



SUPPORT

A. 05149 (Gottfried)

Prohibiting Third Parties from Participating in the Revenues of an Adult Care Facility and Requiring that any Fee for the Lease of the Property or Premises be Limited to Fair Market Value

May 16, 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 care facilities.

This bill amends the Social Services Law to: (1) prevent third parties from participating in the total gross income or net revenue of a facility; and (2) limit any fee for the lease of real property on which an adult care facility is located to the commercially reasonable fair market value of similar properties. MFY supports this legislation, because it would curtail unnecessary over-utilization of Medicaid funds.

The New York State Commission on Quality of Care and Advocacy for People with Mental Disabilities ("CQC"), an independent State agency, issued a report titled Adult Homes Serving Residents with Mental Illness: A Study on Layering of Services detailing findings that some adult homes rented space to medical providers at inflated rates, presumably in payment for unfettered access to a captive population of vulnerable people:

Rental income is both a significant source of income at some homes and, more importantly, it buys access to the home's residents. Exceptionally high rents, the renting of the same space to several providers, the renting of common space (lounges, portions of the dining room), the renting of non-existent office space and inflated "service agreements" (for telephone and parking spaces, for example) are practices which point to these arrangements as a hidden form of remuneration in return for access to the home's residents. For example, at one home reviewed in the study, an OMH-certified clinic rented space for \$16.50 per square foot, but across the hall, in similar space, a private provider was paying \$37 per square foot.

Permitting third parties to rent space in an adult care facility without regulation increases the likelihood that for-profit service providers – private physicians, psychologists, medical clinics, mental health clinics, rehabilitation service providers, and nursing and home health care agencies – will provide fragmented, uncoordinated, and unnecessary care to adult home residents. This is likely to occur when an operator potentially has a powerful financial incentive to facilitate access to their resident population.

This legislation would limit instances where providers can pay above market rent in exchange for access to a captive resident population and exploit that access for profit. Consequently, this legislation is an important tool to curtail unnecessary over-utilization of Medicaid funds, which has been a longstanding problem in the adult home context. We applaud the Legislature's efforts to improve accountability and transparency in this industry.

For more information, please contact:

Shelly Weizman, Senior Staff Attorney: (212) 417-3761, sweizman@mfy.org