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Report Shows Nursing Home Residents Are Often Illegally Confined

“Imprisoned in Their Homes” Finds Homes’ Restrictive Day Pass Policies Violate Residents’ Rights to Community Integration

NEW YORK, NY, October 18, 2017—A new report by Mobilization for Justice (MFJ) details the barriers that nursing home residents face when they attempt to leave the home to visit family or friends, go to religious services, shop, or simply sit outside in the fresh air. The report recommends that the New York State Department of Health (DOH) follow successful policies used in other states to protect the independence of nursing home residents and promote community inclusion.

“Most nursing homes require residents to request a ‘day pass’ each time they want to leave the nursing home – whether it’s for a short excursion to have lunch with a family member or an overnight stay,” said Samantha Rauer, a Staff Attorney at Mobilization for Justice and author of the report. “Detaining residents in this way violates the Americans with Disabilities Act (ADA) and state and federal regulations.”

MFJ’s investigation found that there is no guarantee that residents who request a day pass will get one. Overly restrictive day pass policies include requiring residents to request a pass days in advance, offering no opportunity to appeal if the request is denied, limiting passes to certain hours or requiring that residents plan out their exact whereabouts and time schedule in advance. Some require that residents have an escort at all times or require a physician consultation and medical order stating that the resident is “mentally cleared and medically stable.”

Michelle Bagley, a former resident of a Bronx nursing home, was initially prevented from leaving the home to attend religious services at a mosque where she had worshipped for many years. “Everyone has the right to worship in your own way. Without a day pass in the nursing home, you can’t get out. There are so many different religions and ways to worship but they don’t offer half of that. You can’t tell me how to worship my God,” she said. With MFJ’s intervention, Ms. Bagley secured a standing pass for religious services.

“Treating nursing home residents like detainees is wrong,” said NYS Assembly Health Committee Chair Richard N. Gottfried. “Nursing homes should not be allowed to require medical orders to go outside, revoke or forbid day passes as a punitive measure, or require urine tests upon return to the facility. This report shines light on truly shocking behavior, and the State Health Department must take action to make sure this doesn’t go on.”

“Given that these are homes, and not prisons, residents’ right to leave should be limited only when there is an individualized, documented medical reason to limit that right,” said Kevin M. Cremin, MFJ’s Director of Litigation for Aging and Disability Rights. “The DOH should develop a model policy for day pass access, issue clear guidance on residents’ rights to day passes, and track complaints about restrictive day pass access.”

NYS Senator Jesse Hamilton said, “Thanks to Mobilization for Justice for this eye-opening report. It serves as an important step forward in ensuring that nursing home residents’ rights and liberties are truly respected. With this report, Mobilization for Justice helps guide policymakers across government towards real solutions that will make a meaningful difference in the lives of countless New Yorkers.”

NYS Senator Brad Hoylman added that, “Nursing homes are meant to serve the needs of residents, not act as virtual holding cells to confine and incarcerate senior citizens. Restrictive day passes are not only detrimental to the health and well-being of our senior citizens but are discriminatory and potentially illegal. I’m grateful to Mobilization for Justice for shining a light on this important issue and look forward to working with them to guarantee New York’s senior citizens receive the quality of care they deserve.”

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