



## Testimony on State's Enforcement of Laws & Regulations Protecting Adult Home Residents

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My name is Jeanette Zelhof and I am the Managing Attorney of MFY Legal Services' Mental Health Law Project. We were funded in 1983 by the New York City Department of Mental Health, Mental Retardation and Alcoholism Services to address the civil legal needs of the de-institutionalized mentally ill living in private apartments, single room occupancy hotels, supported housing, community residences and adult homes. It was recognized by the Department that a mental health consumer could have all the therapy and medications in the world, but without safe, secure and affordable housing, and a steady stream of income, could become homeless, hospitalized or forced into a shelter.

### MFY's Work on behalf of Adult Home Residents

MFY has regularly advocated on behalf of adult home residents since that time. We have done outreach and training to adult home residents in the five boroughs of Manhattan -- distributing our residents' rights handbook, educating residents about their rights, and listening to the concerns of residents and the issues they deem important. We have regularly worked with the Coalition for the Institutionalized Aged and Disabled (CIAD) that organizes and empowers Residents Councils to advocate on their own behalf. This model of MFY lawyer and CIAD organizer has been a successful one. What residents cannot accomplish through Residents Councils is referred to MFY for legal intervention.

MFY has advocated for adult home residents in both individual and group matters -- from individual problems with personal needs allowances and medication management issues, to affirmative litigation on behalf of large groups of residents challenging poor living conditions and abusive practices in the homes. MFY is currently co-counseling a case on behalf of 17 of the 24 disabled residents of the former Leben Home who, it is alleged, were subjected to unnecessary prostate surgery at the hands of the Leben Home operator, a case manager at the home, two doctors and a local hospital. We are also representing over 100 Seaport Manor Home for Adults residents in their challenge to conditions at the home and the improvident terms of a stipulation negotiated by DOH with respect to the closure of that home, which I will talk about later.

My comments today are therefore based on many years of advocacy for this community and an intimate knowledge of the adult homes in the New York City area where my staff and I have spent countless hours visiting, training and serving this vulnerable group of people. I will focus today on the failure of the State to enforce the current statutory and regulatory provisions governing the operation of adult homes, and how legal advocacy services has filled the gap left by lack of State enforcement.

### Adult Homes Have a Place in the Continuum of Supportive Housing

Let me first begin by saying that it is our opinion that, in the absence of a broad range of supported housing options for people with mental illness, there is a place for adult homes in the continuum of housing options. And I say this not from my own opinion or that of mental health policy people. I say this based on my years of meeting and getting to know adult home residents. Many adult home residents suffer, not only from serious and persistent mental illness, but also suffer from the long-term effects of institutionalization. Many have never lived on their own; and many do not want to, feeling that managing their illness is enough of a daily challenge. Having said this, however, let's be clear:

- the State Office of Mental Health must review the care provided to adult home residents by on-site mental health teams and must ensure that all those residents who need mental health care are receiving it;
- the homes must be smaller;
- the homes must provide the services set forth by law to ensure a healthy and safe environment;
- the homes should encourage rehabilitative services for those suffering the effects of long-time institutionalization; and
- the homes should provide vocational services, as appropriate, to maximize an individual's potential.

It is also our opinion that this can be done under the current statutory and regulatory scheme.

### The Law Provides Adequate Enforcement Mechanisms but the State Lacks the Political Will

The problem with adult homes is not the lack of laws or regulations; the problem is the State's lack of will to enforce the law; and the State's lack of will to send a message to adult home operators that violation of the law will not be tolerated. This lack of will to enforce has resulted in a history of enforcement proceedings that makes a mockery of the process, and has sent a signal to adult home operators that they can consistently violate the law and will not be accountable in any way. Following are three examples of the State's failure to enforce the law and how we have responded in the absence of State action:

Brooklyn Manor Home for Adults: Brooklyn Manor, with a capacity to house over 200 residents, had a long history of egregious violations, including misappropriation of residents' money and poor living conditions, when the State Department of Social Services (the predecessor to the Department of Health) began enforcement proceedings in 1992. By applying the law and regulations, the State mounted a case spanning three years, including 42 days of testimony, over 6,900 pages of testimony and 54 exhibits. Finally, on March 7, 1996, the Administrative Law Judge (ALJ) concluded that the operator of Brooklyn Manor did not possess

the requisite character and fitness necessary to operate the home, refused to renew the license, and imposed approximately \$70,000 in fines. So far so good.

At that point, a responsible individual should have been found to operate the home. So imagine the residents' surprise when, despite the judge's decision, the State then withdrew its case against the operator. Not one piece of evidence, save a letter from the operator, was submitted in support of the withdrawal. No explanation. Nothing. Two and one-half years of enforcement proceedings effectively voided by one letter from the operator.

In the absence of an explanation from the State, and in the face of the State's arbitrary and irrational abandonment of its victory, MFY litigated the issue. In the meantime, the operator had his license back. By the time the case was heard, the operator's license had expired (how and why did it expire) so the case was moot. Yet, this operator continues to run the home; this home continues to receive poor inspection reports; and 216 residents continue to live in abysmal conditions) This outcome, however, was not the result of weak laws or regulations; it was the result of lack of political will and, one might argue, outright corruption.

Leben Home for Adults: The Leben Home, one of the largest adult homes in the New York City area, has the capacity to house 366 residents. In June 2000, based on New York State Commission on Quality of Care findings, the State evacuated approximately 60 residents from the home for conditions deemed dangerous to the residents' health and safety. Two months later, the State fined the home \$65,000, but suspended \$60,000. Included in the stipulation of settlement under which the Leben operator paid a mere \$5,000 was a provision that any time a Leben resident is transferred to a health facility, the operator should send an approved transfer form. This term was to address the State's own findings that 24 residents of the home had been subjected to unnecessary surgery. The State knew of these surgeries, because they were being reviewed by its own Bureau of Professional Misconduct. What I have just explained is the extent of the State's oversight, inspection and enforcement after learning of these outrageous violations of residents' civil rights.

MFY did not learn of this until months later and, in the absence of any effective measures taken against the home, MFY brought a suit against all the Leben Home, its operator, and others alleged to have been part of this to perform unnecessary prostate surgery on unwitting residents of the home, allegedly to collect Medicaid and Medicaid monies.

MFY's lawsuit attracted public attention to the plight of the Leben residents who continued to live in abject conditions and at the mercy of the operator. As a result of our advocacy with the State, a temporary receiver was appointed to run the home until a permanent operator was found. This prevented the displacement of over 300 residents of the home and the loss of 361 beds. However, had MFY not received public attention with the filing of its lawsuit on behalf of the wronged residents, the State would have left the operator in charge of the very residents he had already abused as found by another arm of DOH. The State's failure to protect the Leben residents was not for lack of legal remedies. Once public outcry was heard, the State knew exactly how to proceed and did so. Unfortunately, the State lacked the political will to do the right thing in the first place.

Seaport Manor Home for Adults. With 346 beds, Seaport Manor is one of the largest homes in the New York City area. Given its long history of serious violations of Social Services laws and regulations and allegations of negligent mental health care for its disabled residents, and the large number of deaths at the home, the residents of Seaport were relieved to learn that enforcement proceedings had been instituted in October 2001 against the operators of the home. A review of the charges reveals that, had the State sustained all the charges, the home could have been liable for close to half a million dollars in fines.

However, before the case was even heard, the State entered into a stipulation with the Seaport operators in which the home was permitted to surrender its license and displace over 300 residents in consideration of a mere \$20,000 in fines – as the operator stands poised to open a shelter, no doubt funded again by public money, from which, presumably, the operator will profit greatly

What kind of accountability is this for repeated, egregious violations? It sends a message that one can continually violate the law with little accountability, and then walk away with impunity when called to task. But once again, this outcome was not the result of weak laws or regulations; it was the result of lack of political will.

MFY is therefore representing over 100 of the residents of Seaport Manor, who ask a simple question? “Why did they [the State] have to close the place down? Why couldn’t they find someone else to clean it up and run it better?” A very good question. It is incomprehensible to residents that the State would permit the operator of Seaport Manor to surrender its license and displace over 300 mentally ill individuals, in consideration of a mere \$20,000 in fines. There are better solutions. One remedy would be for the State to seek the appointment of a temporary receiver to operate the home pending the transfer of the operating certificate to a qualified and competent individual who would responsibly run the home. The State could also seek the appointment of a temporary receiver to operate the home while other housing models are developed at Seaport Manor, e.g., the State could explore the creation of community residence beds or variations on the community residence model supervised by the Office of Mental Health on the Seaport property. A multi-use facility (some community residence beds and some adult home beds) might also be created, which could then serve the varying mental health needs of the diverse population living in Seaport Manor. Unfortunately, despite months of negotiations with DOH, this has not happened. Once again, MFY is forced to expend its resources on litigating this issue.

Widespread Illegal Practice of Refusing to Admit Adult Home Residents after Temporary Hospitalizations: On a regular basis, MFY is forced to bring court proceedings to force operators of the homes to allow residents of adult homes to return to their homes after temporary hospitalizations. As you know, many adult home residents periodically require psychiatric hospitalization. The law is clear that once a resident is stabilized and ready to return to the home the operator must allow the resident to return. After all, like it or not, an adult home is “home” for a resident – and for some, it’s been “home” for many years. It’s where a resident hangs his clothes, eats his meals, gets his care, and knows his neighbors and his neighborhood. Yet operators consistently use these hospitalizations as opportunities to get rid of resident they think are “problems” -- either because they are behaviorally challenging or because they are active in

their Residents Councils. MFY takes each of these cases, goes into Court and, based on the clear mandate of the law, succeeds every time in getting an order restoring the resident to the home. Yet the State rarely intervenes. In all these cases, MFY calls the State, explain the situation, and show the documentation that the resident is ready to return. But if the operator refuses, the State refuses to act forcing us to waste precious resources to litigate. This refusal also results in taxpayer waste. While a resident languishes in a hospital waiting for the case to be litigated, who pays the bill? Medicaid. Every extra day in the hospital results in wasted Medicaid expenditures.

There is simply no reason why the State, upon receiving documentation from a hospital that a resident is ready to return, should not require the operator to do so. Does this require statutory amendment? No. Does this require regulatory amendment? No. Does this require more inspectors? No. This requires political will to enforce the law as it exists.

### Summary

How then do we fix this terribly broken system without hurting the vulnerable people who should be helped? The adult home model may have its limitations, but in the absence of a comprehensive program of alternative housing, adult homes are an important housing option for people who cannot live independently and should be preserved. The State must use the resources it has available to it – a comprehensive statutory and regulatory scheme with legal remedies available to address the host of problems in the home

With public attention finally being paid to the egregious conditions in adult homes, and serious questions being raised about the benefits of segregating hundreds of disabled people into large homes that are little more than warehouses, oversight and inspection of adult homes must be approached seriously, and as part of a greater plan for developing housing for people with mental health needs. Integral to this, accountability must be demanded from those who make their business caring for the mentally ill. The law and regulations give the State all resources they need to accomplish this. What the State needs is the will.