142 A.D.2d 537
Supreme Court, Appellate Division, First Department, New York.

John HEARD, et al., Plaintiffs–Appellants,
v.
Mario M. CUOMO, etc., et al.,
Defendants–Respondents.
Michael KOSKINAS, et al., Plaintiffs–Appellants,
v.
Jo Ivey BOUFFORD, etc., et al.,
Defendants–Respondents.

July 28, 1988.

Homeless mentally ill persons discharged from state mental hospital sought representative sample of "written service plans" issued to patients upon discharge from mental hospitals. The Supreme Court, New York County, Lehner, J., 139 Misc.2d 336, 526 N.Y.S.2d 760, denied request, and appeal was taken. The Supreme Court, Appellate Division, held that: (1) class certification was unnecessary, and (2) patients were entitled to disclosure of carefully redacted service plans.

Ordered accordingly.

Attorneys and Law Firms

****253** J.C. Johnson, New York City, for plaintiffs-appellants.

P.A. Durfee, New York City, L.A. Feiner, Brooklyn, for defendants-respondents.

***539** Before KUPFERMAN, J.P., and CARRO, MILONAS, ELLERIN and WALLACH, JJ.

Opinion

MEMORANDUM DECISION.

***537** Order, Supreme Court, New York County (Edward H. Lehner, J.), entered April 5, 1988, 139 Misc.2d 336, 526 N.Y.S.2d 760, which denied plaintiffs' motion for an order pursuant to Mental Hygiene Law Sec. 33.13(c)(1) requiring disclosure to them of a representative sample of "written service plans" issued to patients in the class represented by plaintiffs upon their discharge from mental hospitals, unanimously reversed, on the law and the facts and in the exercise of discretion, and ***538** plaintiffs' motion, as limited by their stipulation upon oral argument below, is granted, without costs. Settle order before Justice Lehner outlining the measures to be taken to safeguard the confidentiality of the information provided to plaintiffs.

Mental Hygiene Law Sec. 33.13(c)(1), as amended by Laws of 1984 ch. 912, Sec. 2 (effective Sept. 1, 1984), requires that information contained in records required to be maintained by facilities licensed or operated by the offices of mental health, mental retardation and developmental disabilities, including the identification of patients or clients and clinical records or information tending to identify patients or clients shall not be a public record and shall not be released except pursuant to a court order requiring disclosure upon a finding by the ****254** court that the interests of justice significantly outweigh the need for confidentiality. Subdivision (f) (added by Laws of 1984 ch. 912, Sec. 2) provides that any such disclosure shall be limited to that information necessary in light of the reason for disclosure and such information shall be kept confidential by the party receiving such information.

Plaintiffs, on their own behalf and on behalf of all other homeless mentally ill persons who have been discharged or conditionally released from New York State psychiatric centers or hospitals administered by the New York City Health and Hospitals Corporation without a "written service plan", as required by Mental Hygiene Law Sec. 29.15(f) and (g), bring these consolidated actions, seeking declaratory and injunctive relief requiring defendants, *inter alia,* to abide by their express statutory obligations, particularly the requirement of Mental Hygiene Law Sec. 29.15(f) and (g) that defendants prepare for each discharged or conditionally released patient a written service plan that includes: "1. a statement of the patient's need, if any, for supervision, medication, aftercare services, and assistance in finding employment following discharge or conditional release, and 2. a specific recommendation of the type of residence in which the patient is to live and a listing of the services available to the patient in such residence. 3. A listing of organizations, facilities, including those of the department, and individuals who are available to provide services in accordance with the identified needs of the patient" and, where appropriate, "notification of the appropriate school district and the committee on special education regarding the proposed discharge or release of a patient under twenty-one years of age, consistent with all applicable federal and state laws relating to confidentiality of such information."

[1] While class certification appears unnecessary and inappropriate where governmental operations are involved and any relief granted to plaintiffs would adequately flow to and protect others similarly situated under principles of stare decisis (*see, Matter of Rivera v.*

Trimarco, 36 N.Y.2d 747, 749, 368 N.Y.S.2d 826, 329 N.E.2d 661; *Williams v. Blum,* 93 A.D.2d 755, 461 N.Y.S.2d 311, *mot. for lv. to appeal dismissed,* 61 N.Y.2d 905, 474 N.Y.S.2d 1025, 462 N.E.2d 1203; *Grant v. Cuomo,* 134 Misc.2d 83, 88, 509 N.Y.S.2d 685, modified on other grounds 130 A.D.2d 154), plaintiffs should be entitled to seek to establish, if possible, a pervasive pattern of failure on the part of respondents to prepare and issue the mandated "written service plans" in violation of the statute.

[2] To that end, disclosure of 200–300 carefully redacted service plans and imposition of strict safeguards limiting access to and use of such information is appropriate, particularly where there is a legitimate public interest in information regarding the procedures for the release and aftercare of mental patients. (*See, Matter of New York News (Ventura),* 67 N.Y.2d 472, 476–77, 503 N.Y.S.2d 714, 494 N.E.2d 1379). Clearly, under these circumstances, the interests of justice should allow the release of the information required with appropriate safeguards to protect the identity of the patients.

Parallel Citations

142 A.D.2d 537, 531 N.Y.S.2d 253