



TESTIMONY FOR A HEARING ON:

**Oversight: Emergency Planning and Management During
and After the Storm: Emergency Preparedness and
Response at the City's Healthcare Facilities**

PRESENTED BEFORE:

Committee on Mental Health, Mental Retardation, Alcoholism,
Drug Abuse and Disability Services Committee on Aging

PRESENTED BY:

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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. My testimony today will focus on those residents.

As you no doubt have heard from your constituents or read about in the press, Hurricane Sandy and its aftermath have had a detrimental effect on residents of adult homes and nursing homes in New York City. We provide the following recommendations to help ensure that, in the event of another disaster on this scale, residents in these institutions will have access to a safer and more organized evacuation plan that respects their dignity, choices, and needs.

II. Key Recommendations

A. A Mandatory Evacuation Order Should Not Exclude Adult Homes and Nursing Homes

It is our understanding that, at some point before the storm, a decision was made that adult homes and nursing homes in Zone A should “shelter in place” with increased staffing and resources. This decision was made despite a mandatory evacuation order for all other people living in Zone A. A mandatory evacuation order should apply to all people in an affected area, and should exclude no one on the basis of disability or housing type.

Many residents in these facilities, particularly in assisted living residences and nursing homes, have medical needs that require additional assistance in an emergency. The common sense approach would be to allow time and resources to make sure that emergency plans take into account those medical needs.

Conversely, residents of adult homes do not have the same level of medical need as nursing home residents. Adult homes are large congregate care facilities which house people who are elderly, but do not have medical needs that rise to the level of nursing home case, and/or people who have mental disabilities, but who do not need inpatient psychiatric services. Many adult home residents are perfectly mobile and have the capacity to make choices about where and how they want to shelter during an evacuation, just like all other New Yorkers. As a result, adult home residents potentially could have moved to a safer location without a much higher use of resources than people living in the community. Instead, they were grouped in with a high-need population based on assumptions about the needs and capabilities of people who happen to live in adult homes.

B. An Executive Decision-Maker Must Be Appointed in Conjunction with the State

It is still not clear who had the authority to determine that these facilities should “shelter in place” rather than evacuate: Was it the operators? The City government? The State government? There

has been a lot of confusion and placing blame about this issue following Sandy, particularly in the press. And there was even more confusion during the days and hours preceding the storm.

This is not surprising. In the aftermath of Hurricane Katrina, the Office of Manhattan Borough President Scott M. Stringer conducted an analysis of nursing home disaster preparedness. This 2006 study, shockingly titled “No Way Out,” found that no executive decision-maker exists in the event of an emergency. The study found that, in the event that nursing home residents are in danger, there is no clear authority who determines whether or not nursing homes should evacuate. Not only are nursing home administrators confused about who is in command, but there is confusion within the Department of Health (DOH) and the Office of Emergency Management (OEM) as well. When asked who (i.e. DOH, OEM, or the administrator of a nursing home) has the ultimate authority in deciding whether a nursing home should evacuate or stay in place, DOH answered “it depends.” When OEM was asked the same question, they answered “any of the above.”

The study also found that the State does not provide nursing home administrators with criteria to help them determine whether to evacuate or “defend in place,” a decision that is critical in the limited time during and after an emergency.

We are concerned that this issue has not been adequately addressed. We strongly recommend that all relevant city and state agencies convene an immediate workgroup to address this issue and others and develop clear and consistent policies to disseminate to facilities.

C. Better Oversight and Resources are Needed if Facilities are Expected to “Shelter in Place”

Although facilities were told to shelter in place, no agency ensured that facilities actually had the resources to do so. As a result, residents suffered from a lack of adequate staffing, food, and heat. Some facilities had no generators, others had generators that failed after thirty minutes. Residents were told to hurry up and be ready to evacuate and then ended up waiting in dark and cold hallways for hours. Additionally, there was no adequate provision for a back-up plan in the event that facilities became unable to “shelter in place.”

As a result of this approach, most of these facilities were evacuated *after* the storm, and the evacuation was chaotic. Many residents were told to leave everything; as a result, many did not bring identification, cell phones, money, clothing, or even shoes with them to the shelters. When I went out to the shelters after the storm, I spoke with one resident who was still in his pajamas with no shoes. Residents of Surf Manor in Coney Island and New Gloria’s Manor in the Rockaways described to me how they had to walk out through water and sand to evacuate, and that many elderly people using walkers had a very difficult time doing this.

Some facilities had very good evacuation plans in place – as they are required to have by regulation – but could not or did not follow them. What is the point of preparing, vetting, and approving a disaster plan if it won’t be used in a disaster?

D. The City must establish a comprehensive plan for evacuation in the event of another regional disaster

Most, if not all of these facilities, do not have plans that take into account a regional evacuation of multiple facilities. A March 2006 report by the New York State Assembly Committee on Corporations, Authorities, and Commissions found that New York City's "58 nursing homes that are located in hurricane evacuation zones are completely unprepared to evacuate the thousands of special needs individuals who will require assistance during a hurricane emergency." The report found that evacuation plans were not reviewed, not complete, seriously deficient, and did not consider a multi-facility evacuation. Instead, the plans, to the extent that they even existed, were meant for evacuating single institutions during events such as a fire or a localized power outage.

After the issuance of the report's preliminary findings, DOH and OEM attempted to upgrade the plans. Despite these attempts, the report found that even the improved new plans cannot function if a regional evacuation is required. Scott Stringer's "No Way Out" study, which was issued after these attempts to upgrade, sharply criticized DOH guidelines and practices for nursing home evacuation plans. For example, the study found the following:

- DOH does not check the quality of nursing home evacuation plans, they merely check to see if nursing homes have answered a set of questions. The DOH does not check whether these questions were answered adequately or if the answers raise any potential questions about the sufficiency of a plan;
- DOH accepts nursing home plans that are incomplete; moreover, the agency sets no standard as to how evacuation plans should be structured. Some plans are two pages while others are 200 pages. Plans vary widely and there is no standard or model that DOH provides to nursing homes to ensure a proper plan is designed;
- DOH's guidelines are inadequate;
- Transportation vendors have contracts with multiple nursing homes, making a regional evacuation of nursing home residents impossible.

This inadequate planning was reflected in the Hurricane Sandy evacuation. We received many reports that nursing home residents arrived at shelters that were unable to care for them. In some cases, residents were sent to shelters or to other nursing homes with no medical records, no medication, and no medical directives. Once they arrived, it was unclear who was responsible for assessments at the new location. The cost to the city, to first responders, to shelters, to other resources, and to the affected residents might never truly be calculated.

Many family members did not know where their relatives were taken. People could not reach the facilities and were told to call 311 or to go on the Red Cross website to find their relatives. This is unacceptable. The "No Way Out" study found that evacuation plans are not uniformly accessible to the families of nursing home residents or to the residents themselves, and that some nursing homes were unwilling to share their plans and do not let family members know what exactly will happen to their loved ones in the event of an emergency. There should be more uniform standards, more transparency, and a centralized hotline with information for families of people in institutional settings.

We received reports of at least one death that was related to the poor evacuation. In that case, a family member was able to reach the facility and found her father in terrible condition. The power was out, there was no hot food, and he was sitting on a piece of plastic shivering in the cold. The daughter was told he needed to be hospitalized. She tried to follow the ambulance to the hospital but couldn't because the roads were blocked to all but emergency personnel. When she finally located him, it turned out he went to another nursing home, and then another. It became clear to her that he hadn't eaten, and it was not clear who was in charge of his care. Several days later, her father passed away.

This tragic situation and others could potentially have been avoided if facilities evacuated before the storm, had adequate resources to "shelter in place," and had a comprehensive appropriate evacuation plan that contemplated a regional evacuation.

E. The City Should Conduct a Comprehensive Review of Shelter Accessibility and Safety for Residents of Institutions

Residents of a number of adult homes were evacuated to city shelters. Once there, they faced many restrictions based on assumptions about people with disabilities. For example, residents of Belle Harbor Manor and Central Manor sheltering at the Armory in Park Slope were told that they were not allowed to leave unaccompanied, despite the fact that adult home residents can come and go from their homes as they please.

At a number of shelters, people were not provided with their full SSI benefits; instead, their own money was doled out piecemeal, presumably because of security and theft concerns in the shelter. However, adult home residents have the right to weigh risks and make their own choices about their own money. In fact, there are strict laws in place protecting the rights of adult home residents to receive their benefits without restriction, and that this was a time when they had an even greater need for their money in order to replace lost belongings. A disability literacy training program for shelter staff and volunteers would help address these issues.

Residents of a number of facilities were evacuated to other adult homes and nursing homes. The State waived capacity standards at these homes during the emergency; as a result, some homes were at double and triple capacity. For example, Queens Adult Care Center, a facility in East Elmhurst, Queens, housed residents from three facilities at one point. That created a situation where well over 600 people were housed in a facility with the capacity for about 300. When we went out to visit these homes, we saw people everywhere. People were sleeping in cots in noisy and crowded hallways and common areas with no privacy, under lights that were never turned off, and with no choice in the matter. Staff members were walking around with electric razors, shaving people's faces where they sat. People expressed concern for their lives because of the stress of the situation. We received reports that residents of nursing homes evacuated to Bishop Hucles, a facility in Brooklyn, were crowded into all available areas of those facilities and were being washed in front of other residents. Basic human dignity and respect should not be suspended just because there was a hurricane.

Not only was it stressful for the evacuated residents, it was a total imposition on the people that live there who were forced to share space with hundreds of other people, and in some cases were forced to share their rooms and bathrooms. Why are adult home and nursing home residents the only group of people to be forced into a situation where they have no choice but to share their space – which they pay for – with complete strangers? It's untenable and a violation of basic rights. Furthermore, it's a serious fire hazard and an overall dangerous situation.

The current situation is still very difficult. Pressure from the city for people to leave shelters caused some homes to re-open before they were really ready. At Surf Manor in Coney Island, the facility re-opened when they had no common space, no laundry capacity, broken-down elevators, no kitchen and no dining room for weeks.

A number of facilities are still evacuated, some in very restrictive settings. Residents of Belle Harbor Manor – after sleeping on uncomfortable cots for months – are now being housed at Milestone, a facility on the grounds of Creedmoor Psychiatric Hospital in Queens. We have been receiving reports of restrictions on visitors, on the right to come and go, and on the right of people to take their own medication – all rights that adult home residents have under the law. Similarly, residents of Park Inn are being housed at a retreat center affiliated with a nursing home. They report that they are not allowed to leave the facility unescorted and that there is only one phone available for almost 200 people. Again, people's basic rights and dignity should not be suspended simply because there was a hurricane.

The city should immediately conduct a comprehensive review of shelter availability, accessibility and safety for residents of institutions with input from residents, family members, advocates, and facilities in preparation for another disaster.

F. Conclusion

MFY Legal Services, Inc. thanks the City Council for holding this hearing. We are committed to helping the State develop and implement a disaster plan for people living in adult care facilities that is safe, effective, and respects the dignity and choice of the residents of those facilities. Thank you.