mental action and need not follow the dictates of the Due Process Clause.[1323] Or, where a state workers' compensation statute was amended to allow, but not require, an insurer to suspend payment for medical treatment while the necessity of the treatment was being evaluated by an independent evaluator, this action was not fairly attributable to the state, and thus pre-deprivation notice of the suspension was not required.[1324] In the context of regulated nursing home situations, in which the homes were closely regulated and state officials reduced or withdrew Medicaid benefits paid to patients when they were discharged or transferred to institutions providing a lower level of care, the Court found that the actions of the homes in discharging or transferring were not thereby rendered the actions of the government.[1325]

In a few cases, the Court has indicated that discriminatory action by private parties may be precluded by the Fourteenth Amendment if the particular party involved is exercising a "public function." [1326] For instance, in *Marsh v. Alabama*,[1327] a Jehovah's Witness had been convicted of trespass after passing out literature on the streets of a company-owned town, but the Court reversed. It is not entirely clear from the Court's opinion what it was that made the privately owned town one to which the Constitution applied. In essence, it appears to have been that the town "had all the characteristics of any other American town" and that it was "like" a state. "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." [1328] A subsequent attempt to extend *Marsh* to privately owned shopping centers was at first successful, but was soon turned back, resulting in a sharp curtailment of the "public function" doctrine.[1329]

[1323] 436 U.S. at 164–66. If, however, a state officer acts with the private party in securing the property in dispute, that is sufficient to create the requisite state action and the private party may be subjected to suit if the seizure does not comport with due process. Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982).

[1324] American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40 (1999).

[1325] Blum v. Yaretsky, 457 U.S. 991 (1982).

[1326] This rationale is one of those that emerges from various opinions in Terry v. Adams, 345 U.S. 461 (1953) (holding that a political association limited to white voters that held internal elections to designate which of its member would run in the Texas Democratic primaries was acting as part of the state-established electoral system).

[1327] 326 U.S. 501 (1946).

[1328] 326 U.S. at 506.

[1329] *See* Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968), *limited in* Lloyd Corp. v. Tanner, 407 U.S. 551 (1972), and *overruled in* Hudgens v. NLRB, 424 U.S. 507 (1976). The *Marsh* principle is good only when private property has taken on *all* the attributes of a municipality. Id. at 516–17.