



TESTIMONY FOR A HEARING ON:

Supportive Housing Services in New York State

PRESENTED BEFORE:

**THE NEW YORK STATE ASSEMBLY STANDING COMMITTEE ON SOCIAL SERVICES
MICHELE TITUS, CHAIR
THE NEW YORK STATE ASSEMBLY STANDING COMMITTEE ON MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES
FELIX ORTIZ, CHAIR**

PRESENTED BY:

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December 17, 2012

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I. Introduction

MFY 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. We provide advice and representation to more than 8,000 New Yorkers each year. MFY serves residents of institutions, including adult homes and nursing homes, as well as people seeking to maintain their homes in the community.

New York State's mental health system is on the precipice of a radical shift – in reforms in the way we pay for services through Medicaid re-design, in a renewed commitment to provide these services in less restrictive settings as appropriate through compliance with the Supreme Court's decision *Olmstead*, and in attempts to streamline systems of oversight through a new Justice Center for vulnerable persons.

These shifts in our approach to providing and paying for mental health care in this State present a timely opportunity to take a holistic approach to creating and funding supportive housing as well as making the process of obtaining supportive housing accessible to people with disabilities.

The housing funded in the 2012-13 Budget is a commendable beginning, but even more supportive housing is desperately needed. We provide the following recommendations to fund and improve access to the supportive housing system.

II. Key Recommendations

- A. Take advantage of the shift to more coordinated and managed care in New York's Medicaid program to fund and incentivize supportive housing, specifically:
 - a. Require health home networks to contract with a wide variety of housing providers;
 - b. Provide incentives to Managed Long-Term Care (MLTC) plans to pay for care in the community rather than in institutions:
 - i. Ensure that MLTC plans comply with the Americans with Disabilities Act and *Olmstead*;
 - ii. Require MLTC plans to contract with all nursing homes that meet specified quality measures; and
 - iii. Create an Ombudsprogram to investigate consumer complaints and monitor systemic problems and proposals by an MLTC Plan to place a beneficiary in a nursing home;

- c. Ensure that the Department of Health is utilizing Medicaid waiver programs to the fullest extent;
- B. Reform the system for accessing supportive housing in New York City:
 - a. The application process should not require a gate-keeper in order to access supportive housing; it should be accessible to any person with a disability, service provider, family member, or advocate;
 - b. Reform the application process to include individuals who face imminent eviction as a “priority” population;
 - c. Reform the application process to ensure that “priority” populations, including adult home residents, are treated as a priority both on paper and in practice; and
 - d. Reform the application process to allow for flexibility in the current six-month expiration period.
- C. Implement reforms in the adult home model of care to meet compliance with *Olmstead*, including ensuring that a sufficient number of supportive housing units are available for adult home residents.

III. The Shift to Coordinated and Managed Care Can Also Be a Shift to More Community-Based Care

The State should take advantage of the new changes being implemented in the Medicaid re-design process to give incentives to insurers to pay for and provide services in the community rather than in institutions.

A. Require Health Homes to Contract with a Variety of Housing Providers

New York has recently taken aggressive steps to contain the cost of care for high-need Medicaid beneficiaries by requiring them to access all their medical, mental health, and social services, including housing, through highly-coordinated networks called health homes.

In their proposal to incorporate health homes into the State Medicaid system, the Medicaid Redesign Team stressed the importance of strong community ties to social service providers to address the numerous social barriers to health care that Medicaid beneficiaries may encounter. There is no stronger community tie than a person’s housing.

Currently, only some health home plans contract with multiple supportive housing providers as part of the network. Each health home network should be required to contract with a wide range of housing providers, including supportive housing providers, to ensure choice and appropriate placement for the people enrolled in each network. The care coordinators in each network should also be educated on supportive housing options and the application process.

B. Incentivize Managed Long-Term Care Plans to Provide Services in The Community

Like the shift to health homes for high-cost Medicaid beneficiaries, New York is attempting to contain the cost of home health care by require certain people who are dually-eligible for Medicaid and Medicare and who need long-term care services to join a MLTC plan to coordinate and pay for all of that person's long-term care services.

As New York transitions people into these MLTC plans, the State should adopt policies that incentivize the MLTC plans to pay for care in the community as a first option. MLTC plans will pay for many of the supports and services people need to be successful in supportive housing. This includes home health care, personal care, day programs, and other services.

a. The State Should Ensure that MLTC Plans Comply with the Americans with Disabilities Act

The legislature should ensure that the Department of Health has adequate resources to engage in oversight of MLTC plans to prevent unnecessary institutionalization and ensure compliance with the Supreme Court's *Olmstead* decision and the Americans with Disabilities Act.

The shift to MLTC opens the door to the possibility that certain high-need beneficiaries who could remain in the community will be end up institutionalized in nursing homes or other settings because of the high cost of caring for them at home. Ensuring adequate oversight of MLTC plans is important because these plans now determine access to services which allow older people to age in place with dignity and allow people with disabilities to live in community settings that are more integrated, less restrictive, and ultimately less expensive than institutional settings such as adult homes or nursing homes.

b. The State Should Ensure That MLTC Plans are Not Incentivized to Unnecessarily Institutionalize High-Cost Beneficiaries

The legislature should ensure that people who are living in the community successfully are not unnecessarily institutionalized simply based on cost to the MLTC plan. We refer you to our attached testimony on this issue provided to the New York State Assembly Committee on Health and Committee on Oversight, Analysis, and Investigation on December 7, 2012, which discusses this issue in further detail.

C. The State Should Ensure Medicaid Waiver Programs are Utilized to their Fullest Extent

New York participates in a number of Medicaid waiver programs that can be used to fund care in the community rather than care in a nursing home or another institution. The legislature should ensure that the Department of Health is utilizing these programs to their fullest extent.

The Nursing Home Transition and Diversion (NHTD) program, for example, is a program that uses Medicaid funding to provide supports and services to people with disabilities in a

community setting rather than in a nursing home. Although this program has been in effect for a number of years, it is not being used to its full funding capacity.

The Legislature should also encourage the state to take full advantage of other federal programs, such as the “money follows the person” grant and Community First Choice program.

IV. The Application Process for Supportive Housing Must be Made More Accessible

In addition to funding supportive housing programs, the Legislature should ensure that people with mental illness can actually access supportive housing as it becomes available. Currently, the process for applying to supportive housing in New York City is inaccessible to many consumers.

A. Applying for Housing

The very first step in the application process – filling out the application itself – is where many of our clients find themselves without access. The application, called the HRA 2010E, is a computerized form that must be filled out by someone who has received special training. Even if an individual is connected to services, his or her service providers have often not received training on how to fill out the application. Some of our clients are told that they must be living in a shelter to have the application filled out.

The application process should be accessible to any consumer and any service provider, family member, or advocate. By denying the actual consumer a way to submit the application by him- or herself, this process inserts a third-party as gatekeeper to the consumer’s autonomy, choices, and security.

MFY is a member of the Adult Home Residents' Housing Task Force, a coalition formed specifically for identifying and addressing the barriers faced by adult home residents who wish to move to supportive housing. The task force is comprised of supportive housing providers, advocates, and the entity that processes the applications. The two overarching barriers that the task force has found are that (1) there is not enough housing, and (2) even if housing were to become available, there is no one to help residents fill out the application.

B. Waiting for Housing

If an individual is not a member of a “priority” population – on paper and in practice – he or she may be unable to access supportive housing. People who are homeless, for example, are considered a priority population. However, people facing imminent eviction are not. As a result, a person facing eviction must often actually become homeless in order to access supportive housing.

Requiring someone to get evicted and enter a shelter before accessing supportive housing makes little sense, considering the physical, emotional, and financial toll of entering the shelter system. The process should be reformed to include people who face imminent eviction as a “priority” population.

Additionally, even if an individual is technically a member of a “priority” population, he or she may not be a priority in actual practice. Residents of adult homes, for example, are a priority population on paper, but not in practice. Many adult home residents who could and would live in more independent housing are nevertheless stranded in adult homes because of this process considers adult home permanent housing. The process should be reformed to ensure that “priority” populations receive priority both on paper and in practice.

C. Re-Applying for Housing Due to Expiration of Housing Application after Six Months

After six months, the HRA 2010E approval and referrals expire. This means that the applicant must start the process all over again if any of the documentation or the application itself is over six months old.

We have seen cases where a person was approved for housing, was accepted to a particular supportive housing program from a long waiting list, and then had to re-submit all of their documentation because the six month time frame expired. One individual currently in this circumstance is an adult home resident who was, and still is, evacuated to a shelter due to Hurricane Sandy. That person could be in his own apartment right now, but is in a shelter instead due to this rigid process.

The process should be reformed to allow for flexibility, case-by-case determinations regarding whether additional documentation is needed from an applicant and provision of assistance in obtaining that documentation, if needed.

The process for accessing supportive housing can be a tremendously disempowering and arduous process. It must be reformed to remove these barriers.

V. The State Must Reform the Adult Home Model of Care

Adult homes are large congregate care facilities housing people with disabilities, people who are elderly, and people with mental illness. In New York City, many adult homes house between 200 and 300 people and most are privately owned.

Many people in adult homes want to live in more independent housing. I recently met a young woman at a resident rights training at an adult home in Far Rockaway who is 22 years old. She has bipolar disorder and had been homeless. Why is she in an adult home? Adult homes were originally conceived to house the frail elderly. Every time MFY attorneys visit adult homes, people approach us and ask us how they can move to more independent housing.

For decades, news articles, government reports, and lawsuits have criticized the adult home system for being abusive, discriminatory, and expensive – more expensive than supported housing.¹ As one former Adult Home resident has testified about supported housing: “It’s

¹See 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); The New York Times, Broken Homes (April 28-30, 2002).

freedom for me. It's freedom. It's being able to actually live like a human being again." New York should provide all adult home residents this same opportunity to flourish.

Although the 2012-2013 budget contemplates supported housing units for individuals in adult homes, it is not nearly sufficient for all the people who want to live in more independent settings. The Department of Health and Office of Mental Health have proposed regulations limiting the number of people with mental illness in large adult homes and preventing discharge to adult homes from psychiatric hospitals. These regulations are a good first step, but they will not achieve their goals if funding is not provided for the actual housing and supports people need to live successfully in the community. Funding supportive housing for this group of people is an investment – it will pay dividends with an *Olmstead*-compliant system, saved Medicaid money, and saved lives.

We urge the Assembly to encourage the Department of Health and Office of Mental Health to ensure that a sufficient amount of community housing is made available for each relevant county prior to the implementation of these proposed regulations to ensure that all residents of adult homes have the opportunity to live in the most integrated setting appropriate to their needs. Additionally, the proposed regulations contain no deadline for implementation, no provision for resident participation and choice, no provision for transparency and accountability, and no due process protections for residents. We hope the Assembly will encourage the Department of Health to adopt an active and holistic approach to reforming the adult home system.

VI. Conclusion

MFY Legal Services, Inc. thanks the Committee on Social Services and the Committee on Mental Health and Developmental Disabilities for holding this hearing. We are committed to helping the State develop and implement a holistic approach to funding supportive housing that saves the state money, complies with the ADA and *Olmstead*, and protects its most vulnerable populations. Thank you.