

SUPPORT

A. 02368A (Weinstein)

To allow residents of adult care facilities to seek court protection when the operator of the facility is endangering their health, safety and welfare.

May 6, 2014

MFY Legal Services Inc. envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. MFY's Disability and Aging Rights Project focuses on protecting the rights of people who live in institutions, including adult care facilities.

Adult care facilities are privately-owned institutions that house people with physical and psychiatric disabilities. Most are operated for profit. The term "adult care facilities" encompasses assisted living facilities, adult homes, and enriched senior housing. Adult homes, in particular, have had a long and troubling history of abuse, neglect, and civil rights violations.¹

Despite efforts to improve Department of Health (DOH) oversight of these facilities, serious problems remain. A 2011 report by the Long Term Care Community Coalition found that many facilities are not being held accountable for their violations.² The report also found that the current regulatory scheme allows facilities to escape penalties and enforcement, even for repeated violations.

Even when the DOH takes action, that action is often inadequate. In one facility, the DOH repeatedly cited the operator for his outrageous behavior that included yelling, harassing, and threatening residents and retaliating against them for making reports to the DOH. In 2012, the DOH held an enforcement proceeding to prevent this person from having contact with residents. To date, the DOH has not issued a decision, and residents continue to live in fear of the operator.

Currently, residents must rely on the DOH to seek a receiver to operate a facility when they have concerns about their health, safety and welfare.³ This legislation would empower residents to go directly to a court to request this relief. It would also authorize the DOH to intervene and join the residents in these actions and potentially circumvent the burdensome delays that have historically plagued DOH enforcement actions.

For more information or to discuss our recommendations further, please contact:
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¹ See *Disability Advocates, Inc. v. Cuomo*, 653 F.Supp.2d 184 (E.D.N.Y. 2009); New York State Commission on Quality of Care and Advocacy for Persons with Mental Disabilities (CQC), *A Review of Assisted Living Programs in "Impacted" Adult Homes* (2007); CQC, *Health Care in Impacted Adult Homes: A Survey* (2006); CQC, *Adult Homes Serving Residents with Mental Illness: A Study on Layering of Services* (2002); Clifford J. Levy, *Broken Homes*, N.Y. Times, Apr. 28-30, 2002, available at http://www.nytimes.com/ref/nyregion/BROKEN_HOMES.html.

² Long Term Care Community Coalition, *Care and Oversight of Assisted Living in New York State* (2011).

³ NY Soc. Serv. Law § 461-f.