

After a Decade of Litigation, Relief for New York City Adult Home Residents

By Jota Borgmann

Introduction

On July 23, 2013, adult home residents in New York City reached a landmark settlement with New York State. The settlement ensures that thousands of residents of 23 large adult homes will have the opportunity to live in their own homes with the services they need to succeed and be part of their communities.



The settlement follows nearly a decade of litigation in a related case, *Disability Advocates, Inc. v. Paterson* (“the DAI case”). A new class action, *O’Toole v. Cuomo*, was brought by residents of three adult homes on behalf of approximately 4,000 residents citywide. The plaintiffs alleged that New York State unnecessarily segregates people with mental illness in adult homes in violation of the Americans with Disabilities Act (“ADA”). The United States Department of Justice filed a related case and joined in the settlement.

This article provides a brief history of adult homes in New York State and the work of the Adult Home Advocacy Project at MFY Legal Services, Inc. (“MFY”). It then describes the litigation history of the DAI case and background on the *O’Toole* settlement. Finally, it describes the *O’Toole* settlement’s provisions in detail and its current procedural status.

The History of Adult Homes

Adult homes are intended to house individuals who “are by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.” New York Social Services Law § 2(21). Adult homes were originally envisioned as housing for seniors who needed assistance with activities of daily living, but not skilled nursing care. With the advent of the deinstitutionalization movement—the movement of people with mental illness out of state hospitals—adult homes became the default alternate housing. This effectively resulted in “transinstitutionalization”¹ of people with mental illness because adult homes share many of the characteristics of psychiatric wards.

Adult homes are typically large, segregated, isolated places with regimented schedules, lines for receiving medication and allowances, and little autonomy or privacy.² Their institutional conditions and inadequate services were described in reports beginning in the 1970s.³ A decade later, the New York Commission on Quality of Care and Advocacy for Persons with Disabilities (the “CQC”)⁴ reported that the conditions in adult homes jeopardized residents’ safety and health.⁵

In 1992, MFY founded its Adult Home Advocacy Project, which provides free legal services to adult home residents throughout New York City. Using a lawyer-organizer model, MFY began working collaboratively with Coalition of Institutionalized Aged & Disabled (“CIAD”) to reach out to adult home residents. Through outreach and know-your-rights trainings, MFY and CIAD were able to identify systemic problems that could be addressed through organizing or legal advocacy. MFY began representing residents in cases addressing poor conditions, financial abuses, and other civil rights violations. The most egregious violations are exemplified by the *Leben Home* case, which MFY litigated on behalf of 17 residents who were subjected to unnecessary prostate surgery as a result of a fraudulent Medicaid-billing scheme.⁶

In 2002, the *New York Times* published a Pulitzer Prize-winning series of articles about the squalid conditions and rampant exploitation occurring in New York City adult homes.⁷ In response to the series, Governor George Pataki convened an “Adult Care Facilities Workgroup” consisting of mental health advocates and professionals, adult home operators, and state officials. The Workgroup found that many residents could live in more integrated housing settings and recommended that the State create more community housing. Specifically, it found that 12,000 people with mental illness resided in adult homes in New York State and that at least 50% could reside in more integrated settings.⁸ In response to the Workgroup recommendations, the State enacted a budget providing some funding for 100 to 900 community housing beds that required dollar-for-dollar local matching funds.⁹

Prior Litigation: *Disability Advocates, Inc. v. Pataki*

In 2003, Disability Advocates, Inc. (“DAI”),¹⁰ a nonprofit protection and advocacy organization, sued the State on behalf of people with serious mental illness

residing in large, “impacted”¹¹ adult homes in New York City or at risk of placement into such homes.¹² It alleged that the State had discriminated against people with mental illness in violation of the ADA and Section 504 of the Rehabilitation Act by unnecessarily segregating them in large adult homes in New York City. DAI alleged violations of the “integration mandate” of the ADA and Rehabilitation Act. The integration mandate was articulated in the Supreme Court’s decision in *Olmstead v. L.C.*¹³ In *Olmstead*, the Supreme Court ruled that, under the ADA and Rehabilitation Act, states are required to provide services to people with disabilities in the most integrated setting appropriate to their needs.

The DAI case went to trial in 2008. Over 18 days, 52 witnesses testified and over 300 exhibits were admitted into evidence. The district court held that the defendants violated the ADA and the Rehabilitation Act.¹⁴ The court found that virtually all adult home residents were qualified to receive services in supported housing, which it found to be a much more integrated setting. The Department of Justice intervened during the remedy phase of the case and the court ultimately ordered the State to transition every adult home resident with mental illness who qualified for and wanted supported housing over three years.

The State then appealed the case to the Second Circuit and arguments were heard in December 2010. In February 2011, the Second Circuit stayed the district court’s remedial order. In April 2012, the Second Circuit ruled that DAI lacked standing, and that the intervention by the United States of America as a plaintiff after the liability phase of the action did not cure DAI’s lack of standing. Nonetheless, the Second Circuit did not question the district court’s findings.

Settlement of the New Class Action *O’Toole v. Cuomo*

After the Second Circuit issued its decision, negotiations began almost immediately between counsel for the adult home residents, the United States, and the State. Negotiations lasted until July 2013 when a settlement agreement was executed.¹⁵ The named plaintiffs brought the action on behalf of a class of “all individuals with serious mental illness who currently, or who may in the future, reside in impacted adult homes in New York City with more than 120 beds.” The class action complaint and settlement agreement were filed simultaneously, the case was deemed related to the DAI case, and the same district court judge, Judge Nicholas Garaufis, was assigned to the matter.

The State agreed to fund at least 2,000 units of supported housing for adult home residents, and more if needed. Every adult home resident who qualifies will

have the choice to move to community housing within five years. Supported housing is an apartment in the community that comes with rent assistance and support services. Residents can live alone or with roommates if they choose. The support services may include visits from case managers or help with moving, health care, shopping, medication, or personal care.

In addition to community housing, the other major provisions of the settlement include: “in-reach” to adult home residents to ensure they are able to make an informed choice about their housing options; individual assessments of adult home residents that emphasize self-determination of the resident and community integration; continued access by adult home residents to community health services that ensure their success in transitioning to community living, including services covered by Medicaid; an independent reviewer, Clarence Sundram, to oversee the implementation of the settlement and regular reporting on its progress by the State; and court enforceability of all settlement terms.

In November 2013, the court granted preliminary approval of the settlement and scheduled a fairness hearing for January 9, 2014, in which class members were afforded the opportunity to tell the court their views of the settlement. Dozens of adult home residents from adult homes throughout New York City came and spoke at the fairness hearing and there were more than 200 written submissions from residents to the Court. The comments on the settlement were overwhelmingly supportive. Residents described the conditions in their adult homes as “infantilizing” or like a “psychiatric ward.” They described the ill treatment they sometimes received from staff or how they felt like a “second-class citizen” or “domestic farm animal.” And many spoke of their strong desire to live on their own, take care of themselves, and be in charge of their lives again.

Next Steps

On March 17, 2014, the district court approved the settlement. Supported housing providers have already begun in-reach in three adult homes in Coney Island under contracts awarded by the State to fund 1,050 units of supported housing.

Endnotes

1. Ira Burnim and Jennifer Mathis, *The Olmstead Decision at 10: Directions for Future Advocacy*, Clearinghouse Review Journal of Poverty Law and Policy, Vol. 43, Nos. 7-8, at 391 (November-December 2009).
2. *O’Toole v. Cuomo*, 13-CV-4166, Compl. ¶ 3.
3. See, e.g., Charles J. Hynes, Deputy Attorney General, *Private Proprietary Homes for Adults*, 37-38 (March 31, 1979); New York City Council Subcommittee on Adult Homes, *The Adult Home Industry: A Preliminary Report, Summary of Preliminary Findings*, at 2 (1979).

4. The CQC "was dissolved on June 30, 2013 and its responsibilities, programs and functions were transferred to the New York State Justice Center for the Protection of People with Special Needs." See <http://cqcnyc.org>; New York Executive Law § 551.
5. New York State CQC, *Adult Homes Serving Residents with Mental Illness: A Study of Conditions, Services and Regulation* 12-21, 30, 32-36 (Oct. 1990).
6. Sarah Kershaw and Clifford J. Levy, *Inquiry Finds Mentally Ill Patients Endured 'Assembly Line' Surgery*, N.Y. TIMES, March 18, 2001.
7. Clifford J. Levy, *For Mentally Ill, Death and Misery*, N.Y. TIMES, Apr. 28, 2002, § 1, at 1; Levy, *Here, Life Is Squalor and Chaos*, N.Y. TIMES, Apr. 29, 2002, at A1; Levy, *Voiceless, Defenseless and a Source of Cash*, N.Y. TIMES, Apr. 30, 2002, at A1.
8. *Disability Advocates, Inc. v. Pataki*, No. 03-Cv-3209, Compl. ¶ 113 ("DAI Compl.").
9. *Id.* at ¶ 114.
10. Disability Advocates, Inc. became Disability Rights New York in 2013.
11. "Impacted" adult homes were defined by the State as homes with 120 or more beds where at least 25% of residents were people with a serious mental illness. DAI Compl. ¶ 33.
12. DAI litigated the case along with co-counsel from MFY, the Bazelon Center for Mental Health Law, New York Lawyers

for the Public Interest, Urban Justice Center and Paul, Weiss, Rifkind, Wharton & Garrison, LLP.

13. 527 U.S. 581 (1999).
14. *DAI*, 653 F. Supp. 2d at 314.
15. Before the settlement was reached, the New York State Office of Mental Health made a clinical determination that congregate settings such as the adult homes at issue in *O'Toole* are not conducive to the recovery or rehabilitation of the residents and issued a regulation that prohibits hospitals from discharging patients with serious mental illness to "transitional adult homes" as defined in 18 NYCRR § 487.13. See 35 N.Y. Reg. 6 (Jan. 16, 2013); 14 NYCRR § 582.6(c).

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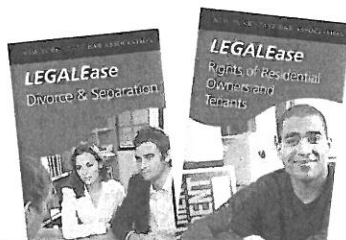
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