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## **Trapped in Nursing Homes, People with Disabilities Fight Back**

### ***Class Action Lawsuit Charges Violation of Constitutional Rights***

NEW YORK, NY, AUGUST 19, 2015—Feeling trapped in his nursing home, Hamilton Smith, a Bronx resident, and three other people with disabilities filed a class action lawsuit yesterday in federal court to end the illegal administration of a program designed to transition them to their own homes with the care and support they need to live independently.

Represented by MFY Legal Services, Inc. and Patterson Belknap Webb & Tyler LLP, the suit alleges that the New York State Department of Health (DOH), DOH Commissioner Howard Zucker, and Visiting Nurse Association Health Care, Inc. (VNA) have administered the Nursing Home Transition and Diversion Medicaid Waiver Program (NHTD Program) unconstitutionally and illegally. New York’s Medicaid Plan trumpets NHTD as a program that helps senior citizens and individuals with disabilities avoid unnecessary confinement in nursing home facilities.

Mr. Hamilton’s story is a common one. He first applied to the NHTD Program nearly three years ago and VNA found that he qualified to transition out of a nursing home. He was unable to complete his application despite his repeated requests to VNA for assistance allegedly due to a lack of program resources. After two years of trying to complete his application, VNA informed Mr. Smith during a routine status update that his eligibility determination had “expired” and that he would need to reapply to the NHTD Program. When he attempted to do so, VNA declared him ineligible for the program, even though Mr. Smith suffered the same level of disabilities he had two years before. VNA failed to provide Mr. Smith with written notice of its decision or a detailed explanation of the reasons for its determination that he was ineligible and did not inform him of his fair hearing rights. Mr. Smith remains confined to a nursing facility, still waiting for the assistance that would help him live in his own home.

“The plaintiffs are among thousands of New Yorkers who remain trapped in nursing home facilities, when they could be receiving the care they need in their own homes, due to the poor and illegal administration of the NHTD Program,” said Nahid Sorooshyari, a staff attorney at MFY Legal Services. “When the Program fails to give residents a written explanation of a denial and does not inform them of their right to a fair hearing, it violates their constitutional right to due process.”

“Research shows that people with disabilities benefit emotionally and physically when they are able to live in their own homes,” said Patterson Belknap partner Michael F. Buchanan. “The plaintiffs hope that this lawsuit will compel the Program to respect residents’ right to due process and provide

assistance in a timely manner so that people who are able to live independently with support do not continue to languish in nursing homes where they don't belong.”

MFY Legal Services is a non-profit organization that provides a wide range of free civil legal services to low-income New Yorkers and focuses extensively on protecting the rights of people with disabilities. MFY works closely with organizations that serve New Yorkers with disabilities and runs the Nursing Home Residents Project to provide information, advice, and advocacy for nursing home residents. Patterson Belknap Webb & Tyler LLP is a full-service law firm that has partnered with MFY in the past to secure access to justice for adult home residents with mental illness and to defend the rights of “three-quarter house” residents. The Firm’s pro bono work includes representing runaway and homeless youth, children in foster care, and individuals with mental illness and developmental disabilities in vindicating their constitutional rights.

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