By Jota Borgmann

Whether served in a hospital, a nursing home, a school, or a prison, institutional food has generally been notorious for its unappealing and unhealthy character. Efficiency and cost have become the predominant concerns and determine the source and quality of the food served. The result is flavorless, tedious, and nutritionally deficient meals. Institutions generally offer, besides poor quality and taste, little if any choice in what and how food is eaten. Here I focus on food service in New York adult homes, known as “board and care homes” in other states, and the parallel problems and solutions presented in other types of institutions—nursing homes, schools, and prisons.

Food in New York’s Adult Homes

Adult homes are institutions licensed to house older adults and people with disabilities. In New York City many adult homes are large facilities primarily housing people with psychosocial disabilities. Adult homes are required to provide a range of services, including meals, in exchange for an elevated facility payment of $1,208 through residents’ Supplemental Security Income. MFY Legal Services offers free legal assistance to adult home residents throughout New York City and regularly fields complaints about the food in the homes.

The New York State Department of Health regulates adult homes. In the last quarter of 2011 a fifth of all regulatory violations found by the Department of Health in adult homes were related to food service. Residents have characterized adult home food service as one of many services where they are nickel-and-dimed by the owner-operator. One resident described the meat in his meals as “mystery meat.” Another

1See N.Y. Soc. Serv. L. § 2(21) (McKinney 2012).

2Most residents receive Supplemental Security Income (SSI), although some residents receive welfare, social security disability, or other income. SSI beneficiaries have a statutorily protected personal-needs allowance of $184 (see id. § 131-o). The remaining $1,208 is the amount that most adult homes charge residents as a monthly facility rate.

explained how he consumed nutritional drinks in lieu of eating the meals offered. Residents who try to manage their weight or who have diabetes complain that the food is high in carbohydrates. Many say that they are rarely served fresh fruit or vegetables or only when a Department of Health inspector comes to the home. More than a hundred residents of the Garden of Eden Home for Adults (not the idyllic place the name suggests) recently petitioned the administration to “upgrade” the quality of the “bankrupt” food.  

Aside from the quality of meals, a key problem with food in adult homes is the lack of choice and control. Residents do not have access to a kitchen to cook or store their own food. They complain about the monotony of the food served. “They give us chicken nineteen times per month,” said one resident at Oceanview Manor Home for Adults. “Chicken teriyaki, chicken paprika … chicken cooked the same way with different sauces.”

In *Disability Advocates Incorporated v. Paterson* the plaintiff alleged that people with mental illness were unnecessarily segregated in adult homes in New York City in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The court evaluated whether adult homes were institutions, defining an institution as “a segregated setting for a large number of people that through its restrictive practices and its controls on individualization and independence limits a person’s ability to interact with other people who do not have a similar disability.” In concluding that adult homes were institutions, the court considered testimony regarding the inflexible schedules for mealtimes, which were announced over the public address system; residents’ assigned seating in the dining room; and residents not being allowed to invite guests to meals. Indeed, food service in adult homes is in some ways similar to that in prisons, where inmates typically have no control over when meals are served, where they are served, with whom they may eat, the types of food they eat, and the quantity of food served.

Not surprisingly, adult home residents frequently report that they use much of their limited incomes to purchase food outside the home. But what is available near the typical adult home to someone without access to a kitchen? Residents report that they get Chinese takeout or buy canned goods from a bodega. Eating out is an expensive alternative for the typical resident who has a monthly allowance of $184 to pay for clothing, toiletries, transportation, medical copayments, and other personal needs. Residents of institutions are not eligible to receive food stamps. Some residents keep small refrigerators in their rooms—if they are allowed—or keep food in a cooler. Norman Bloomfield of Surf Manor Home for Adults in Coney Island is one such resident. During a recent visit, Bloomfield pointed to the cooler he used to store plain yogurt and juice since refrigerators are prohibited in resident rooms. Each day Bloomfield goes food shopping and spends $2 on a new bag of ice for his cooler.

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5Telephone Interview with Oceanview Manor Home Resident (May 14, 2012).


7See *Disability Advocates*, 653 F. Supp. 2d at 199.

8Id. at 199–200, 210, 224.


10See *Disability Advocates*, 653 F. Supp. 2d at 206 (recounting testimony of one adult home resident that many residents at his home would “eat out to the extent their monthly funds allow it because the food at the facility is so bad”).

11See N.Y. Soc. Serv. Law § 131-o.


Emerging Solutions to the Failure of Institutional Food

When residents discuss moving to their own apartments or another independent setting, they often mention their desire to do their own food shopping and cooking. One resident who was able to move from an adult home to an apartment described the joy of having control over her food: “[I]t’s just so great ... to be able to stand in front of your own stove and cook something nice and tasty and fresh. A totally different lifestyle.”44 One witness in the Disability Advocates case testified about how she felt living in her own apartment after spending sixteen years in an adult home: “I can limit what I eat or I can expand my choices. I can have as much salad as I like. I can have as little grease as I like. I can eat foods that were not permitted in the home.... I do my own shopping. I do my own food selection.... It’s freedom for me. It’s being able to actually live like a human being again.”45

Food-Related Health Issues for People Living in Institutions

Residents of institutions often have health conditions that could benefit from an individualized diet. In nursing homes most residents are 65 or older and thus are more likely to have conditions such as diabetes and hypertension.16 Studies show that Vitamin D deficiencies are prevalent among elderly patients in nursing homes.17 Of the residents in New York’s assisted living facilities, which include some adult homes, approximately 41 percent have a diagnosis of serious and persistent mental illness and many have conditions such as diabetes, chronic respiratory problems, cardiac conditions, or high blood pressure treated with medication.18 On average, residents of New York assisted living facilities take six to nine medications daily.19 Studies show that people who take antipsychotic drugs are at higher risk of developing type 2 diabetes.20 People with these diagnoses require healthy individualized diets, which are lacking in many institutions. In fact, one recent study of the microbiota, or gut bacteria, of older adults found that those living in long-term residential care settings had significantly less diverse microbiota than those of community dwellers. The study found that this lack of microbiota diversity correlated with increased frailty.21

Growing evidence links food security and quality to mental health and well-being.22 The nutrients most commonly associated with good mental health are polyunsaturated fatty acids, minerals such as zinc and magnesium, and vitamins; many of these nutrients are found in fresh fruits and vegetables, whole grains, and fish.23 These items are not commonly part of institutional food service. Despite the

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15Disability Advocates, 653 F. Supp. 2d at 222.
16See Centers for Medicare and Medicaid Services, Nursing Home Data Compendium 2010, at 26 (2010), http://go.cms.gov/MkdLnB; Margaret McDonald et al., Prevalence, Awareness, and Management of Hypertension, Dyslipidemia, and Diabetes Among United States Adults Aged 65 and Older, 64A JOURNALS OF GERONTOLOGY SERIES A: BIOLOGICAL AND MEDICAL SCIENCES 256 (2009), http://1.usa.gov/LrCk0Z.
19Id. at 53.
21See Marcus J. Claesson et al., Gut Microbiota Composition Correlates with Diet and Health in the Elderly, NATURE (July 13, 2012).
23See Van de Weyer, supra note 22, at 8–17.
range of special dietary needs of institutional residents who could benefit from fresh and varied food, institutional kitchens have become places where food is not chopped or cooked but simply heated and served.24

Compounding the problem of fresh, nutritious food not being available is not being able to chew food of any kind. Dental health services are a severely unmet need for adult home residents, nursing home residents, and other beneficiaries of Medicaid. Until recently Medicaid health plans in New York were not required to provide dental coverage.25 Other states have the option of covering adult dental health as part of their Medicaid plans.26 One MFY client was unable to chew food because of the pain caused by ill-fitting dentures, and, for many weeks, she subsisted mainly on soft drinks.27

**Enforcement and Litigation Involving Institutional Food**

New York adult homes have detailed regulations around food service. Adult homes must consider “each resident’s prescribed dietary regimen and food allergies” in planning, preparation, and service of meals.28 Certain portions of fruits, vegetables, dairy, and meats or meat “equivalents” must be included in the daily menu, but there are no requirements as to whether they should be fresh, frozen, or canned.29 The regulations do require meals to reflect “variety in methods of preparation and content” and “seasonal availability of food.”30 Food storage and preparation must preserve flavor, appearance, and nutritional value of the food.31 The reality of adult home meals is different. The quality of food remains poor, and residents do not receive individualized diets.

Regulatory enforcement and litigation present limited options for improving adult home food. Residents often report that their complaints to the Department of Health about food service, including complaints related to a prescribed dietary regimen, do not bring about significant changes. Litigation against adult homes can take up basic cleanliness but does not reach issues of quality and choice. Residents of Surf Manor Home for Adults recently brought a class action lawsuit against living conditions, including the operator’s failure to maintain a clean and sanitary environment.32 The plaintiffs recounted violations issued by the Department of Health on unsanitary kitchen conditions and storage and preparation of food—for example, mixing spoiled, moldy, and rotting food with fresh foods.33 The plaintiffs further alleged that the operator had not corrected many of the violations issued by the Department of Health but that the operator had taken some measures under the threat of litigation.34
Whether the case will result in improved food quality remains to be seen.

Dealing with food choice through litigation is similarly limited in other institutional settings. Prisoners have sued under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act to challenge an institution’s refusal to accommodate special diet requests based on religious beliefs.35 The U.S. Supreme Court’s analysis of constitutional claims in Turner v. Safley looks, in part, at the allocation of prison resources to make the accommodation and whether it could be made at a de minimis cost.36 In DeHart v. Horn the Third Circuit held that, under the First and Fourteenth Amendments, a prison’s denial of a special diet consistent with the plaintiff’s Buddhist beliefs was reasonably related to the prison’s interest in efficient food provision; the court noted that, because the plaintiff would not eat pungent vegetables, the request would require individualized preparation and special ordering of certain food items and secured food storage to avoid theft of those items.37

In the school context, students and their parents have sought accommodations and damages for food-related medical needs. A student in New York was denied injunctive relief and damages in a case alleging his school’s failure to accommodate his diabetes under the Americans with Disabilities Act, where he claimed that he required special heating equipment and supervision in food preparation.38 Schools do not have a duty, Maryland’s Court of Appeals held, to “identify students with special dietary needs, develop a flagging regimen, or otherwise guard against individual exposure to food allergens” under the National School Lunch Act.39

**Effective Change Through Pilot Programs and Resident Input**

Pilot programs and resident-centered planning demonstrate that institutional food can be healthier and offer greater choice. “Farm to Institution” programs have sprung up around the United States.40 A Philadelphia-based program connects local farms to schools, universities, hospitals, and elder care communities in Southeastern Pennsylvania, New Jersey, and Delaware.41 Sacred Heart hospital in Eau Claire, Wisconsin, created a cooperative to connect the hospital with local farmers to use local meats, dairy, fruits, and vegetables.42 The cost of using local food was 15 percent to 20 percent more, but the facility saw a return in positive public relations.43

Movement toward healthier food in public schools has gained momentum nationwide, resulting in proposed regulatory changes.44 For example, the Fresh Fruit and Vegetable Program was a pilot in certain schools and, after initial success, was expanded to other states and is now part of proposed rules from the U.S. Department of Agriculture to encourage
consumption of fresh fruits and vegetables by elementary school children.\textsuperscript{45}

Some nursing homes’ food service goes through a “culture change” program that gives residents input into their care, but adult homes vary in their openness to resident input.\textsuperscript{46} At Queens Adult Care Center residents complained that condiments such as jam and syrup were watered down to the point of tastelessness; the residents successfully organized to stop the practice of watering condiments down. At Rockaway Manor in Queens a successful pilot program, funded by a state grant with proceeds from a lawsuit settlement, hired a new chef committed to ensuring variety, using fewer processed foods, and eliciting resident input in menu planning.\textsuperscript{47}

JK Canepa, an organizer for the Coalition of Institutionalized Aged and Disabled, helped residents at Rockaway Manor plant vegetables in planters. The produce was used by the chef in their food. Residents at another home became involved with a nearby community garden and grew produce there. Residents in several adult homes have formed food committees with Canepa’s help. Food committees can effect change to a certain degree by presenting the administration with petitions and surveys that show what food residents like or do not like and suggesting small changes, such as adding more or less sauce or offering spices and garnishes on the side, Canepa explained. “They’re working with a situation where there is little money spent on the food. What they can’t do is get the homes to spend more money on the food,” said Canepa.\textsuperscript{48}

But input from food committees is not always well received at adult homes and can sometimes result in retaliation against the residents. For example, Canepa helped three residents at Garden of Eden Home for Adults form a food committee, but after a few meetings residents were intimidated by the administrator, and the committee quickly dissolved.\textsuperscript{49}

Since adult homes are generally privately owned, for-profit entities, they are not mission-driven to provide better food, and, unlike public schools, they face no widespread movement to change the food they offer.\textsuperscript{50} Thus the challenge with pilot programs is to convince private operators of institutions to invest in them or develop sufficient funding from public or charitable sources. In a video about the Rockaway Manor program, the chef describes the savings he achieves by making more items from scratch and suggests that adult home operators also might be motivated to ensure happier residents and staff.\textsuperscript{51}

The most promising change in institutional food comes from pilot programs and other initiatives that offer funding to improve the quality of the food. Such programs can garner wide support because they benefit not only residents or patients of institutions but also the wider community by providing more jobs and greater support for local farmers and other businesses. Because of the special health needs of residents of institutions and the dismal state of food in their homes, institutional food warrants greater attention by food and health policy advocates.

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\textsuperscript{48}Telephone Interview with JK Canepa, Organizer, Coalition of Institutionalized Aged and Disabled (June 7, 2012).

\textsuperscript{49}For other examples of retaliation in adult homes, see Disability Advocates, 653 F. Supp. 2d at 202 n.81 (recounting residents’ testimony, one testified that administrator threatened to send him to nursing home for complaining about food).

\textsuperscript{50}Compared to mission-driven institutions such as Sacred Heart Hospital, whose chief executive officer said that the Franciscan mission to promote health and wellness was part of the motivation to provide healthy, local food (see Eisen, supra note 24).

\textsuperscript{51}See FamilyCook Productions, \textit{Stirring Up Change in Adult Homes Short}, \textsc{YouTub}e (June 23, 2011), http://bit.ly/PivisW.
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