

Health

Originally published December 1, 2011 at 5:17 PM | Page modified December 1, 2011 at 5:47 PM

Court: Some bone-marrow donors can be paid

A federal appeals court ruled Thursday that most bone-marrow donors can be paid, overturning the government's interpretation of a decades-old law making such compensation a crime punishable by up to five years in prison.

By PAUL ELIAS

The Associated Press

SAN FRANCISCO — A federal appeals court ruled Thursday that most bone-marrow donors can be paid, overturning the government's interpretation of a decades-old law making such compensation a crime punishable by up to five years in prison.

In its ruling, the 9th U.S. Circuit Court of Appeals said a technological breakthrough makes donating bone marrow a process nearly identical to giving blood plasma.

It's legal — and common — to pay plasma donors. Therefore, the court ruled, bone-marrow donors undergoing the new procedure can be paid and are exempt from a law making it a felony to sell human organs for transplants.

The unanimous, three-judge panel of the court did say it remains a felony to compensate donors for undergoing an older transplant method, which extracts the marrow from donors' bones.

The court said the new technology isn't covered by the law because bone marrow isn't taken from the donor. Instead, specialized cells that grow into marrow are taken from a donor's bloodstream, so the procedure is basically a blood donation, not an organ transplant, the court said. It noted that two-thirds of bone-marrow transplants employ the newer process.

Tens of thousands of people with leukemia, lymphoma and other blood diseases are saved each year by such procedures. An estimated 3,000 more die waiting for donations, which unlike simple blood donations need to be genetically compatible, making matches especially difficult for African Americans.

Advocates for paying donors said compensation will spur more donations. Detractors argue that donor compensation will exploit the poor to undergo risky medical procedures to benefit the wealthy.

The National Marrow Donor Program, the nonprofit that provides transplants from volunteers, opposes payments.

"We were surprised and puzzled by the appellate court's decision regarding allowing compensation," said Michael Boo, the program's chief strategy officer. "The National Marrow Donor Program is studying the decision and assessing the impact. We do not anticipate the ruling will change the NMDP's current policies and practices."

The ruling overturns a lower-court decision barring compensation for all bone-marrow donations.

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The lawsuit was filed by lawyers at the nonprofit Institute for Justice, representing a coalition of patients, doctors and MoreMarrowDonors.org, which is seeking to offer donors \$3,000 in the form of a scholarship, housing allowance or gift to charity.

The U.S. Department of Justice can ask the appeals court to reconsider the decision or petition the U.S. Supreme Court to take it.

Justice spokesman Charles Miller said the department is reviewing its options.