UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DISABILITY ADVOCATES, INC.,

Plaintiff,

v.

GEORGE PATAKI, in his official capacity as Governor of the State of New York, ANTONIA C. NOVELLO, in her official capacity as Commissioner of the New York State Department of Health, JAMES STONE, in his official capacity as Commissioner of the New York State Office of Mental Health, THE NEW YORK STATE DEPARTMENT OF HEALTH, AND THE NEW YORK STATE OFFICE OF MENTAL HEALTH,

Defendants.

COMPLAINT

Plaintiff Disability Advocates, Inc., a New York protection and advocacy agency, sues the defendants on behalf of residents in large New York City adult homes and those at risk of entry into such homes and alleges:

PRELIMINARY STATEMENT

1. Title II of the Americans With Disabilities Act, 42 U.S.C. §§ 12131, 12132, prohibits discrimination against individuals with disabilities, including those with mental illness. Similarly, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides that no person with a disability, including those with mental illness, shall: "solely by reason of his or her disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

2. Further, Title II of the ADA requires that "a public entity shall administer services, programs, and activities *in the most integrated setting appropriate to the needs* of qualified individuals with disabilities." *See* 28 C.F.R. § 35.130(d) (emphasis added).

3. In the landmark decision *Olmstead* v. *L.C.*, 527 U.S. 581 (1999), the U.S. Supreme Court held that these provisions of law are violated when a state places people with mental illness in "unjustified isolation," and that a person with mental illness may sue the state for failing to place him or her "in the most integrated setting appropriate to [his or her] needs."

4. This action is brought in furtherance of these mandates. Rather than comply with these laws, New York State officials and agencies responsible for the care and treatment of people with mental illness (and hospitals they license and supervise) discharge thousands of these people from psychiatric hospitals to equally oppressive, large and isolated institution-like settings commonly referred to as "adult homes," which offer little or no rehabilitative treatment to promote integration into the community. As chronicled in an April 2002 Pulitzer Prize-winning series of articles in the *New York Times*, abuse, neglect, negligent supervision, inadequate medical care and chaos pervade many of these adult homes – referred to as "psychiatric flophouses" – in New York City. 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.

5. Ironically, people with mental illness are often left to languish in these adult homes while equally affordable and more humane residential settings exist and/or could be made available. Such residential settings are more integrated and more appropriately meet the needs of thousands of people with mental illness currently residing in adult homes.

6. By this action, Plaintiff seeks an end to New York State's practice of knowingly placing and maintaining individuals with serious mental illness in these substandard adult homes rather than in superior, more integrated residential settings already existing in this State.

7. In addition, permitting such substandard conditions in adult homes constitutes discrimination pursuant to Title II of the ADA and Section 504 of the Rehabilitation Act by providing housing and services to those with mental illness in a manner not commensurate with the quality of housing and services directed primarily at individuals without mental illness.

PARTIES

8. Plaintiff Disability Advocates, Inc. ("Disability Advocates" or "Plaintiff"), is a not-for-profit corporation, authorized to practice law under New York State law. Disability Advocates is an authorized protection and advocacy agency under the Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI"), 42 U.S.C. § 10801 *et seq*. Disability Advocates has statutory authority to pursue legal, administrative and other appropriate remedies to ensure the protection of individuals with mental illness who are or will be receiving care and treatment in New York State. 42 U.S.C. § 10805.

9. Disability Advocates is pursuing this action to protect and advocate for the rights and interests of residents of adult homes and those at risk of entry into such homes who are all "individuals with mental illness" as that term is defined in 42 U.S.C. § 10802. These individuals are Disability Advocates' constituents.

10. These constituents have a significant mental illness and reside in adult homes, psychiatric hospitals, and other "facilities" rendering care and treatment for mentally ill individuals as that term is defined in 42 U.S.C. § 10802.

11. These constituents have a significant mental illness that substantially limits one or more major life activities, including personal care, working, and sleeping. They are therefore individuals with disabilities for purposes of the Americans with Disabilities Act and the Rehabilitation Act.

12. These constituents have each suffered injuries, or will suffer such injuries, that would allow them to bring suit against defendants in their own right.

13. Defendant George Pataki is the Governor of the State of New York, a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). He is ultimately responsible for ensuring that New York operates its service systems in conformity with the Americans with Disabilities Act and the Rehabilitation Act. He is sued in his official capacity.

14. Defendant New York State Department of Health ("DOH") is the agency created by the State of New York that licenses, supervises and enforces the laws and regulations applicable to adult homes, and is responsible for protecting the rights of the residents. DOH is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1).

15. Defendant Antonia C. Novello is the Commissioner of DOH. She is responsible for the operation and administration of DOH, including its activities regarding adult homes. She is sued in her official capacity.

16. Defendant New York State Office of Mental Health ("OMH") is the agency responsible for jointly inspecting adult homes that are "impacted" by a large percentage of residents who have serious and persistent mental illness. OMH is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1).

17. OMH shares the responsibility for protecting the rights of the residents of impacted adult homes with DOH.

18. OMH also operates state inpatient psychiatric facilities and is responsible for discharge planning, placement and follow up for individuals residing in such facilities. Additionally, OMH funds privately operated psychiatric hospitals for clients of the public mental health system and is responsible for developing standards for discharges from these hospitals.

19. OMH is charged by statute with "the responsibility for seeing that mentally ill persons are provided with care and treatment, that such care, treatment and rehabilitation is of high quality and effectiveness, and that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected." Mental Hyg. Law § 7.07(c).

20. Defendant James Stone is the Commissioner of OMH. He is responsible for the operation and administration of OMH, including its activities regarding adult homes and state psychiatric facilities and the overall planning, programs

and services for the mental health system in New York. He is sued in his official capacity.

21. DOH and OMH are recipients of federal funds.

22. DOH and OMH are programs of state government.

JURISDICTION

23. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 for civil actions arising under the laws of the United States; and 28 U.S.C. § 1343 for actions under laws providing for the protection of civil rights.

24. Declaratory and injunctive relief are sought under 28 U.S.C. § 2201 *et seq*.

25. Venue in the Eastern District of New York is proper under 28 U.S.C. § 1391, as it is the judicial district in which a substantial portion of the events or omissions giving rise to the claims herein occurred.

BACKGROUND

26. Beginning in the 1970s, the State of New York began discharging large numbers of individuals with mental illness from its psychiatric institutions, and it continues to do so.

27. Some fortunate individuals are discharged from a psychiatric institution and placed in residential programs that are designed to help them achieve independence and recovery from their illnesses. Most others, however, are placed in large institutions, known as "adult homes." [1] Adult homes are part of the New York State system for providing services to people with mental illness.

[1] Adult homes may house individuals with physical disabilities as well. An adult home in which the great majority of residents have mental illness is known as an

28. In general, these institutions have substandard conditions and do not provide recovery-oriented services. These adult homes generally segregate individuals from others who do not have mental illness. New York has long known of the poor conditions in these long-term placements. New York State and New York City officials referred to these adult homes as "de facto mental institutions" and "satellite mental institutions" over twenty years ago. 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).

29. Adult homes were established to provide room and board, housekeeping, personal care and supervision. N.Y. Comp. Codes R. & Regs. Title 18, § 487.2(a); N.Y. Soc. Serv. L. § 2(25). Adult homes also must arrange services for residents, such as medical care and transportation. However, each service they provide could be provided in the more integrated and state-supported residential programs.

30. Instead of serving individuals with mental illness in more integrated settings, New York has chosen to operate a mental health system that depends on these large and substandard adult homes.

31. Historically, the defendants have knowingly permitted and continue to permit the operators of adult homes to provide unsafe, unsanitary and inadequate care amounting to abuse and neglect. Some residents have died due to the

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"impacted" home. Technically an "impacted" home is one in which at least 25% of the residents have mental illness. In most impacted homes, however, the proportion of residents with mental illness is at least 75%. It is these impacted adult homes that concern Plaintiff, and all references hereinafter to "adult homes" refer to impacted adult homes unless otherwise indicated.

lack of appropriate medical care, mental health treatment or supervision. Many others have been forced to live in filthy, squalid conditions. While the defendants may have recently increased their efforts to address these problems, their efforts have been insufficient to correct the results of years of discriminatory toleration of such unsafe, unsanitary and inadequate care.

32. Proposals recently announced by the State of New York in response to media exposure of the shameful conditions of these homes fail to meet the need for alternative, more integrated settings for current and future residents of large adult homes. Defendants have had detailed knowledge of the unnecessary segregation and poor conditions in adult homes for many years, through reports of the New York State Commission on Quality of Care for the Mentally Disabled, defendants' own agencies, the press, the New York City Council, the New York State Assembly and other sources. Yet defendants have failed to take adequate steps to create more appropriate settings. Judicial relief is needed.

33. Recognizing that larger adult homes exacerbate the problems described above, New York recently announced a plan to cap the size of new housing for individuals with mental illness at 120 beds per facility. Moreover, the problems described above are exacerbated in those homes that are "impacted," which is an adult home in which at least 25% of the residents have mental illness.

34. As such, Plaintiff brings this action on behalf of those residents with mental illness in homes with more than 120 beds or at risk of being placed in such homes in recognition that the state's prohibition on homes of this size indicates a mutual concern about the institutional nature of such large facilities. Moreover, the relief here

sought is directed exclusively at impacted adult homes with over 120 beds located in New York City, and the New York State system that steers people with mental illness into such homes.

35. Approximately 26 adult homes in New York City house more than 120 people and are designated by the State as "impacted." These homes are: Anna Erika, Bayview Manor, Belle Harbor Manor, Brooklyn Manor, Elm-York Home, Garden of Eden, Harbor View Home, King Solomon Manor, Lakeside Manor, Long Island Hebrew, Mermaid Manor, New Central Manor, New Gloria's Manor, New Haven Manor, Ocean House Center, Ocean View Manor Home for Adults, Palm Beach House, Park Inn, Parkview Manor, Queens Adult Care Center, Riverdale Manor, Sanford, Seaview Manor, Surf Manor Home for Adults, Surfside Manor and Thomas Jefferson Home.

FACTS

Discharge From Hospital

36. New York State historically and currently provides inpatient hospitalization to individuals with mental illness in public and private psychiatric hospitals.

37. While in the hospital, an individual generally lives in a congregate setting with many others. Meals are provided with little choice about what to eat. Medication is dispensed daily and taken under watchful eyes. Bedrooms are shared, and there is little privacy. Often bedrooms are located around a day room, where individuals can watch TV or engage in other activities.

38. In this setting, individuals are extremely segregated from society; they live only with others with mental illness and have little opportunity to engage in normal community life.

39. OMH is required to implement and monitor a comprehensive program to ensure, among other things, that an individual is placed upon discharge in an "adequate and appropriate residence for the person's needs." Mental Hyg. Law § 29.15(h). OMH is also responsible for developing appropriate standards for the discharge of individuals from privately operated psychiatric hospitals. Mental Hyg. Law § 41.17(a)(2).

40. Some individuals discharged from psychiatric hospitals go home to family or friends following hospitalization. Others are discharged to nursing homes. Many are discharged to a "transitional residence," which is often just a different floor in the same hospital and, thus, still constitutes a segregated setting.

41. Some individuals are discharged from hospitals and others are discharged from "transitional residences" to various residential programs that are dependent on state funding.

42. In many of these residential programs, individuals live in their own apartments with privacy and choice of activities. They generally live in buildings with individuals who do not have mental illnesses. They are able to receive and entertain visitors and communicate by phone in privacy. Residents go to stores to shop for food and other necessities. They go to doctors of their choice and engage in social activities of their choice. They tend to these and other daily needs to the degree they are able, with supportive services offered to them by case managers as needed. These programs are designed to foster independence and recovery and to enable individuals to become as self-sufficient as possible. Such programs are known as "supported housing." Close to

10,000 individuals are served in these residential programs statewide, and over 4,600 of those individuals are in New York City.[2]

43. When no openings are available in supported housing or other similar facilities, individuals with serious mental illness are discharged to adult homes.

Impacted Adult Homes

44. Impacted adult homes are institutions with characteristics similar to those of a hospital. Like hospitals, they place many limitations on residents' autonomy and privacy. Residents live a regimented lifestyle where most daily activities are conducted in one place, in the company of large numbers of other individuals with mental illness, and subject to restrictive rules and policies. In some instances the time for various events during the day is announced by the ringing of a bell like a school bell. Residents in some homes are assigned a fixed place to sit in the common dining area. In contrast, the more integrated community residential programs for individuals with mental illness afford people much more choice, freedom and privacy as well as the opportunity to maintain family relationships and to interact with and form friendships with people who do not have mental illness.

45. In most impacted adult homes, the proportion of residents with mental illness is at least 75%.

46. Individuals who reside in impacted adult homes share common areas with scores of other people with mental illness. They have little to no privacy.

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[2] Additionally, New York has "supportive single room occupancy residence" programs, which are programs that do not provide as intensive a level of services as some other programs but do provide 24-hour supervision, case management and other services such as budgeting assistance. Participation in on-site programming is voluntary, depending on need.

Meals are provided with little choice. Hundreds of individuals share access to a single common area. Residents must line up for medication, which is only dispensed at specific times in the common areas.

47. The impacted adult homes provide almost no recreational or other activities. Residents spend hours watching television in a common room or smoking cigarettes in a smoking room during the winter or outside when the weather allows. Residents wander aimlessly in and out of the common room and smoking room with nothing to do for the majority of the day. Only a minority of residents attend day programs outside the home.

48. Residents of impacted adult homes have almost no control over their personal space. They share rooms with at least one other person (some homes have rooms with three beds). In most cases, four residents share a bathroom. Residents have no control over when or by whom their rooms are cleaned or who can access their room. Residents frequently complain of thefts of clothing and other personal effects.

49. Impacted adult home residents have virtually no privacy. Pay phones are in common areas where anyone can overhear a conversation. In homes where residents can receive calls through the home's switchboard, residents are paged over a loudspeaker to come to a phone. Residents are paged to come take their medications if they do not line up to get them at the designated time. Some impacted adult homes have policies restricting incoming telephone calls to very limited hours.

50. The lack of privacy in impacted adult homes makes it very difficult for residents to exercise their rights. Since residents often cannot make phone calls without the home's knowing they are doing so, residents are fearful of calling attorneys

or other advocates when they have a problem. Residents are also fearful that if an advocate calls them at the home, the home will find out about it and retaliate. Some impacted adult homes limit residents' access to advocates by simply barring the advocates from the home. Some operators and administrators intimidate residents with threats of eviction or hospitalization. Residents who do exercise their rights can and do face retaliation from the impacted homes. This serves as a further disincentive to residents exercising any kind of independence.

51. Residents have little contact with members of the community outside the impacted home. Some homes bar residents from congregating in front of the home, limiting their contact with the communities in which they are housed. Outsiders' visits are limited. Most visitors may not be received in privacy. Residents often develop their own systems of exchange within an impacted home, borrowing money at exorbitant interest rates and bartering for cigarettes, sex and personal items.

52. The depersonalization and lack of mental stimulation in the impacted adult homes erode residents' ability to live independently.

53. Moreover, many impacted adult homes have policies the effect of which are to prevent residents from moving out of the home, including withholding money from residents and creating barriers that inhibit the ability of case managers to assist residents in seeking and applying for other types of housing. Furthermore, residents are not educated about alternatives to adult homes and are often told that if they leave the impacted adult home, they will become homeless.

54. Operators often take control of individuals' Medicaid cards, forcing residents to use doctors and pharmacies chosen by the operator, often for the operator's financial gain.

55. Adult home operators frequently serve as the representative payee for residents and control the residents' finances. Operators who serve as representative payees receive residents' SSI checks directly from the government and distribute to residents the small personal needs allowance that residents are permitted to retain from these checks. This "personal needs allowance" is between $124 and $144 a month – between $4 and $5 per day.

56. Residents' money is sometimes withheld as punishment for failure to follow the home's rules or attend scheduled programs.

57. Countless DOH inspection reports have documented numerous health, safety and sanitation citations. Residents of adult homes have been at risk of death or injury due to unsafe and unsanitary conditions. The same types of violations persist year after year.

58. Residents are also at increased risk of death or injury from suicide because they are denied necessary care and rehabilitation.

59. On-site mental health providers typically rent space in the homes from the operators. New York State law requires that operators of impacted adult homes arrange for residents to receive needed mental health services. Home-health care service providers also pay the operators for space. These arrangements have led to repeated and well-documented instances of abuse (*e.g.* kickback schemes, unnecessary medical procedures and misleading billing practices). *See* New York State Commission on

Quality of Care for the Mentally Disabled, *Adult Homes Serving Residents with Mental Illness: A Study on Layering of Services* (Aug. 2002).

60. Adult homes do not meet the needs of persons with serious and persistent mental illness.

61. Adult homes fail to adequately provide rehabilitative treatment designed to promote recovery, independence and integration into the community.

62. Adult homes lack the trained staff necessary to provide adequate care to individuals with mental illness.

The Role of OMH and DOH

63. Defendants OMH and DOH have a joint duty to inspect impacted homes and ensure compliance with applicable laws and regulations. DOH licenses the homes.

64. Many individuals with mental illness who reside in impacted homes were discharged directly from psychiatric hospitals to the homes.

65. Individuals with mental illness are placed in adult homes because there are insufficient discharge options in the community for people with mental illnesses who need some degree of supervision or support.

66. There are long waiting periods for admission to supported housing programs, so people with serious mental illness are inappropriately discharged from psychiatric hospitals to adult homes because of insufficient capacity in community residential programs, including supported housing. The decision to discharge an individual to an adult home as opposed to supported housing is not based on any relevant treatment criteria or diagnosis, but simply on availability.

67. Once individuals are placed in adult homes, they are rarely able to transfer to OMH supported housing, such that being discharged into an adult home has dramatic, long-term consequences for the individual.

68. Defendants categorize adult homes as permanent placements and, as a result, do not consider the needs of adult home residents for more integrated housing when they plan for development of integrated supported housing programs.

69. Defendants do not provide adult home residents with information on alternatives to adult homes or assist them in exploring these alternatives.

70. Residents are left to stagnate in adult homes and, in all too many cases, to live permanently with fear of abuse and fear of retaliation against those who voice concerns or express a desire to leave.

71. Defendants are responsible for administering a system of care for individuals with mental illness.

72. Defendants are also responsible for establishing appropriate discharge standards at the psychiatric hospitals that traditionally place individuals in adult homes.

73. Defendants are administering their program of services in a manner that supports and encourages the segregation of individuals with mental illness through their over reliance on adult homes.

74. Defendants have developed and fund long-term residential programs that enable individuals to receive services in settings far more integrated than adult homes.

75. However, defendants have failed to develop and fund sufficient capacity in these programs, forcing into adult homes thousands of individuals who could, and would, prefer to be served in more integrated settings.

76. New York has policies, rules and practices that discourage the development of integrated residential settings for people with mental illness and instead perpetuate the current system of adult homes. Changing these policies, rules and practices would not be a fundamental alteration under *Olmstead*, 527 U.S. 581 (1999). Services can be provided in a more integrated setting at a cost equivalent to or less than the average cost of providing services to an adult home resident.

These Problems Have Persisted For Over 25 Years

77. Defendants have long been aware of the substandard conditions of adult homes and of their institutional nature. Despite numerous reports and newspaper accounts over the past 25 years, defendants have persistently and knowingly permitted the operators of adult homes to abuse and neglect residents, providing unsafe, unsanitary and inadequate care in needlessly segregated settings.

78. In 1977, as a result of an investigation by Deputy Attorney General Charles Hynes, the New York State Attorney General's Office put the defendants on notice that adult homes were inappropriate placements for people with mental illness.

79. The first interim report of the Hynes Investigation ("1977 Hynes Report") detailed the existence of unhealthy, unsafe and unsanitary conditions in adult homes. It noted that a large number of patients were discharged from state psychiatric centers into adult homes without adequate services. Charles J. Hynes, Deputy Attorney General, *Private Proprietary Homes for Adults: An Interim Report* (March 13, 1977).

80. The 1977 Hynes Report recommended accelerating the development of community-based facilities.

81. As a result of the 1977 Hynes Report, legislation was enacted requiring the Department of Social Services (now Department of Health) and the Department of Mental Hygiene (now Office of Mental Health) to establish a system of joint inspections of adult homes with significant numbers of individuals with mental illnesses. New York State Commission on Quality of Care for the Mentally Disabled, *Adult Homes Services Residents with Mental Illness: A Study of Conditions, Services, and Regulations* 1 (Oct. 1990).

82. Additionally, legislation was passed that specifically authorized the Department of Mental Hygiene (now the Office of Mental Health) to propose supplementary standards for the care and protection of individuals with mental illness in adult homes housing a significant number of such persons. *Id.* To date, the Department has not promulgated any additional standards or regulations for the care of individuals with mental illness in impacted adult homes.

83. In 1979, Deputy Attorney General Hynes issued a follow up report ("1979 Hynes Report"). Hynes found that in some impacted homes,

> Residents still appear totally uncared for: they are dirty, disheveled, unshaven, unbathed and dressed in soiled clothing. Inadequate food, in amount and nutritional value, is a continuing problem and the subject of frequent complaints. Special diets are not always provided. Recreational programs are minimal or non-existent in many homes. Kitchen sanitation and food handling practices are frequently health hazards. Building, fire and safety violations, often serious and dangerous, are common.

> Inadequate staffing is widespread and causes deficiencies in personal care services, housekeeping, and maintenance.

Charles J. Hynes, Deputy Attorney General, *Private Proprietary Homes for Adults* 17 (March 31, 1979).

84. The 1979 Hynes Report stated that since 1968, deinstitutionalization had been the mental health policy of the state, with inpatient census of the state psychiatric centers dropping from 60,321 to 26,000 during the first decade of this policy. "Massive deinstitutionalization coincided with high adult home vacancy rates and a shortage of alternative residential arrangements. . . There is a fundamental disparity between the kind of care, supervision, and support needed by many dischargees and the kind of care and services that adult homes provide." *Id.* at 30-31. The Report noted that most of the dischargees did not need help with daily self-care such as eating, toileting and mobility. On the other hand, they had behavioral problems that the adult home staff did not know how to address.

85. The 1979 Hynes Report also noted, "Large numbers of patients have been placed in facilities that cannot or do not meet their needs. Institutional life continues and there is little or no integration into the life of the community." *Id.* at 37-38. The report described adult homes as "de facto mental institutions." *Id.* It also concluded that the development of alternative placements for adult home residents has been "woefully slow and inadequate given the need for such facilities." *Id.* at 53.

86. Also in 1979, a report on the adult home industry by the New York City Council Subcommittee on Adult Homes stated that "former mental patients often constitute the majority or a very large minority of the residents of private, proprietary homes – creating, in fact, satellite mental institutions. (Some homes in New York City

have between 200 and 300 former mental patients, larger populations than some state hospitals)." *The Adult Home Industry: A Preliminary Report* (1979), Summary of Preliminary Findings.

87. The Council Subcommittee's report also contains information regarding high numbers of suicides, unsafe conditions and fraudulent financial practices. New York City Council Subcommittee on Adult Homes, *The Adult Home Industry: A Preliminary Report* (1979).

88. In 1990, the New York State Commission on Quality of Care for the Mentally Disabled ("CQC") reported to the New York State Legislature that large adult homes serving people with mental illness were unable to meet residents' needs. The CQC is a state agency responsible for monitoring and reporting on the quality of care for persons with mental disabilities.

89. The CQC surveyed a sample of 47 impacted adult homes that serve large numbers of residents with mental illness, examining conditions in the home, financing and effectiveness of the regulatory system.

90. The CQC found a significant number of homes with seriously deficient conditions that jeopardized residents' health and safety. Moreover, in many instances, the CQC found that these conditions had existed over time and had been cited repeatedly by state inspectors, but had remained uncorrected or had recurred repeatedly. New York State Commission on Quality of Care for the Mentally Disabled, *Adult Homes Serving Residents with Mental Illness: A Study of Conditions, Services and Regulation* 12-21, 30, 32-36 (Oct. 1990).

91. The CQC provided detailed descriptions of the substandard conditions it discovered in many of the larger homes. For example, at the Park Inn Home, the CQC found:

> The grounds of the home were littered with garbage, the hedges needed trimming, and the walls on the side of the home were marred with graffiti. The interior of the home was dimly and poorly ventilated, with unattractive, damaged institutional furniture set on dark, buckled, and worn carpeting. One bathroom . . . had a large hole in the floor by the bathtub which permitted the viewer to see the basement. Some residents . . . were poorly dressed in stained, ill fitting, layered attire, sometimes without socks or stockings . . . many were dirty and appeared to require additional staff assistance with personal hygiene.

Id. at 14.

92. The CQC noted that the Department of Mental Hygiene (now OMH) had not used its regulatory authority to propose new regulatory standards for adult homes serving individuals with mental illnesses, despite substantial evidence that residents' needs were not being met and that there were significant deficiencies in treatment.

93. The CQC found that "although mental hygiene law requires that discharge planning for patients include a determination of whether facilities to which patients are discharged are 'adequate and appropriate' to meet their needs, patients continue to be discharged to adult homes which regularly fail to meet standards on DSS inspections." Memo from Clarence J. Sundram, December 5, 1990, accompanying report, *Adult Homes Serving Residents with Mental Illness.*

94. The CQC found that once residents with mental illness become a majority in an adult home, the change in the overall composition accelerates until almost all the residents are individuals with mental illness.

95. The CQC found a *de facto* state policy of segregating residents with mental illness into particular homes. The CQC found that "there appears to be a pattern developing that as residents with mental illness become a majority, the change in the overall composition of the home accelerates until it predominantly serves only those residents." New York State Commission on Quality of Care for the Mentally Disabled, *Adult Homes Serving Residents with Mental Illness: A Study of Conditions, Services, and Regulation* 39 (Oct. 1990).

96. The CQC found that adult homes in New York City would not be able to appropriately serve the increasing number of patients discharged from inpatient psychiatric facilities.

97. The CQC made a number of recommendations, including the systematic assessment of residents' mental health needs and development of alternatives to meet the needs of residents with mental illness for personal care and supervision, medical, mental health and psychiatric rehabilitation services.

98. In December of 2001, the CQC issued a report on the Ocean House adult home (one of the homes enumerated in paragraph 35), entitled *Exploiting Not-For-Profit Care in an Adult Home: The Story Behind Ocean House Center, Inc.*

99. The report documents widespread fraud and misuse of residents' and state money at Ocean House. Residents were receiving medical care that they did not need, and providers fraudulently billed Medicaid and Medicare for that care. The report

found that significant amounts of state and federal money are spent on adult home residents, but the quantity and type of services provided appear to be driven more by greed than residents' needs. The report also found that treatment plans and activities were inadequate.

100. In April 2002, Clifford Levy wrote a Pulitzer Prize-winning series of articles in the *New York Times* depicting squalor and chaos in large New York City adult homes and reporting that an extraordinary number of deaths had occurred in these facilities. 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.

101. Levy wrote, "State investigators . . . [for] three decades described many of the homes as little more than psychiatric flophouses, with negligent supervision and incompetent distribution of crucial medication. At one, Brooklyn Manor, the staffing was so sparse that a resident was put in charge of the entire place on one evening, a routine 2001 state inspection report shows." Clifford J. Levy, *For Mentally Ill, Death and Misery,* N. Y. TIMES, Apr. 28, 2002, § 1, at 1.

102. Mr. Levy's independent analysis of death rates in 26 of the largest and most troubled homes in the city documented 946 deaths between 1995 and 2001. Of those, 326 were people under 60, including 126 in their 20's, 30's and 40's. When asked for records of investigations of these deaths, the Department of Health provided only 3. Clifford J. Levy, *For Mentally Ill, Death and Misery,* N. Y. TIMES, Apr. 28, 2002, § 1, at 1.

103. In August 2002, the CQC released a report entitled, *Adult Homes Serving Residents With Mental Illness: A Study on Layering of Services*, describing the cost and quality of Medicaid-funded services provided to adult home residents. The CQC examined information from the 11 largest impacted homes in the greater New York City area. Each home had a census over 200, one had a census over 300, and 90% of the residents had mental illness. New York State Commission on Quality of Care for the Mentally Disabled, *Adult Homes Serving Residents with Mental Illness: A Study on Layering of Services* (Aug. 2002).

104. The CQC found that the average cost of providing services to an adult home resident was $37,435. *Id.* at 4.

105. Adult homes' costs are paid for by Supplemental Security Income, including state supplements and public assistance funds. Health and mental health care for adult home residents with mental illness are paid for largely by Medicaid, which, as detailed in the CQC report, is vastly over-used in impacted adult homes. The CQC found services were "costly, fragmented, sometimes unnecessary, and often appeared to be revenue-driven, rather than based on medical necessity." *Id*. at 3. The CQC recommended exploring ways that the money currently spent on adult home residents could be better utilized by shifting the funding "to develop alternatives to adult homes that promote responsibility and independence." *Id.* at 18.

106. Despite the recommendation in this state-sponsored report and the many prior reports, defendants have not proposed the development of sufficient community residential services for impacted adult home residents and those individuals

at risk of entering adult homes. The result is that New York fails to serve individuals with mental illness in the most integrated setting appropriate to their needs.

107. Year after year, DOH inspection reports have documented numerous health, safety and sanitation citations that have put residents of adult homes at risk due to unsafe and unsanitary conditions. Defendants, however, have failed to take adequate measures to redress continued poor conditions in impacted adult homes.

108. The conditions in impacted adult homes make it more difficult for residents to learn to live in normalized community settings. In fact, residents of adult homes lose daily living skills and become more dependent on the homes for every aspect of their lives.

109. Defendants continue to encourage and facilitate the placement of people with mental illness into adult homes even though the homes are not the most integrated setting appropriate to their needs and the homes are unable to provide them appropriate services.

110. Defendants have no reliable system for assessing whether current or prospective adult home residents can be served in more integrated settings.

111. In response to the series of articles in the *New York Times* exposing the horrible conditions prevalent in adult homes, the Commissioner of DOH formed an Adult Home Workgroup consisting of professionals, advocates, adult home operators, state officials and others.

112. The State Adult Home Workgroup found that at least one half of adult home residents could be appropriately served in more integrated community residential programs and urged the development of community alternatives. The

Workgroup made detailed proposals for reform, including proposals to create 6,000 more integrated housing and treatment alternative beds, and proposals to improve the quality of care for those persons who remain in adult homes. New York has failed to enact laws implementing most of those proposals.[3]

113. As the State Workgroup reported, approximately 12,000 individuals with psychiatric disabilities live in adult homes in the New York State, and *at least* 50% or 6,000 of those individuals could live in more integrated community settings. This Complaint is directed at the over 4,000 individuals with psychiatric disabilities living in impacted homes with more than 120 residents in New York City. Thus, applying the State Workgroup's 50% projection specifically to these homes, it can be expected that *at least* half of over 4,000 people on whose behalf this case is brought could be served in more integrated settings. Upon information and belief, the evidence will show that far more than 50% of the residents can be served in more integrated settings.

114. The recently enacted State budget for Fiscal Year 2003-04 creates between 100 and 900 alternative residential beds for adults with mental illness statewide. In his budget message the Governor also promised to request funding for 600 additional beds in Fiscal Year 2004-05, and another 100 to 900 beds in Fiscal Year 2005-06. The housing that would be created in 2003-2004 and 2005-2006 would be contingent on a

[3] While the Governor proposed an assessment of every adult home resident, the budget that was enacted only funded assessments of a small percentage of the residents. Most of the money that the Governor proposed for assessments and for improving care and treatment of residents was redirected into a so-called Quality Incentive Payment Program, which provides financial bonuses to adult home operators who comply with minimal regulatory and statutory requirements – rather than addressing integration.

dollar-for dollar local match, except for 100 beds in each of these fiscal years. None of the housing which might be created under these proposals would necessarily be for adult home residents or those at risk of being placed in adult homes.

115. Upon information and belief, the first 100-900 beds will not actually become available until more than two years from when they were proposed. Moreover, because of the "local match" requirement, if localities such as New York City choose not to spend millions of dollars for new beds, most of the housing proposed for 2003-2004 and 2005-2006 will not be developed. Funding for additional beds beyond the first year is uncertain. Thus, after the conclusion of the Legislative session on June 19, 2003, New York State has no definite plan to provide a more integrated community residential setting for even a single adult home resident with mental illness.

116. Even if every single bed promised is actually created and is allocated to residents of impacted adult homes, which is far from assured, this would only provide integrated community residential beds to a small portion of those entitled to them. The proposal will not serve the needs of the majority of the adult home residents in New York City. The proposal is woefully inadequate to meet the needs of Plaintiff's constituents.

117. In his Executive Budget, the Governor requested funding to, among other things, assess the needs of adult home residents with mental illness for more integrated housing and services. The recently enacted State budget eliminated three quarters of the requested funding, with the result that only a small portion of residents will be assessed to determine their need for more integrated housing and services.

118. Moreover, the Governor's proposal fails to shift funding from adult homes to integrated community residential services. Shifting residents and funds from impacted adult homes to community-based residential programs would enable far more of Plaintiff's constituents to be served in integrated settings and would entail no additional cost.

119. By reason of the foregoing allegations, there exists a justiciable controversy with respect to which Plaintiff is entitled to the relief prayed for herein.

FIRST CLAIM FOR RELIEF
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT MANDATE TO ADMINISTER SERVICES AND PROGRAMS IN THE MOST INTEGRATED SETTING

120. Plaintiff repeats and realleges the above paragraphs.

121. This claim for relief is brought against defendants George Pataki, Antonia Novello, and James Stone in their official capacities.

122. Plaintiff Disability Advocates' constituents are individuals with serious and persistent mental illness. They have mental impairments that substantially limit one or more major life activity.

123. Plaintiff's constituents are qualified individuals with disabilities within the meaning of 42 U.S.C. § 12131(2).

124. Plaintiff's constituents who reside in impacted adult homes or are at risk of placement in such homes are qualified to participate in more integrated community residential programs that meet their mental health needs.

125. Serving Plaintiff's constituents in more integrated settings can be reasonably accommodated.

126. Defendants Pataki, Novello and Stone are responsible for the operation of public entities covered by Title II of the ADA. 42 U.S.C.§§ 12131(1)(A) and (B).

127. Title II of the ADA prohibits defendants from discriminating against individuals with disabilities in programs and activities. 42 U.S.C. §§ 12131, 12132.

128. Title II also requires that "a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." *See* 28 C.F.R. § 35.130(d).

129. The defendants are obligated under the ADA to administer New York State programs in a manner that supports the availability of services and programs in the most integrated setting for individuals with disabilities.

130. Defendants have failed to meet this obligation. Defendants are instead requiring thousands of individuals to live and receive services in adult homes, although the homes are not the most integrated setting appropriate to their needs.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT'S PROHIBITION ON USING METHODS OF ADMINISTRATION THAT SUBJECT PLAINTIFFS TO DISCRIMINATION

131. Plaintiff repeats and realleges the above paragraphs.

132. This claim for relief is brought against defendants George Pataki, Antonia Novello, and James Stone in their official capacities.

133. Plaintiff's constituents who reside in impacted adult homes or are at risk of placement in such homes are qualified to participate in more integrated community residential programs that meet their mental health needs.

134. Title II of the ADA prohibits defendants from discriminating against individuals with disabilities. 42 U.S.C. §§ 12131, 12132.

135. Regulations implementing Title II of the ADA provide that "a public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities. . ." 28 C.F.R. § 35.130(b)(3).

136. Defendants utilize methods of administration that have the effect of subjecting individuals with disabilities to discrimination. Defendants utilize methods of administration that perpetuate the current adult home system rather than facilitate the receipt of services in the most integrated setting appropriate to the needs of Plaintiff's constituents and result in continued placement in settings that are segregated, unsafe, unsanitary and inappropriate.

THIRD CLAIM FOR RELIEF
DISCRIMINATION ON THE BASIS OF DISABILITY IN
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

137. Plaintiff repeats and realleges the above paragraphs.

138. This claim for relief is brought against defendants George Pataki, Antonia Novello, and James Stone in their official capacities.

139. Plaintiff's constituents who reside in impacted adult homes or are at risk of placement in such homes are qualified to participate in more integrated community residential programs that meet their mental health needs.

140. Title II of the ADA prohibits defendants from discriminating against individuals with disabilities. 42 U.S.C. §§ 12131, 12132.

141. Defendants discriminate against Plaintiff's constituents on the basis of their mental illness in violation of the ADA by placing Plaintiff's constituents into impacted homes knowing that these homes are not appropriate to meet their needs and by failing to take adequate measures to redress continued poor conditions in impacted adult homes that, upon information and belief, they do not tolerate in adult homes that primarily serve individuals with physical disabilities.

142. The state's practice of knowingly placing and maintaining individuals with serious mental illness in impacted adult homes constitutes discrimination because such substandard conditions are not tolerated in other state-sponsored, state-run and/or state-regulated facilities that provide housing and services primarily on behalf of individuals without mental illness.

FOURTH CLAIM FOR RELIEF
FAILURE TO ADMINISTER SERVICES IN THE MOST INTEGRATED SETTING APPROPRIATE IN VIOLATION OF THE REHABILITATION ACT

143. Plaintiff repeats and realleges the above paragraphs.

144. This claim for relief is brought against each and every named defendant.

145. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides:

> No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

146. Defendants are recipients of Federal financial assistance.

147. OMH and DOH are programs receiving Federal financial assistance.

148. Plaintiff's constituents who reside in impacted adult homes or are at risk of placement in such homes are qualified to participate in more integrated community residential programs that meet their mental health needs.

149. Serving Plaintiff's constituents in more integrated settings can be reasonably accommodated.

150. Defendants violate Section 504 of the Rehabilitation Act by failing to administer services to Plaintiff's constituents in the most integrated setting appropriate for them.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE REHABILITATION ACT'S
PROHIBITION
ON USING METHODS OF ADMINISTRATION
THAT SUBJECT PLAINTIFFS TO DISCRIMINATION

151. The plaintiff repeats and realleges the above paragraphs.

152. This claim for relief is brought against each and every named defendant.

153. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 prohibits defendants from discriminating against individuals with disabilities.

154. Regulations implementing Section 504 of the Rehabilitation Act provide that a "recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of disability; [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the

objectives of the recipient's program with respect to handicapped persons . . ." 45 C.F.R. § 84.4(b)(4).

155. The defendants are recipients of Federal financial assistance.

156. OMH and DOH are programs receiving Federal financial assistance.

157. Defendants utilize methods of administration that have the effect of subjecting individuals with disabilities to discrimination. Defendants utilize methods of administration that perpetuate the current adult home system rather than facilitate the receipt of services in the most integrated setting appropriate to the needs of Plaintiff's constituents and result in continued placement in settings that are segregated, unsafe, unsanitary and inappropriate.

SIXTH CLAIM FOR RELIEF
DISCRIMINATION ON THE BASIS OF DISABILITY
IN VIOLATION OF THE REHABILITATION ACT

158. Plaintiff repeats and realleges the above paragraphs.

159. This claim for relief is brought against each and every named defendant.

160. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides:

> No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

161. The defendants are recipients of Federal financial assistance.

162. OMH and DOH are programs receiving Federal financial assistance.

163. Plaintiff's constituents are qualified to participate in more integrated community residential programs that meet their mental health needs.

164. Defendants discriminate against Plaintiff's constituents on the basis of their mental illness in violation of Section 504 of the Rehabilitation Act by failing to take adequate measures to redress continued poor conditions in impacted adult homes, that, upon information and belief, they do not tolerate in adult homes that primarily serve individuals with physical disabilities.

165. The state's practice of knowingly placing and maintaining individuals with serious mental illness in impacted adult homes constitutes discrimination because such substandard conditions are not tolerated in other state-sponsored, state-run and/or state-regulated facilities that provide housing and services primarily on behalf of individuals without mental illness.

WHEREFORE, Plaintiff prays for the following relief:

a. declaratory and injunctive relief;

b. an order requiring that defendants promptly take such steps as are necessary to enable Plaintiff's constituents to receive services in the most integrated setting appropriate to their needs;

c. an order directing defendants to remedy unlawful conditions in impacted adult homes and to treat such impacted adult homes in the same way as homes that provide housing and services primarily on behalf of individuals without mental illness;

d. an award of prevailing party costs, disbursements and attorney fees;

e. such other relief as the Court deems appropriate.

Dated: New York, New York
June 30, 2003

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