

SUPPORT

A. 04261 (Raia)

Ensuring the Comprehensiveness and Effectiveness of Evacuation Plans for Nursing Homes and Other Facilities

April 15, 2013

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 homes and nursing homes.

This legislation proposes to address shortfalls in emergency preparedness in nursing homes, assisted living facilities, and similar facilities. To achieve this, the legislation requires: (1) state agencies to study the comprehensiveness and effectiveness of evacuation plans for emergencies; (2) state agencies to issue "guidelines and recommendations"; (3) "nursing homes, assisted living facilities and other housing for partly or wholly dependent elderly persons" to comply with those guidelines and recommendations; (4) the New York State Department of Health (DOH) to review facilities' evacuation plans every year and to ensure compliance with the agencies' guidelines and recommendations; and (5) agencies to study the placement and maintenance of power equipment in health facilities.

MFY applauds this legislation's focus on emergency preparedness for residents of nursing homes, assisted living facilities, and similar facilities. Hurricane Sandy had a detrimental effect on thousands of adult home and nursing home residents in New York City. This legislation is an important step in helping to ensure that, in the event of another disaster, residents of these facilities will have access to safer and better organized evacuation plans that respect their dignity, choices, and needs. We believe, however, that this legislation would be strengthened by incorporating the following four recommendations:

Recommendation 1: State Agencies Should Review, Adopt, and Implement Recommendations Made By Previous Studies and Reports.

This legislation calls for a study of the comprehensiveness and effectiveness of evacuation plans for emergencies. However, numerous comprehensive studies have already been

conducted regarding emergency preparedness for nursing homes and other facilities. The following studies, for example, offer insightful and important recommendations that have not been implemented in New York State:

- Department of Health and Human Services (HHS), OIG, Supplemental Information Regarding the Centers for Medicare & Medicaid Services' Emergency Preparedness Checklist for Health Care Facilities, OEI-06-09-00271 (April 13, 2012) (discussing the need for more detailed emergency preparedness guidance for nursing homes, including “guidance regarding searching for missing patients, determining sufficient quantities of supplies, reviewing recommended emergency response practices, tailoring emergency planning templates, and collaborating in healthcare coalitions”).
- Department of Health and Human Services (HHS), OIG, Gaps Continue to Exist in Nursing Home Emergency Preparedness and Response During Disasters: 2007-2010, OEI-06-09-00270 (April 2012) (discussing the failure of state agencies to use CMS’s “emergency preparedness checklists as tools for effective emergency planning” and the need for federal, state, and local agencies to collaborate to “develop model policies and procedures to protect resident health, safety, welfare, and rights during and after disasters”).
- Manhattan Borough Present Scott Stringer, No Way Out: An Analysis of the New York State Department of Health’s Role in Preparing Nursing Homes for Emergencies (December 2006) (recommending that the DOH “must expand its set of guidelines and undertake a thorough assessment of evacuation plans at least every six months” and “should immediately convene a working group to study alternative strategies for a regional evacuation”).
- Richard L. Brodsky, Chairman, Committee on Corporations, Authorities, and Commissions, New York State Assembly, The Final Report on New York City Emergency Response and Evacuation Plans in the Event of a Weather-Related Emergency (March 23, 2006) (finding that New York City’s evacuation plan “has no effective way of moving special populations in nursing homes, hospitals, and other institutions” because of “[t]he lack of coordinated evacuation plans . . . [and] inadequate medical transportation . . .”).

Rather than requiring state agencies to allocate time and resources to conduct another general study of emergency preparedness, the legislation should require state agencies to take concrete action on recommendations set forth in the studies that already have been completed. This legislation should direct state agencies to:

- Review recommendations made by previous reports, studies, and public testimony by stakeholders;

- Request input from relevant stakeholders, including residents, advocacy groups, the New York State Office of Long Term Care Ombudsman, facility operators, and government officials; and
- Issue regulations with the resulting requirements—rather than simply “guidelines and recommendations”—within six months so that facilities will be prepared for future disasters.

Recommendation 2: State Agencies Should Conduct Limited Studies Focusing On Recent Events and Gaps in Existing Research

Because numerous general studies have already been conducted regarding the comprehensiveness and effectiveness of evacuation plans for emergencies, this legislation would be more cost-effective if it required focused studies that would help fill the gaps in existing research. Topics for specific studies should include:

- The evacuation of facilities due to Hurricane Sandy, focusing on best practices and areas that need improvement; and
- Identifying steps that state and local entities should take when there is a regional disaster requiring a large-scale evacuation of multiple facilities.

Recommendation 3: This Legislation Should Focus on Improving Enforcement of New and Existing Emergency Preparedness Regulations.

This legislation requires the DOH to review facilities’ evacuation plans every year and to ensure compliance with the agencies’ “guidelines and recommendations” for emergency preparedness. We recommend that this legislation improve compliance by:

- Directing the DOH to issue specific regulations regarding emergency preparedness by nursing homes and other facilities;
- Directing the DOH to conduct inspections at least every six months to ensure that nursing homes and other facilities are complying with those specific regulations;
- Directing the DOH to make sure that its investigators are regularly trained on how to assess a facility’s compliance with emergency preparedness requirements; and
- Increasing penalties for facilities that fail to comply with the agencies’ requirements for emergency preparedness.

Recommendation 4: This Legislation Should Include All People Living in Nursing Homes and Other Facilities, Not Just Elderly Individuals

This legislation focuses on protecting “elderly individuals who are partly or wholly dependent on their caregivers.” However, there are a significant number of people who

live in nursing homes and other facilities who are not elderly. This legislation should be modified to make it clear that it intends to benefit all residents of nursing homes and other facilities.

In sum, MFY supports this legislation but recommends several ways in which it could set forth a more efficient process that would help ensure that residents of nursing homes and other facilities will have access to safer and better organized evacuation plans.

For more information or to discuss our recommendations further, please contact:
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