



LONG TERM CARE COMMUNITY COALITION
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Working to improve long term care through research, education & advocacy

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Welcome to the [LTC E-NEWSLETTER](#), a monthly electronic newsletter of the [Long Term Care Community Coalition](#). Note to Readers: To go directly to an article, click on its page number in the Table of Contents. Once you are at the article, click on any underlined text for a link to more information or to send a message in “Spotlight on Advocacy.”

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[U.S. COURT OF APPEALS RECOGNIZES RIGHT TO JUSTICE FOR VIOLATIONS OF NURSING HOME RESIDENT RIGHTS](#)

In a landmark decision, the U.S. Court of Appeals for the Third Circuit ruled on June 30, 2009 in *Grammar v. John J. Kane Regional Centers* that nursing home residents and their representatives have a right to sue for violations of the 1987 Nursing Home Reform Law. The Reform Law sets forth standards of care and rights for residents, such as the right to receive sufficient care to achieve one’s highest practicable physical and psycho-social well being.

While the ruling applies specifically to a case against a county-run nursing home, and could thus be limited to claims made against government-run nursing homes, it is nonetheless very significant. As noted in [*The Legal Intelligencer*](#), the opinion “recognizes a new category of lawsuits... [by giving] residents of county-run nursing homes the right to bring civil rights claims under Section 1983 to challenge the quality of their treatment (*3rd Circuit Recognizes New Cause of Action for Civil Rights Violations at Nursing Homes* (July 1, 2009)). Section 1983 ([42 U.S.C. § 1983](#)) provides that

Every person who under color of any statute... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress....

The application of § 1983 to people acting “under color of” law, while generally understood to mean state employees or officials, has been interpreted to include private citizens in certain circumstances, such as when the private citizen was performing a state-mandated service (for instance, in the case of a private doctor contracted by a state to provide medical services to prison inmates). Given the fact that nursing homes are the primary provider of state-funded residential long term care (and given the concomitant significant government interest (and involvement) in nursing home care) this has the potential to also be meaningful for people seeking justice from non-government owned facilities that have caused resident harm.

This proposition is bolstered by the second major determination made by the court: that the Nursing Home Reform Law establishes “individual rights” for a “class” of people (nursing home residents). Using a three-pronged test – whether the statute confers substantive rights, whether these rights are “clearly delineated” and whether the language of the law “unambiguously binds” state and nursing homes – the court determined that the Nursing Home Reform Law satisfies all of these criteria, and that “Congress intended to create individual rights in drafting and adopting...” the Reform Law. As a result, the case (which is based on allegations that the nursing home’s failure to provide proper care resulted in a woman developing decubitus ulcers, malnourishment and eventually sepsis, from which she died) was remanded (returned to the lower court, which had ruled against the plaintiff) for further proceedings in line with the findings in this decision.

[\[http://www.ca3.uscourts.gov/opinarch/072358p.pdf\]](http://www.ca3.uscourts.gov/opinarch/072358p.pdf)

LITTLE-KNOWN BENEFIT CAN HELP VETS & SPOUSES PAY FOR CARE SERVICES

Saul Friedman, writing in his [Newsday](#) column Grey Matters, reported on a little-known benefit for veterans and their spouses that can help pay for assistance and care services at home, in assisted living or in a nursing home. According to the column, published on June 27, 2009,

On Dec. 19, 2006, then-Veterans Affairs Secretary Jim Nicholson issued a press release "to inform wartime veterans and surviving spouses of deceased wartime

veterans about an underused, special monthly pension benefit called 'Aid and Attendance.' "

The press release stated, "Although this is not a new program, not everyone is aware of his or her potential eligibility. The Aid and Attendance pension benefit may be available to wartime veterans and surviving spouses who have in-home care or who live in nursing homes or assisted-living facilities."

You may learn more by calling Veterans Affairs at 800-827-1000, or by visiting its Web site ([Click here](#) to connect, then click into "What are Aid and Attendance and Homebound benefits? How do I apply.")

[\[http://www.newsday.com/business/custom/retirement/ny-bzsaul2712880606jun25,0,1486786.column\]](http://www.newsday.com/business/custom/retirement/ny-bzsaul2712880606jun25,0,1486786.column)

WEBSITE GIVES SIDE-BY-SIDE COMPARISON OF HEALTHCARE REFORM PROPOSALS

An interactive website page from The Kaiser Family Foundation allows individuals to compare, side-by-side, the leading reform proposals across a number of important indicia. According to the Foundation, "Included in this side-by-side are proposals for moving toward universal coverage that have been put forward by the President and Members of Congress. In an effort to capture the most important proposals, we have included those that have been formally introduced as legislation as well as those that have been offered as principles or in White Paper form. This side-by-side will be regularly updated to reflect changes in the proposals and to incorporate major new proposals as they are announced."

[\[http://www.kff.org/healthreform/sidebyside.cfm\]](http://www.kff.org/healthreform/sidebyside.cfm)

SPOTLIGHT ON ADVOCACY: SUPPORT FAMILY DECISION-MAKING

In New York State the only way families and friends of people who do not, or never had, the ability to make their own health care decisions can intervene to make those decisions on the patient's behalf is if the patient has signed a health care proxy or has left "clear and convincing evidence" of his wishes. Without a proxy or evidence, the hospital or nursing home is allowed to make these decisions. Millions of New Yorkers are in danger of having the most important and personal decisions in their lives in the hands of strangers. For those who are already incapacitated or who were born incapacitated, it is too late. The power to make health care decisions should be in the hands of those who understand the unique values, choices and morals of the patient.

The Family Health Care Decisions Act is a bill that would allow the family and friends of incapacitated people to make health care decisions in consultation with physicians to ensure that the wishes of the patient are carried out in his or her best interest. The FHDA establishes clear procedures for selecting a surrogate from a list of family members and close friends, and decision-making standards by which the surrogate must abide. The surrogate would be authorized to make all health care decisions that a patient with capacity would be able to make.

[PLEASE SPEAK OUT NOW](#). Send an email or letter now to the Governor and your state representatives, urging them to support the Family Health Care Decisions Act. This bill would allow the people closest to the patient to be their voice. Facilities, doctors and hospitals can never fully understand and carry out each patient's desires. This bill ensures that the patient's loved ones will be able to give instructions that facilities must respect. You can send a quick message by going to [LTCCC's Citizen Action Center](#) (go to www.ltccc.org and click on the Citizen Action Center on the right hand side).

WE'RE ON THE WEB!

www.ltccc.org: Our main website, with access to all of our issues, policy briefs and research.

www.assisted-living411.org: For information on assisted living, including consumer issues and policies.

www.nursinghome411.org: For information on developments in nursing home care, regulation and policy issues.

LTCCC LINKS OF INTEREST:

[View the latest enforcement actions against nursing homes in New York State](#)

[Read the latest edition of LTCCC's Newsletter](#)

[Click Here To Make A Donation On-Line](#) or send a tax-deductible donation to LTCCC, 242 West 30TH Street, Suite 306, NY, NY 10001.

If the above links do not work (or if you are reading a printout of this newsletter) you can find these documents on our homepage, www.ltccc.org.

[SIGN-UP FOR THE LTC E-NEWSLETTER \(OR UNSUBSCRIBE\)](#)!