COURT OF APPEALS RULES THAT SNF CANNOT RESPECT PATIENT'S RACIAL PREFERENCES

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On July 20, 2010, the 7th Circuit United States Court of Appeals determined in the case of Chaney v. Plainfield Healthcare Center, that Title VII of the Civil Rights Act does not permit an employer to accommodate a resident's preference to receive medical care from a certified nursing assistant (CNA) of the same race as the resident. The case involved a skilled nursing facility in Indiana. A white patient asked not to receive care from anyone who was black. The SNF honored the patient's request and placed a written note in the chart stating, "no black" assistants should enter this resident's room or provide her care.

A civil rights lawsuit alleging racial discrimination was brought by an African American employee who had been terminated. She claimed that she had been subjected to a hostile work environment in violation of Title VII. Title VII prohibits employers from discriminating against employees with respect to compensation, terms, conditions, or privileges of employment because of the individual's race. As a defense to the lawsuit, the SNF argued that long-term care facilities have obligations to their clients that place them in a different position from most employers. The SNF pointed out that it is not only an employer but also a medical provider and that the SNF itself is a permanent home to hundreds of residents. In its role as a medical provider and care facility, the rights of residents are mandated by a vast network of state and federal laws and regulations. It argued that its obligations under Title VII must be interpreted in the context of the residents' rights under these other regulatory schemes.

The Court disagreed. It stated that the SNF "acted to foster and engender a racially-charged environment through its assignment sheet that unambiguously, and, on a daily basis reminded Chaney and her co-workers that a resident's request not to receive care from employees of a certain race would be honored by their employer." The court determined that it was unreasonable and a violation of Title VII for an employer to promulgate a policy allowing employee work assignments to be determined based upon the patient's racial preferences. The court stated: "It is now widely accepted that a company's desire to cater to the perceived racial preferences of its customers is not a defense under Title VII to a claim that an employee has been treated differently by an employer because of the employee's race." The court specifically rejected the SNF's argument that federal and state patient's rights laws and regulations justified or excused its conduct. It noted that there was a clear distinction between Title VII cases that permit gender discrimination in the health care setting. The court noted that "the privacy interest that is offended when one undresses in front of a doctor or a nurse of the opposite sex does not apply to race." The court stated:

> "Just as the law tolerates same-sex restrooms or same-sex dressing rooms, but not white only restrooms, to accommodate privacy needs, Title VII allows an employer to respect a preference for same-sex health providers, but not same-race providers."

Although this decision involved a SNF, there is no question as to its applicability to assisted living providers. Nor is there much question that the 9th Circuit or a California state court would follow the reasoning of the Chaney case. Therefore, CALA members should be careful not to cater to their resident's racial preferences or prejudices in hiring, firing or assigning staff.