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Providers can make end-of-life decisions for mentally incompetent residents, judge rules

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Craig Cornett, California Association of Healthcare Facilities

Physicians can administer psychiatric medications and make end-of-life decisions for residents in California who are mentally incompetent, provided family and independent representatives have input, a state appeals court has ruled.

While a 2016 court decision said the law violated patients’ rights, the 1992 law allowing the physician authority over residents at the end of life has remained in effect over the past three years. The law can continue to stand as long as it respects the rights of nursing home residents, the First District Court of Appeals [said](http://www.canhr.org/newsroom/releases/2019/20190723Release/Appeal147987.PDF) Monday. But there are caveats, which include an independent patient representative on the team reviewing medical decisions.

A “patient representative must be appointed for every nursing home resident determined to be decisionally incapacitated,” it wrote. A notice that a resident is “found to lack decision making capacity” must be given orally and in writing, “and the written notice must be given not only to the affected nursing home resident but to at least one other competent person whose interests are aligned with those of the resident.”

Industry leaders expressed relief over the decision.

“This ruling means an interdisciplinary team of caregivers will continue to be able to formulate and implement care plans for up to 12,000 individuals covered by the law,” said California Association of Health Facilities CEO and President Craig Cornett. “We are gratified that the court has brought clarity to this important issue so our members can continue to insure the well-being of these residents.”

California Advocates for Nursing Home Reform, one of the plaintiffs, also found reasons to praise the decision.

“The Court has required nursing homes to provide more due process to critical medical decisions affecting these infirm and otherwise powerless patients, including the administration of psychotropic drugs and decisions surrounding the end of life,” said Amitai Schwartz, the attorney for California Advocates for Nursing Home Reform and nursing home a resident identified as “Gloria A.”