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‘Dumping’ cases: Court rules patients can sue states if a nursing home refuses readmission

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Medicaid-covered nursing home residents have a right to sue states that do not have a fair appeals process in the case of unwanted discharges, a federal court ruled last week.

But an attorney for California’s main provider organization said Friday the decision by the Ninth U.S. Circuit Court of Appeals to reinstate several lawsuits against the state didn’t go so far as to say whether California’s system was constitutional.

“This is largely a procedural decision and does not foretell the ultimate result in the case,” said Mark Reagan, outside general counsel for the California Health Care Association, which had filed a brief in support of the state. “It reflects a willingness of this panel to recognize a private right of action in an environment where federal courts are generally less willing to do so.”

Reagan said most courts have allowed decisions on related issues to rest with the Centers for Medicare & Medicaid Services officials, who ultimately pay for the care of residents on Medicaid.

The California appeal was brought by three residents and an association on behalf of those “dumped,” or denied readmission to their nursing homes after acute hospital stays.

Plaintiff Bruce Anderson has dementia and spent four years in a nursing home before going to the hospital with pneumonia in 2015. He was not readmitted and remained hospitalized, under sedation, for more than a year. Another plaintiff had a stroke and was refused readmission by his home of six years. The third, an ALS patient who has since died, was also denied readmission after a case of pneumonia.

In one case Reagan worked on, the nursing home denied readmission because no attending physician was willing to take the man on after he was discharged from the hospital.

In all three cases, a government hearing officer operating under California’s Medi-Cal procedures agreed that they had been wrongly denied. But the state did nothing to enforce the decision.

“Congress could not have intended (the law) to create meaningless show trials that allow nursing homes to persist in improper transfers and discharges,” Judge Marsha Berzon said in writing the majority opinion for a three-judge panel.

Providers across the nation have come under fire in recent years for alleged dumping or [evictions under false pretenses](https://www.mcknights.com/news/sava-senior-care-faces-multipronged-patient-dumping-lawsuit/).

In this case, the panel ruled the Federal Nursing Home Reform Amendments to the Medicaid Act contain “rights-creating” language that covers unlawfully discharged nursing home residents.

The Ninth Circuit is only the second court to rule that the reform act was intended to allow residents to enforce its patient rights rules in federal court, Bloomberg News reported.

The decision now allows the plaintiffs to argue whether California’s means of enforcing an appeal are indeed fair.