

## Ind. ruling halts caregiver choices based on race

August 23 2010, By CHARLES WILSON , Associated Press Writer

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In this July 30, 2010 photo, Brenda Chaney poses in her attorney Denise LaRue's office , in Indianapolis. Chaney worked in a Plainfield, Ind., nursing home that issued her an assignment sheet including a daily reminder that one woman in her unit "Prefers No Black CNAs." Nursing home residents have the right to choose who's going to take care of them, except when those choices are based on color, 7th U.S. Circuit Court of Appeals ruled in Chaney's case in July. (AP Photo/Michael Conroy)

(AP) -- Certified nursing assistant Brenda Chaney was on duty in an Indiana nursing home one day when she discovered a patient lying on the floor, unable to stand.

But Chaney couldn't help the woman up. She had to search for a white

aide because the woman had left instructions that she did not want any black caregivers. And the nursing home insisted it was legally bound to honor the request.

The episode, which led to a recent federal court ruling that Chaney's civil rights had been violated, has brought to light a little known consequence of the patients' rights movement that swept the nation's health care system over the last two decades.

Elderly patients, who won more legal control over their quality of life in nursing homes, sometimes want to dictate the race of those who care for them. And some nursing homes enforce those preferences in their staff policies.

"When people write laws, they don't think about these types of things very much," said Dennis Frick, an attorney with Indiana Legal Services' Senior Law Project.

At nursing homes, tension over patient rights and race "comes up occasionally in virtually every state in the United States," said Steve Maag, director of assisted living and continuing care at the American Association of Homes and Services for the Aging.

Maag said he has gotten several questions a year from nursing home officials about reassigning workers to suit residents' racial preferences. Another case in Indiana last year resulted in a damage settlement for a caregiver. A state agency in Montana has also handled a formal bias complaint.

Now, Indiana state health officials expect to notify all nursing homes of the court ruling, and Frick said it could be cited as precedent throughout the nation.

In 1987, Congress enacted the Nursing Home Reform Law to address evidence of widespread abuse of nursing home patients. The states followed suit with "a strong set of regulations that would guarantee that residents were free from abuse and had quality of care, and really had quality of life," said Robyn Grant, a national senior care advocate who was involved in drafting Indiana's rules in 1990.

But the emphasis on patient rights led some nursing homes to think they outweighed everything else.

"We were taught that residents' rights were paramount," said Janet McSharar, who specializes in long-term care issues and represented the nursing home where Chaney worked in Plainfield, an Indianapolis suburb of 23,000.

Under federal law, nursing home residents are free to choose their own physicians. Indiana's law is broader, saying patients can choose their "providers of services." Both laws say nursing homes must reasonably accommodate residents' "individual needs and preferences."

Other states' laws are similarly broad. Grant said the Indiana law was intended to cover providers such as pharmacies, not caregivers.

Documents in Chaney's lawsuit, filed in 2008, say her daily assignment sheet at Plainfield Healthcare Center always included the reminder that one patient in her unit "Prefers No Black CNAs."

Chaney, a 49-year-old single mother who at the time was helping to put her only son through college, initially went along with the policy despite her misgivings because she needed the money.

"I always felt like it was wrong," said Chaney, who has worked in nursing homes since she earned certification in 2006. "I just had to go

with the flow."

The nursing home said it was just following a long-standing interpretation of the patients' rights law. "The rules say this is their home and everyone else is just a visitor there, including staff," said McSharar.

[Nursing homes](#) can be hotbeds of racial friction, said David Smith, a Drexel University professor who has studied racial integration in hospitals and long-term care centers. In urban areas, staffs are often predominantly African-American while most patients are white. Some elderly people revert in dementia to the prejudices they grew up with.

"You've got to remember the nursing home residents grew up in the time of Jim Crow, even in the North. They regress back," Smith said.

Courts have held that patients can refuse to be treated by a caregiver of the opposite sex, citing privacy issues. But the 7th U.S. Circuit Court of Appeals, ruling in Chaney's case last month, said applying that accommodation to race goes too far.

"The privacy interest that is offended when one undresses in front of a doctor or nurse of the opposite sex does not apply to race," the ruling said.

State and national officials say they aren't sure how often a patient has rejected a caregiver based on race. A similar case involving an Indianapolis nursing home resulted in an \$84,000 settlement last year, but officials with the Indiana Equal Employment Opportunity Commission would not comment on whether other complaints had been filed because they are not public record.

In a case in 2000, the Montana Department of Labor and Industry said a nursing home acted inappropriately when it reassigned a black [caregiver](#)

to avoid confrontations with biased patients.

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Citation: Ind. ruling halts caregiver choices based on race (2010, August 23) retrieved 18 April 2024 from <https://medicalxpress.com/news/2010-08-ind-halts-caregiver-choices-based.html>

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