

Today's Webinar:



LTCCC WEBINAR

The Dangers of Understaffing and the Need to Litigate

Tuesday, October 17, 2023 | 1-2PM ET



Kelly Bagby (Vice President, AARP Foundation Litigation) and **Benjamin Davis** (Senior Attorney, AARP Foundation Litigation) discuss nursing home and assisted living litigation outcomes and provide valuable insights from their work on these critical cases.

For materials from today's webinar, visit
nursinghome411.org/webinar-litigation-aarp



Cases to Protect Residents in Long-Term Care Settings

Kelly Bagby and Benjamin Davis
AARP Foundation Litigation

What We Will Discuss

1. What is AARP Foundation Litigation?
2. We focus on protecting the civil rights of people in long-term care settings:
 - a. Fighting abuse and neglect in nursing facilities
 - b. Promoting the ability of people to avoid chemical restraints
 - c. Ensuring that residents facing involuntary discharge can fight to remain in their facility
 - b. Combatting disability discrimination to ensure that older people can age in place and avoid institutions

What is AARP Foundation Litigation?

AARP Foundation Litigation advocates for systemic change in federal and state courts nationwide, advancing the legal rights and interests of people 50 and older.

One area we focus on is defending the rights of nursing facility residents and residents in other long-term care settings.

We are a team of 16 attorneys, 4 paralegals, 3 legal assistants, with a nationwide practice.

Fighting Abuse and Neglect Based on Understaffing

AFL is counsel in three pioneering class actions that use consumer protection statutes on behalf of assisted living and nursing facility residents.

Legal theory:

- a. Company's promise they will meet the aggregate assessed needs of the entire population of residents

- b. Facilities are so understaffed that these promises cannot be kept and the company knows that they are either lying to residents or failing to disclose material facts about their staffing shortfalls

Federal Court Class Actions Against One Nursing Facility Chain and Two Assisted Living Chains

Illinois

Tennessee

West Virginia

Fighting for Nursing Residents to Move to Their Communities

The Supreme Court Declared in its landmark decision *L.C. v. Olmstead* that it is per se discrimination to leave a person with a disability in an institutional setting when they can be served in the community.

Brown v. District of Columbia

- Class action brought in 2010 against D.C.
- Seeking transition assistance for all nursing facility residents who want to learn about the community and move out of a facility
- Needs information about the possibility of moving to the community
- Class needs help rebuilding their community lives with services that assist them with their activities of daily living

Litigation to Secure Home and Community-Based Services Instead of Nursing Facility Care

Home and community-based services are the same sort of assistance that people get in facilities:

- help with moving from bed to wheelchair
- help with eating
- help with toileting
- dressing
- bathing
- positioning when a resident cannot reposition themselves

Status of the Brown v. D.C. Litigation

Our team finished our second trial in December 2021 in the D.C. Federal Court.

We were at trial the first time in 2016 and lost.

We appealed and the D.C. Circuit reversed the case and remanded the case for a new trial.

We are hoping for a big win!

Fighting to Keep People in the Community = Avoiding Institutionalization

Litigation on behalf of people who are supposed to get home care services through the New Hampshire home and community-based waiver program.

Because of the poor administration of the program, many hundreds of people each month don't get the services they need, placing them at serious risk of going into hospitals and nursing facilities.

Price v. DHHS

AARP Foundation, Disability Rights Center New Hampshire, Nixon Peabody and New Hampshire Legal Assistance represent a class of people who want to remain in the community.

The services they need are the same they would get in the nursing facility. The state fails to ensure they get these services. The state is obligated under the ADA to prevent institutionalization when it can.

Misclassification of Home Health Care Workers

Because Home Healthcare Aides and similar misclassified home health workers are not entitled to benefits, the turnover rates in the industry are disproportionately high.

This disrupts the consistency of care for those who depend on it.

Because those who depend on such care are typically older persons, efforts to ensure that home health workers are properly classified will in turn improve the quality of care that older persons receive.

Such improvements are directly aligned with the Foundation's goals.

Thank you!!

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