

The Dallas Morning News

PAIN & PROFIT



Tom Fox / The Dallas Morning News

As patients suffer, companies profit

Years of poor state oversight have allowed companies to skimp on essential care for sick kids and disabled adults

By J. David McSwane and Andrew Chavez
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LAKE RAY HUBBARD

Frontage roads set for I-30

Rowlett, TxDOT hope project will ease traffic around Bayside

By RAY LESZCZYNSKI Staff Writer

GARLAND — During the same decades that Rowlett leaders were chasing their dream of turning an underutilized park into valuable Interstate-30 frontage, the Lake Ray Hubbard area was drawing a

lot of people. In the three years since a developer partner paid \$31.8 million for the 267 acres of Rowlett's Bayside, the site known as Bayside has instead become the place where traffic backs up. So once those folks stuck regularly on I-30 if they've interpreted the long-awaited progress at Bayside as just more traffic coming to a stretch of interstate they use daily. "For certain times in the day you have to plan for just sitting in traffic," said Sue Brown of Garland, one of several dozen area residents who attended Thursday night's public input meeting in Garland. But the new developer and his city partners believe there's good news for all in the form of Texas Department of Transportation plans revealed Thursday night at Hella

I-30 frontage road improvements



Source: TxDOT

DALLAS POLICE AND FIRE PENSION SYSTEM

How 1 line saved a plan

Compromise brings hope for city finances, responders' benefits

By TRISTAN HALLMAN Staff Writer

Dallas' \$235 million police-and-fire back-pay lawsuit settlements were made much easier because of a single line in the largely bill that saved the city's first-responder pension system from disaster.

The new law states that "eligible back pay" for pension contributions and benefits "does not include any additional compensation paid by the city to a member or pensioner wholly or partly or directly or indirectly as the result of litigation instituted to recover back pay."

That sentence — a compromise from what the city initially wanted — prevents police and firefighters from claiming the Dallas Police and Fire Pension System owes them more in benefits. And it halts what would've been the consequence of those additional benefits: the retirement fund's claims for pension contributions owed on back pay from the city and those same police and firefighters.

City Attorney Larry Casto said the language was important to the settlements and the pension bill. The sentence also helped "the number crunchers" make sure the pension rescue plan worked, he said. "We needed to add certain," Casto said. "And that sentence facilitated us coming to an accord on the pension legislation."

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RUSSIA INVESTIGATION

Self-pardon 'not going to happen'

Giuliani says such an action by Trump could lead to impeachment

FROM WIRE REPORTS WASHINGTON — President Donald Trump's attorney Rudy Giuliani publicly pressed Trump's expansive view of executive power this week and, saying on two Sunday TV shows that the president probably has the sweeping constitutional authority to pardon even himself. "He probably does," Giuliani said, when asked on ABC's *This Week* if Trump has the ability to pardon himself. "He has no intention of pardoning himself, but he probably — not to say he can't."

Giuliani's comments came less than 24 hours after the revelation Saturday that the president's legal team argued in a secret January memo to Special

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NATION & WORLD

Breast cancer study: Not all need chemo

Many women with early-stage breast cancer who would receive chemotherapy under current standards do not actually need it, according to the largest study ever on the disease's treatment. 1A

Parkland graduation honors slain seniors

The senior class from the Parkland, Fla., high school where a gunman killed 17 people in February received diplomas Sunday and heard from surprise commencement speaker Jimmy Fallon, who told them "don't let anything stop you." 2A

BUSINESS

Women's pay better but decades behind

Although women in Texas have made progress in closing the gender pay gap, they still fall short when it comes to earning the same as men for comparable jobs. If trends hold steady, it could take more than three decades to catch up. Economic Snapshot 1D

METRO & STATE

HMK owner offers to take houses back

The West Dallas businessman who sold more than 100 rental homes to his low-income tenants says he'll return any equity in the houses to any dissatisfied buyers after two former tenants sued his mortgage company. 1B

LIFE & ARTS

Author seeks happy ending after fire

More than a year after losing the third-largest fire in Texas history last spring in the Pearland, John Erickson — the author of the beloved Hank the Cowdog children's book series — is still looking for a happy ending. 1E

INSIDE table with categories like Letters, Editorials, and Sports.



PAIN & PROFIT A DALLAS MORNING NEWS INVESTIGATION

Skimping on care



Heather Powell, who became paralyzed after being shot, reacts to a drop in her blood sugar before eating lunch in her San Antonio apartment. Last year, Superior HealthPlan cut Powell's nursing care to seven hours a day.

Critical needs unmet over years of poor state oversight

By J. DAVID McSWANE and ANDREW CHAVEZ Staff Writers. Photography by TOM FOX Staff Photographer

Day after day, Heather Powell lay in bed, in pain, in her small San Antonio apartment. For two years she languished there, staring at the ceiling, watching spy dramas on Netflix, surfing the Internet with a computer mouse tucked under her chin. She had been almost completely paralyzed from the neck down in a shooting more than a decade earlier. These days she found some joy in the only human relationships she had left, with the helpers who washed her body and cooled her forehead and laughed at her jokes. A state program was supposed to give Powell, now 38, enough help so she could live at home,

rather than in a nursing home. But the hydraulic lift that moved her to the shower or a wheelchair broke, trapping her in bed. There was no sign of the special mattress her doctors had prescribed to relieve pain and prevent the sores that can kill immobilized people. No sign of the gadget that would allow her to turn on the lights or adjust the thermostat with her voice — even after a nurse hired by the state wrote a scathing report about Powell's suffering. Last spring came the cruelest cut. Superior HealthPlan, the company Texas paid to manage her care, said it was cutting the hours of the aides who helped her get through each day. Rather than spending 12 hours a day with her, they would be around for just seven. Alone for 17 hours a day. Unable to move. In pain. Powell began to plan her suicide.

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BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

Agency lenient on illegal gun sales

Even when inspectors say licenses should be revoked, little happens

FROM WIRE REPORTS WASHINGTON — As they inspect the nation's gun stores, federal investigators regularly find violations of the law, ranging from minor record-keeping errors to illegal sales of firearms. In the most serious cases, such as the sale of a gun to a prohibited buyer, inspectors often recommend that gun dealers lose their licenses. But that rarely happens. Senior officials at the Bureau of Alcohol, Tobacco, Firearms and Explosives regularly overrule their own inspectors, allowing gun dealers who fail inspections to keep their licenses even after they were previously warned to follow the rules, according to interviews with more than half a dozen current and former law enforcement officials and a review of more than 100 inspection reports. One store was cited for failing to conduct background checks before selling guns. A store owner told investigators he actively tried to



LOREN ELLIOTT/AGENCE FRANCE PRESSE An ATF official cited politics when asked why the bureau overrules inspectors' recommendations.

See LAW Page 7A

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Powell began to plan her suicide.

Texas is supposed to provide a reasonable quality of life to poor, sick people like Powell, who need long-term care that was once available only in nursing homes. The state used to pay for that care directly, writing checks to doctors and home-care agencies.

When Texas turned over many of its health programs to private companies to manage, they promised to save taxpayers millions while delivering better health care to more than 4 million Texans, including about 720,000 medically fragile children and adults.

But years of inept state regulation have allowed corporations to profit as they skimp on care for sick kids and disabled adults in the program known as Medicaid managed care. And Texas health officials have hidden the full extent of the problems from the public.

The Dallas Morning News has identified hundreds of cases in which essential medical care was delayed, denied or not delivered to people with critical health needs.

We reviewed thousands of pages of documents, including patient medical files, corporate financial records and state records gathered through 160 public-information requests. We analyzed state data and talked to hundreds of people: patients, policy experts and medical professionals.

Here's what we found:

- At least 8,000 Texans like Powell — disabled people trying to stay out of nursing homes — have major unmet medical needs. The state hasn't even studied the care of other disabled adults or ailing children.
- Complaints are growing from patients and their families who say the private health care companies are refusing critical services. Since 2014, appeals of such decisions have risen 26 percent in the program for the elderly and disabled and 31 percent in the program for foster children.
- The companies providing care get to decide what treatments are “medically necessary,” and the state often fails to challenge or even review policy changes that can deny care to thousands of patients. In 2016, state regulators found one such change by Superior HealthPlan was illegal — but only after a baby named D'ashon Morris suffered catastrophic brain damage.
- Medically vulnerable patients struggle to find doctors as the health care companies vastly overstate how many doctors are in their networks. As we will detail in part 3, the companies haven't hired nearly enough “care coordinators” to connect people with treatment, and those they do hire are overwhelmed by too many cases.
- When somebody gets hurt, the state rarely does anything about it, as we will show in part 4. From 2013 to 2016, the state fined the companies just \$12.4 million, or two-hundredths of a cent for every one dollar Texas paid them in those years.

The managed-care industry asserts that it saves Texas about a billion dollars a year while improving the health of children, reducing asthma cases and short-term complications from diabetes. Disabled adults, the industry says, also benefit, showing lower rates of certain infections and pneumonia.

The Texas health commission did not provide us with independent analysis to confirm those savings and said it could not arrange an interview with state executives. Health Commissioner Charles Smith announced his retirement last month. Weeks earlier, *The News* requested an interview and his staff was working to provide answers to our questions.

“Our most important mission is making sure people get the services they need,” commission spokeswoman Carrie Williams ultimately said in a lengthy statement.

“All of these challenges have our ongoing attention and need to be strengthened in order for us to have a successful program,” she added.

Whatever benefits managed care may have for healthy kids, our investigation shows it's not working for sick people. That's because the system provides perverse incentives for health care companies.

“The only way to make money is to deny medically necessary care,” says Peter Hofer, a senior litigator for Disability Rights Texas, which represents Medicaid patients and foster children. “It's a bad model.”

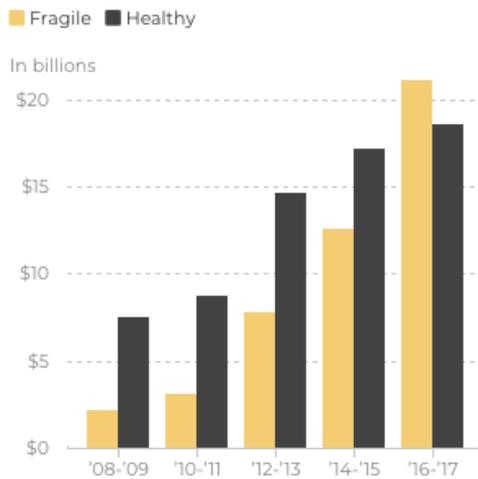
Hofer was involved in landmark litigation that created many of the state rules that companies are supposed to follow.

The Texas Legislature embraced managed care two decades ago as a way to curb soaring Medicaid costs. Like HMOs — health maintenance organizations — in the private sector, Medicaid managed-care companies promised to negotiate low rates for doctors and hospitals, slash spending on unnecessary services and do a better job of weeding out fraud.

The companies also pledged to improve health outcomes through “coordinated care” that would ensure patients got treatment and access to preventive checkups and vaccinations.

More sick people, more money

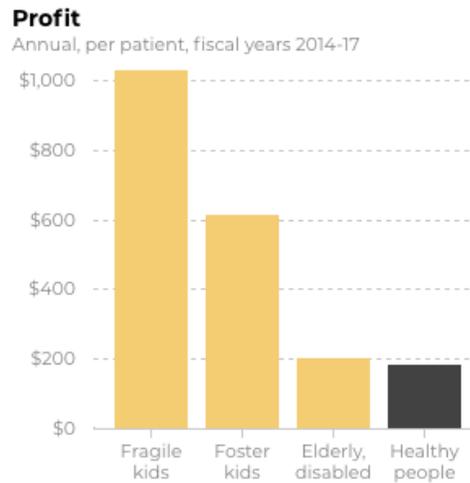
In the early years of managed care, Texans with complex medical needs represented a small fraction of companies' revenues. Today, those sick people account for more than half of the revenue, with \$11.7 billion last year alone.



SOURCE: News analysis of state financial data
Andrew Chavez / DMN

Fragile Texans are more profitable

When lawmakers pushed medically fragile children into managed care, it was a boon for for-profit health care companies. Dollar for dollar, a vulnerable patient is more profitable than a healthy patient.



SOURCE: News analysis of state financial data
Andrew Chavez / DMN

In return for all of this, Texas promised the companies a modest profit.

The first managed-care programs focused on relatively healthy patients, mainly poor children. But the elderly and disabled, who make up less than a quarter of the people in the program, account for more than half of Medicaid spending in Texas.

Texas soon became a national leader in the effort to put more vulnerable people into managed care. In 2008, it chose Superior as the only health plan available to foster children.

Over time, the state rolled the elderly and disabled into managed care, too. And last year, lawmakers ignored warning signs as they expanded the program to cover children who qualify for Social Security disability benefits or depend on machines for eating and breathing.

Today, Texas and the federal government pay about \$11.7 billion a year for the programs that care for the state's sickest citizens. Nine out of 10 of those patients rely on five giant corporations: Superior, Amerigroup, Cigna, Molina and United Healthcare.

Texans with complex medical needs are now the most profitable, on a per-person basis, for the companies in

Medicaid managed care, financial data shows.

The companies told state regulators last year that they netted \$147 million on fragile patients alone.

Few — but damning — studies

Managed care comes with inherent tension: Doctors and the companies argue over what care is necessary, with patients caught in the middle.

So how often do the companies refuse to pay for treatment or services that doctors say are necessary? The state health commission said it has no idea.

While the companies do report some information, it is dotted across thousands of spreadsheets. And auditors have repeatedly warned that companies often supply unreliable and misleading data.

Texas pays health care companies a higher monthly fee to provide at-home care for people like Powell, who would otherwise be confined to nursing homes. In 2013, lawmakers became alarmed at how fast this program was growing and raised concerns that the managed-care companies were needlessly putting people into it just to make more money. The Legislature ordered a study.

So in 2015, nurses traveled the state to check on a small sample of people in the program.

The News obtained records created during that study and discovered that the nurses found problems in more than a third of the 272 cases they reviewed.

Many patients needed but didn't get skilled nursing — a benefit for which the state pays extra. Some patients waited hundreds of days for basic supplies like adult diapers and wipes. One woman spent half a year trying to get a walker despite her history of falls.

The nurses flagged George Berry, a 55-year-old diabetic man who has lost most of his eyesight and needed a nurse's help to make sure he took the right amount of insulin.

Citing privacy concerns, an Amerigroup spokeswoman wouldn't comment on that case, but said the company hired extra people to make sure its clients are getting what they need.

"Amerigroup worked quickly and collaboratively" with the state health commission to address problems identified by the nurses, said Olga Gallardo of Anthem, the health care giant that owns Amerigroup.

But three years later, Berry told *The News* he still hasn't received home nursing and has ended up in the emergency room several times because he took too much insulin.

"I haven't seen a nurse in so long, I don't know what they smell like," he says.

The company's profit margin from this program, 6 percent over the last four years according to our analysis of state data, far exceeds what other companies have pocketed. It netted almost \$400 million, more than all the other health care companies combined.

Last year, the nurses went out again, checking this time on 358 disabled patients. Again, *The News* got the

underlying records.

One in 5 of the patients had unmet needs so severe that nurses recommended health regulators immediately intervene. Almost 20 people were at risk of serious injury because they weren't getting the services they needed, including some with dementia who had no help.

Some patients hadn't seen a nurse in years, or had ill-fitting or painful dentures, cavities and rotting teeth.

In some cases, the companies had rejected valid claims. In others, they hadn't followed through on the needs they knew existed.

When the nurses embarked on the 2017 study, they carefully chose the patients they visited, using the same techniques as social scientists to make sure their sample was representative. That method, combined with some basic statistics, would allow them to estimate how many disabled patients might be at risk.

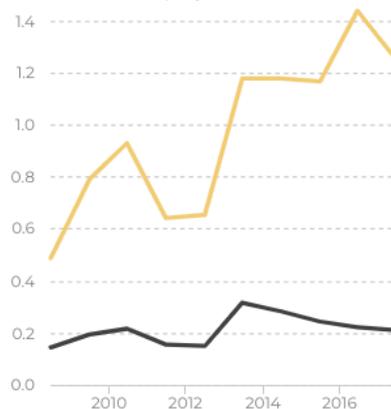
They never published that estimate; the state instead downplayed the significance of the problems in a vague report to lawmakers.

Complaints about denied care have risen among fragile patients

Over the past decade, complaints about vulnerable patients in Texas being denied care have nearly tripled. These patients have complained at five times the rate of healthy people, whose care is far less expensive.

■ Fragile ■ Healthy

Per 1,000 members per year



SOURCE: News analysis of health commission complaints database

Andrew Chavez / DMN

So we did the estimate for them. Using the most conservative assumptions, we found that at least 8,000 patients — and as many as 14,000 — in that program may be going without the services they need. That's out of about 50,000 total.

There is no similar data for medically fragile children, foster kids or disabled Texans who aren't in the program for keeping patients out of nursing homes.

But a report released in April by outside researchers, based on 22,000 patient records, also found serious problems. For example, at two companies, at least two-thirds of the patients who needed personal assistance at home weren't getting it.

Managed-care companies in Texas have the power to write their own policies about what is "medically necessary care." Those rules aren't supposed to be stingier than federal and state standards. Children are entitled to receive individual assessments of their needs — and to have all those needs met.

But Superior has used its policy-writing power to deny care, regardless of what each child might need, according to state records and dozens of interviews with advocates, disability lawyers and parents across the state.

Jane Hardey, a crisis communications expert hired by Superior, said the company follows state parameters on issues like medical necessity, home nursing and reauthorizing treatment. She called accusations that the company is denying care to save money "categorically false."

In 2014, Superior decided that only specialists, not family doctors, could test children for allergies, according to state emails and legal filings. Within months, state regulators were dealing with a crisis: Children

in rural areas couldn't get allergy treatment. The company had no specialists in 63 counties, court records show, forcing patients to travel hundreds of miles to find a doctor.

“Superior’s strategy is to deny as many claims as possible, regardless of the service or provider,” says Casey Low, an Austin lawyer who represents family doctors suing Superior over that policy change. “If they can cover more people, but pay less out in services, they make more money.”

Similarly, the company changed its rules in 2016 to require one nurse to care for two very sick patients, a move that effectively cut its costs in half. The state later determined that policy was illegal, according to records obtained by *The News*, but not until more than a dozen foster children across the state were put in danger.

Doctors, home therapists and disabled people have complained to state health officials and the Legislature for years that Superior was creating unnecessary roadblocks designed to deny care and save money. Critics cite onerous paperwork for doctors and multiple layers of screenings and approvals before the company will allow treatments.

“I believe that this particular managed-care organization is putting children’s lives in danger to make a profit,” says Dr. Ruchi Kaushik, a pediatric specialist in San Antonio who treats medically fragile children.

“We shouldn’t put children’s lives at risk, just so someone can make some money.”

For patients of managed-care companies in general, the problems are getting worse, data shows.

Formal complaints that managed-care companies are refusing needed treatment have jumped as lawmakers have moved more and more people into their care, according to state data.

The trend is especially pronounced in the programs for foster children and the disabled, where the rate of these complaints has almost tripled since 2008.

Filing a formal appeal is even more complicated than making a complaint. But appeals have jumped 27 percent in the programs for foster children, the elderly and disabled since 2014.

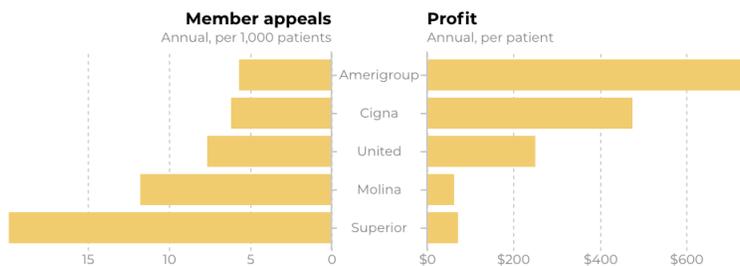
‘I would rather not be alive’

A year ago, Heather Powell got a visit from a registered nurse hired by the state, investigating a complaint about her care. Sara Goodman found that Superior had been collecting thousands of dollars a month to provide Powell everything she needed to live at home — including \$5,000 for the lift, a special mattress and voice-activated controls. But she didn’t get the equipment.

“She has not been out of the bed for more than one year except for transfer by ambulance to medical ap-

When the bottom line hurts, appeals rise

The program for the elderly and disabled is a volatile business because patients need expensive long-term services, which hurt companies’ bottom lines. Over the last four years, the companies that struggled to make big profits accounted for the most appeals by members who were denied care.



SOURCE: News analysis of state financial data and quarterly performance reports

Andrew Chavez / DMN

pointments,” the nurse wrote in her report.

“She is a young, intelligent person who wants to live in her home and participate in the community,” the goal of the Medicaid program she was in, Goodman added in an internal memo obtained by *The News*.

“Superior has failed to address this member’s needs,” wrote Goodman, who did not respond to a request for comment.

The same year it was skimping on care for Powell and countless others, Superior lost \$5.7 million through its contract to provide long-term care for disabled people — its first loss after three years of profitability.

That summer, the state pressed Superior to supply the things Powell needed, a commission spokeswoman said. But the company provided only a thin gel mattress topper, a much cheaper option that caused her pain.

“This is a complex case,” said Williams, the Health and Human Services spokeswoman. “Our staff worked hard behind the scenes on a number of very specific items to help improve her care and quality of life.”

Soon after, Superior cut her personal attendants’ hours.

“If I were to lose these hours,” Powell remembers thinking, “I would rather not be alive.”

She began planning to kill herself by overdosing on her blood-pressure medicine, she says.

But the more she thought about Superior’s reductions, the angrier she got at the company. Rather than give up, she called a disability lawyer and asked for help fighting Superior.

By February, Powell had developed ulcers on her lower back.

That’s when *The News* asked the health commission questions about Powell’s case. Within a few weeks, Superior set up her special mattress, which constantly shifts and redistributes her weight to prevent ulcers.

Her pain quickly became less severe, she says, and she needed fewer drugs to get through the day.

The company also restored the number of hours that personal attendants would be around to help her take her medicine and clean her wounds and place an electric blanket on her when her temperature drops.

She’s relieved, but she says she spends a lot of time worrying for others who might be suffering.

“Can you imagine,” she asks, “how many people they probably do that to?”