Come One, Come All

No public accommodation can discriminate against PWAs

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What do bathhouses, ice-cream parlors and golf courses have in common? All are “places of public accommodation,” defined by law as open to everyone regardless of such characteristics as race, sex, religion and, more recently, disability -- including HIV. A decision last fall by New York’s Court of Appeals has added dentists’ offices to the list, making it less likely that people with the virus will be denied their right of access to essential health services. With more litigation and any luck, insurance companies, which often refuse medical and disability benefits to HIV positive people, will soon be forced to follow suit.

Discrimination tends toward chain reactions. Since the early ’90s when Kimberly Bergalis successfully sued her dentist’s estate, claiming he infected her with HIV, the specter of the perilous HIV positive health care worker has many spooked. In turn, some dentists have taken the offensive by refusing to treat people with HIV. Such was the case of the two New York dentists, who each, according to a ruling by the Division of Human Rights, rejected a patient with HIV and so violated New York’s Human Rights Law. One plaintiff was told by a dental technician that his cracked tooth wouldn’t be fixed unless he first tested negative for HIV; the other said her dentist abruptly ceased treatment after learning she had HIV. The practitioners appealed and initially won, persuading the court that their offices weren’t places of public accommodation. They argued a narrow, literal interpretation of the state law, pointing out it doesn’t specifically mention dentists’ offices and that they operate on private property and by appointment. But New York’s highest court overturned these decisions. The court rejected the colloquial reference to dentists’ offices as “private.” After all, even on private property, they offer services to the general public, advertise in the *Yellow Pages* and hang shingles for all to see.

A public-accommodation classification doesn’t hamstring a medical professional. The law simply states that such discriminatory criteria as disability can’t be the basis for patient exclusion. It’s plain that your HIV status has no relevance to your right to a tooth extraction. Whether the patient or the dentist has HIV, the practice of basic hygiene and universal precautions is the key to prevent the spread of HIV, hepatitis B and other infectious agents. But the appeals court’s ruling underscores that health care workers’ irrational fears of HIV transmission deserve no more deference than those of a bathhouse attendant, an ice-cream scooper or a caddie.

The legal armies of the nation’s insurance companies have also pressed for a rigid reading of “public accommodation,” arguing that the classification safeguards access only to physical

structures and that an insurance policy is not a “place.” So far, all but one of the six reported decisions in such cases have sided with the individuals denied insurance coverage. Although in 1994 an Ohio court concluded that the American for Disabilities Act protects only a disabled person’s physical ability to use a public accommodation’s services, both state and federal courts have since repeatedly balked at so absurd a conclusion. Insurance companies have long tried to place strict caps on -- and even evade responsibility altogether for -- the benefits claims of people with HIV. As the courts continue to clarify the legal provisions on public accommodations, let’s hope judges will keep rebuking such wiles.

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