

ADULT HOME TRENDS TRACKER

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HURRICANE EVACUATIONS PLACE RESIDENTS IN SQUALOR

Hurricane Irene hit New York in late August 2011. Instead of evacuating residents to evacuation centers, many adult homes evacuated to other adult homes. Residents reported numerous troubling experiences.

At Garden of Eden, residents reported that 200 evacuees slept in the dining room and other common areas on flotation mattresses used for swimming pool recreation, or no mattress at all.

Residents complained that the environment was chaotic, overcrowded and that some of the evacuees broke into their rooms.

At Kings Adult Care Center, residents were forced to share their private rooms with evacuees.

At Queens Adult Care Center and Garden of Eden, residents reported an inadequate number of bathrooms for evacuees. As a result, evacuees were reportedly urinating and defecating in their beds and in the hallways.

Only 14,000 New York City residents took advantage of evacuation centers with a capacity to shelter over 70,000. It remains unclear why adult home residents were the only population forced to share

shelter in this inhumane way.

CONDITIONS REPORTED:

- Overcrowding and chaos;
- Lack of cots or mattresses;
- Lack of privacy and security;
- Sharing of mattresses and rooms;
- Mattresses blocking ingress and egress;
- No evacuation plan;
- Lack of adequate bathroom facilities;
- Hospitalizations;
- Several residents did not receive their medication;
- Insufficient number of staff from evacuated homes.

UNCONSCIONABLE AIR CONDITIONING CHARGES

A number of adult homes still charge residents for air conditioning, sometimes at extremely high rates.

MFY brought an action against one home alleging unconscionability where a resident was forced to pay \$250/month for medically necessary air conditioning in her small room.

MFY supports legislation that would permit the Department to set A/C rates in adult homes and hope to work with a number of elected officials to ensure that the legislation passes in the next session.

The Department could, however, end price gouging practices by facilities if it issued a DAL defining

“reasonable rates.” In litigation against one particular adult home, MFY was easily able to calculate reasonable rates with the assistance of a utility consultant and former Con Edison employee.

MFY learned that public utility rates are readily available, public information.

A NEW APPROACH

As attorneys and advocates on the ground in New York City’s adult homes, we are uniquely positioned to identify systemic concerns in individual homes and across multiple facilities, as well as other institutional settings.

The Adult Home Trends Tracker is a publication created to educate law- and policy-makers about these issues.

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MFY SUPPORTS LTCCC'S RECOMMENDATIONS FOR REFORM, INCLUDING:

- Annual inspection of every facility;
- More stringent requirements for adult home staff training;
- Licensure for administrators;
- Require additional hours of care for medication assistance;
- Permit levying of fines "per violation" in addition to "per day";
- Permit a violation to be issued even if the facility corrects a condition within 30 days;
- Raise the amount a fine can be assessed;
- Allocate sufficient funds for DOH surveyors and attorneys;
- Require inspectors to speak with more residents, including the resident who complained.

"DOH NEEDS TO PUT SOME TEETH IN THEIR ENFORCEMENT."

- COMMENT GATHERED BY LTCCC DURING AN INTERVIEW FOR THEIR REPORT

NO MECHANISM TO REMEDY SYSTEMIC VIOLATIONS

MFY attorneys provide free legal representation and advocacy to adult home residents in New York City.

Multiple residents at the same adult home often approach attorneys and advocates with similar complaints which represent a pattern of problematic activity in a particular home.

One strategy MFY attorneys and other advocates have used in these situations has been to combine complaints in a letter or series of letters to the New York State Department of Health. Alternatively, we have copied the Department on our correspondence with the facility itself.

Unfortunately, the Department has not responded to these omnibus complaints. At Oceanview Manor, for example, a number of residents complained that the facility was placing conditions on the receipt of their personal needs allowances in late 2010 and early 2011. Specifi-

cally, residents were asked to shower, change clothes, or attend a day program or they would not receive their allowance. MFY had previously litigated and settled a case involving the exact same issue at that home.

MFY facilitated complaints to the Department from residents and a former employee who corroborated the residents' complaints.

When we followed up with our clients, however, we were told that the inspector did not speak to them about many of their complaints. The former employee was never contacted for follow-up. The complaints were unsubstantiated. Attempts at advocacy with a number of individuals at MARO proved very frustrating and did not resolve the issue.

The Department's Division of Long Term Care **refused to meet with MFY on this issue**, purportedly because of MFY's involvement in *Disabil-*

ity Advocates v. Paterson, in which the Department is a Defendant. However, that case is entirely unrelated to the Department's complaint system.

There seems to be no efficient way to present systemic trends to the Department, or for residents to request review of the Department's findings, even if that inspector did not speak with the resident who complained. A mechanism to file systemic complaints would greatly benefit residents.

The Long Term Care Community Coalition recently issued a report outlining recommendations for oversight and enforcement in adult care facilities. This report reflects many issues advocates have experienced for years. MFY encourages the Department to implement the LTCCC's recommendations. The full report with recommendations can be found at: www.assisted-living411.org

EGREGIOUS VIOLATIONS CONTINUE AT GARDEN OF EDEN

The Department of Health commenced an administrative enforcement proceeding against the Garden of Eden for endangerment of its residents; specifically, for threats and coercion of residents carried out by administration.

The Department is seeking to impose civil penalties and to withdraw approval of Martin

"Jay" Amsel as administrator.

While we commend the Department's efforts in this proceeding and continue to extend our support, we remain concerned about a host of complaints by residents that are not the subject of the proceeding, including financial exploitation and mistreatment by staff. For example, the

Department has failed to enforce a corrective action order requiring the home to return money it withheld and provide case management. Additionally, the facility continues to openly flout a Department order demanding that Amsel cease contact with residents. This case illustrates a compelling need for more stringent enforcement.



DANGEROUS LACK OF CASE MANAGEMENT

Residents regularly report a lack of case management, including lack of financial assistance resulting in eviction and lack of assistance scheduling medical appointments.

Residents at Surf Manor, for example, report chronic and serious complaints stemming from a lack of case management. Over the past 18 months, the Department has conducted at least seven investigations at Surf Manor. In each, the surveyor found defi-

ciencies that could have been avoided with adequate case management.

Residents report that these deficiencies, however, persist to the present. The most troubling complaints involve a failure to connect residents with medical services, including cataract operations, foot surgery, and appointments with cardiologists and neurologists, as well as transportation to appointments. Disturbingly, seven Surf Manor

residents have died in the past eight months.

MFY, CIAD, and the resident council drafted a letter to the Department outlining these issues in painstaking detail. The Department investigated the complaint. However, our clients reported that the surveyor spent only a few minutes, if any, speaking to each resident listed in the complaint letter. The Department did not substantiate the majority of the complaints.



Staff Attorney Barbara Graves-Poller conducts a resident rights training.

DISTURBING PATTERNS OF MEDICATION ERRORS

In its May 2011 report, the LTCCC found that medication was one of three most cited areas for violations by DOH, and that 24 percent of the violations were repeated, systemic non-compliance.

This has reportedly been a longstanding problem at Kings Adult Care Center (KACC), as documented by incident reports submitted to

the Office of Mental Health by South Beach Psychiatric, the former independent case management organization on-site at that facility. Additionally, over the past several months, several KACC residents reported to the DOH that the facility and/or affiliated medical providers administered the incorrect medication to them. One resident reported multiple

inaccuracies in his psychiatric medication. Another resident reported that she received an excessive dose of Prednisone that resulted in a 10-day hospitalization. An Americare employee later administered the wrong type of insulin to her, resulting in a severe blood sugar spike. These reports raise concerns about a systemic medication problem at that facility.

“MEDICATION CITATIONS ARE STILL RAMPANT AND, ALARMINGLY, ALMOST A QUARTER OF THEM ARE REPEATS FROM EARLIER INSPECTIONS.”

- LTCCC REPORT

RECOMMENDATIONS FOR ASSISTED LIVING CERTIFICATIONS

Adult homes throughout the state have applied for basic Assisted Living Residence (ALR) and Enhanced Assisted Living (EALR) certification.

Applicants include a number of New York City homes which the Department has consistently cited for regulatory violations and poor conditions. These facilities are

“re-tooling” themselves to take in a sicker and more vulnerable population by making changes to the physical plant of their buildings.

We are concerned that ALR and EALR certification will enable homes with a history of serious violations to care for an even more vulnerable population.

MFY has submitted comments to the Department regarding the applications of two homes – Garden of Eden and Surf Manor. In coalition with several other advocacy organizations, we have provided the Department with recommendations for the ALR/EALR approval process that we feel would be beneficial to the process.

RECOMMENDATIONS FOR ALR/ EALR CERTIFICATION:

Deny applications of any facility not meeting the good standing provisions.

Scrutinize prior inspection reports.

Deny the application of any facility with a history of serious or systemic violations.

Deny the application of any facility that does not provide air conditioning free of charge.

Publish prior inspection reports online.

Engage residents and resident councils in the certification process.



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MFY Legal Services, Inc. is a not-for-profit law firm that provides free legal representation to poor and low-income people, including individuals with mental illness, in a variety of civil legal matters in New York City.

The Adult Home Advocacy Project of MFY, established in 1992, focuses on protecting the rights of people who live in institutional adult homes through individual legal representation, law reform litigation, and legislative advocacy.

For More Information, contact the Adult Home Advocacy Project at:

212-464-8110

Or toll-free at:

1-877-417-AHAP (2427)

ADVOCATE ACCESS TO ADULT HOMES AT RISK

Adult homes in New York City are home to 4,500 people with mental illness.

Access to residents is critical to MFY's efforts to provide legal representation to a vulnerable and marginalized population.

For the past 20 years, MFY has monitored and exposed conditions in adult homes, leading to significant reforms and greater oversight by the state.

The New York Coalition for Quality Assisted Living (NYCQAL), a trade association of adult home operators, sued MFY and CIAD, the Coalition of Institutionalized

Aged and Disabled, to force compliance with "guidelines" limiting lawyers' and advocates' access to residents and impeding confidential visits and impromptu meetings with residents at the homes.

NYCQAL's guidelines are a blatant attempt to discourage vulnerable people who live in adult homes and who are isolated from the community from speaking with attorneys and advocates who can help them.

The Appellate Division found that NYCQAL's guidelines violate state regulations guaranteeing residents' access to

confidential legal help and advocacy.

NYCQAL appealed to the New York State Court of Appeals, and we await the court's decision.

This decision will have an important impact on isolated and vulnerable people in institutional settings, even beyond adult homes.

An amendment to the Social Services Law which codifies the right of residents to have unimpeded access to their attorneys and advocates will further protect residents who speak out about incidents of abuse and rights violations in adult homes.



"The regulations make the confidentiality of such meetings [between adult home residents and their attorneys and advocates] a primary concern."
- NYCQAL v. MFY
Appellate Division decision