismissed sub nom. CVS Pharmacy, Inc. v. Doe, One*, 142 S. Ct. 480 (2021)

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.

Arizona v. City & Cnty. of San Francisco, 211 L. Ed. 2d 243, 142 S. Ct. 417 (2021)

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

- **CMS Guidance: Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss, *available at*, <https://www.cms.gov/files/document/qso-22-22-hospitals.pdf>.**

Challenges:

- **United States v. Idaho, No. 1:22-CV-00329-BLW, 2022 WL 3692618 (D. Idaho Aug. 24, 2022) (enjoining Idaho from enforcement of Idaho Code § 18-622 which bans all abortions to the extent it conflicts with EMTALA-mandated care).**
- **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

See Katie Keith, *Health Related Litigation and The Supreme Court: The 2021 Term (Part 1)*, HEALTH AFFAIRS (June 22, 2022), <https://www.healthaffairs.org/doi/10.1377/forefront.20220622.965227/>.

See Katie Keith, *Health Related Litigation and The Supreme Court: The 2021 Term (Part 2)*, HEALTH AFFAIRS (July 5, 2022), <https://www.healthaffairs.org/doi/10.1377/forefront.20220705.312402/>.

Brief of Former Senior HHS Officials in Talevski case, available at, brief filed by former senior officials of the Department of Health and Human Services in the case, https://www.supremecourt.gov/DocketPDF/21/21-806/238702/20220923154428261_Brief.pdf.

Brief of the American Public Health Association in *Talevski* case, available at, https://www.supremecourt.gov/DocketPDF/21/21-806/238583/20220922160145225_21-806%20APHA%20ACPM%20Deans%20Chairs%20Scholars%20Amicus%20Brief.pdf.

Thomas Barker, Blog on Talevski case available at <https://www.medicaidandthelaw.com/2022/06/21/enforcing-medicaids-requirements-in-the-federal-courts/>.

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