

U.S. Supreme Court Expands Options for Residents & Families Suing Nursing Homes

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In a ruling issued today, the United States Supreme Court held that the family of a nursing home resident could bring a claim against the nursing home under the Federal Nursing Home Reform Act via section 1983. In *Health & Hospital Corporation of Marion County v. Talevski*, Talevski's family claimed that the nursing home where Talevski resided violated his right to be free from unnecessary physical or chemical restraints and his right to only be discharged or transferred upon the satisfaction of certain conditions. The family asserted that these rights arose out of the Federal Nursing Home Reform Act ("FNHRA"), which provides the regulatory provisions to which nursing homes are held and surveyed upon by the Centers for Medicare & Medicaid and state survey agencies. In other words, these regulatory violations can now serve as a basis for a private right of action.



As noted above, the case expressly focused on two regulations: the requirement that nursing homes must protect and promote a resident's right to be free from physical or chemical restraints imposed for purposes of discipline or convenience and not required for the treatment of medical conditions; and the requirement that nursing

homes cannot discharge a resident without meeting certain conditions (i.e., the involuntary discharge requirements). The Court's majority opinion noted that both of these regulations are within the "resident's rights" statutory provisions of FNHRA, which has an 'individual 'rights-creating' focus.' The Court also made clear that it is Medicaid-participant nursing homes who are required to respect and honor these rights and thus, who may be sued under FNHRA. In other words, these private rights of action under FNHRA would apply to any facility subject to the regulations in the FNHRA. While the Court recognized that there is already a scheme in place to address the FNHRA

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violations (i.e., the survey process), it held that allowing a private right of action did not thwart the operation of that administrative process in any way.

While nursing home residents and their families always had the ability to sue nursing homes for negligence or malpractice, this decision holds that nursing homes can now also be sued – under section 1983 – by private parties for violating the FNHRA regulations. The impact on nursing facilities is primarily two fold. First, it provides a federal cause of action that would allow a plaintiff to sue a nursing facility in federal – rather than state – court. Second, it provides the plaintiffs in these cases another potential area of financial recovery, because successful claims under section 1983 give the court the ability to award attorney fees.

While the full impact of this decision remains to be seen, a few likely impacts should be noted. Plaintiffs' attorneys will be looking more closely at a facility's regulatory violations and determining whether they can serve as an additional basis for what would have traditionally been a simple negligence claim. From a practical perspective, nursing homes should take this into consideration when they decide whether they want to challenge a regulatory violation. The potential litigation exposure has increased and thus, it may make sense to spend time and effort challenging a regulatory violation where in the past the nursing home may have just agreed to pay the fine.

As noted above, now that a federal private right of action exists, plaintiffs will have more ready access to the federal courts. This will mean new judges and juries that have not traditionally addressed nursing home cases. Additionally, the 1983 action not only gives plaintiffs' attorneys the ability to potentially recover attorney fees, but the existence of a separate federal claim likely also allows a plaintiff to escape caps on damages that some state legislatures have enacted. In short, the *Talevski* decision increases the overall financial exposure of nursing facilities.