

# **RIGHTS OF ADULT HOME RESIDENTS**

**A HANDBOOK FOR ADULT HOME RESIDENTS  
IN NEW YORK CITY**

**MFY LEGAL SERVICES, INC.**

# **ADULT HOME ADVOCACY PROJECT**

## RESIDENTS' BILL OF RIGHTS

1. Your civil and religious rights shall not be infringed. The home must encourage and assist you in the fullest possible exercise of these rights.
2. You have the right to have private, written and verbal communications with anyone of your choice.
3. You have the right to present grievances on your behalf, or the behalf of other residents, to the administration or facility staff, the Department of Health or other government officials or other parties without fear of reprisal.
4. You have the right to join with other residents or individuals to work for improvements in resident care.
5. You have the right to manage your own financial affairs.
6. You have the right to privacy in your own room and in caring for personal needs.
7. You have the right to confidential treatment of personal, social, financial and health records.
8. You have the right to receive courteous, fair and respectful care and treatment at all times and you shall not be physically, mentally or emotionally abused or neglected in any manner.
9. You cannot be restrained or locked in a room at any time.
10. You have the right to receive and send mail or any other correspondence unopened and without interception or interference.
11. You can leave and return to the facility and grounds at reasonable hours.
12. You cannot be obliged to perform work. If you work, you must be paid.

13. You cannot provide an operator or agent of the operator any gratuity for services to which you are entitled.
14. If you are involved in an incident or accident, you have the right to have your version of the events included in the report.

# **RIGHTS OF ADULT HOME RESIDENTS**

## **A HANDBOOK FOR ADULT HOME RESIDENTS IN NEW YORK CITY**

© Copyright 1986;2004 by MFY Legal Services, Inc.

All Rights Reserved  
Seventh Edition, July 2004

**MFY LEGAL SERVICES, INC.  
ADULT HOME ADVOCACY PROJECT**

**299 BROADWAY, 4TH FLOOR**  
**New York, NY 10007**  
**(212) 464-8110**

TABLE OF CONTENTS

RESIDENTS' BILL OF RIGHTS . . . . .	inside front cover
PREFACE .....	i
RIGHTS OF ADULT HOME RESIDENTS .....	1
BEFORE YOU MOVE TO AN ADULT HOME .....	3
MONEY .....	7
<input type="checkbox"/> Cash Benefits .....	7
<input type="checkbox"/> Retroactive Payments from the SSA .....	9
<input type="checkbox"/> Rent      13	
<input type="checkbox"/> Personal Allowance .....	14
<input type="checkbox"/> Earned Income .....	15
<input type="checkbox"/> Residents' Accounts .....	16
<input type="checkbox"/> Representative Payees .....	18
OTHER GOVERNMENT BENEFITS .....	19
PERSONAL CARE. ....	22
LINEN and LAUNDRY .....	23
FURNITURE .....	26
SECURITY .....	26
MEDICATION .....	28
FOOD .....	33
HEAT and AIR CONDITIONING .....	35
VISITORS .....	37
MAIL and TELEPHONE .....	38
RESIDENTS' COUNCIL .....	40
COMPLAINTS and GRIEVANCES .....	42
EVICTIONS and INVOLUNTARY HOSPITALIZATIONS .....	43
Evictions .....	43
Temporary Involuntary Psychiatric Hospitalizations ...	45

MOVING OUT..... 50

ORGANIZATIONS THAT HELP ADULT HOME RESIDENTS..... 51

## PREFACE

MFY Legal Services, Inc. hopes that this publication will inform adult home residents of their rights and will thereby assist them in enforcing those rights. If this handbook helps adult home residents to feel more informed, more powerful, and more independent, the authors will have accomplished their purpose.

## RIGHTS OF ADULT HOME RESIDENTS

- Q. What are my rights as a resident of an adult home?
- A. The residents' Bill of Rights is printed on the inside of the front cover of this book and must also be posted in a noticeable public place in each home.
- Q. Where do these rights come from?
- A. These rights are derived from New York State Social Services Law Section 461-d and are part of the regulations of the New York State Department of Health. These regulations are over 100 pages long. They can be found in 18 NYCRR Parts 485 through 487. This handbook will explain many of the regulations.
- Q. Can I get a copy of these adult home regulations?
- A. Yes. You can get a copy of these regulations, for a charge, by calling or writing the New York State Department of Health, Bureau of Adult Care Facilities. You can call Publications at (518)

474-5370 or address your request to DOH, P.O Box  
2000, Albany, 12220

Q. What else does the NYS DOH Bureau of Adult Care Facilities (DOH) do?

A. DOH regulates adult homes. It is responsible for making sure that adult home owners are following the regulations.

Q. How does DOH know whether home owners are following the regulations?

A. DOH conducts at least one unannounced inspection of each adult home every year.

Q. Can I complain to DOH?

A. Yes. You can complain to DOH if you believe that the home owner is violating one or more of the regulations. You can call the DOH Adult Homes hotline toll free at (866)893-6772, or, if you live in an adult home located in New York City, address your complaint to The Bureau of Adult Care Facilities, 5 Penn Plaza, Fifth Floor, New York, NY 10001.

Q. Can I get help in making a complaint?

A. Yes. You may want to consult with others before making a complaint. Some of the people who could help you are:

- the residents' council in your home
- \* the Coalition of Institutionalized Aged and Disabled at (212) 481-7572
- \* the Adult Home Advocacy Project of MFY Legal Services (212) 464-8110
- \* the on-site mental health team
- \* the Long Term Care Ombudservice Program at (212) 962-2720

More information about these organizations is printed on the inside of the back cover of this book.

Q. Could I be evicted for complaining to DOH?

A. No. The Bill of Rights says that a resident has a right to present grievances "without fear of reprisal." This means that you cannot be threatened, harassed or forced to retract your complaint. If you are, contact DOH and an MFY lawyer at MFY Legal Services. You cannot be

evicted for making a complaint.

## BEFORE YOU MOVE TO AN ADULT HOME

Before you move to an adult home, you have the right:

- \* to an interview with the home administration
- \* to receive a copy of the admission agreement
- \* to receive a copy of the residents' Bill of Rights
- \* to receive a copy of the home's rules
- \* to see a copy of the DOH's most recent inspection report of the home.

Q. What is the purpose of this interview with the home administration?

A. The interview is to help you decide if you want to live at the home, and for the home administration to decide if it wants to accept you for residence.

Q. Where does this interview take place?

- A. It almost always happens at the adult home. You should ask for a tour of the home so that you can decide whether you want to live there.
- Q. What else happens at the interview?
- A. You should receive a copy of the admission agreement and an explanation of what it means. You should be told about the personal allowance and how your allowance will be protected.

Q. Who else can I speak with about the home?

A. You may want to speak to one or all of the following:

- \* other residents
- \* the residents' council in that home
- \* the on-site mental health team who will be providing you with case management services
- \* the Coalition of Institutionalized Aged and Disabled at (212) 481-7572
- \* DOH at (866) 893-6772

Q. What is an admission agreement?

A. An admission agreement is the contract between you and the owner of the adult home. It states how much you must pay the home. It also explains what services you will receive. Some of these services are:

- \* 3 meals a day and an evening snack
- \* housekeeping services
- \* linen services
- \* laundry of washable clothing
- \* personal care services

\* staff on duty 24 hours a day

\* case management services

\* an activities program.

Q. Who signs the admission agreement?

A. You and the operator sign the admission agreement, but only after you have decided that you want to stay at the adult home. Remember: You don't have to move to an adult home if you don't want to. If you don't want to move to the adult home, don't sign the admission agreement.

Q. What else happens at the interview besides talking about the admission agreement?

A. You are also entitled to receive a copy of the residents' Bill of Rights and a copy of the home's rules, and to see a copy of the latest DOH inspection report for the home.

Q. Will the home administration ask me any questions at the interview?

A. Yes. The home administration should ask about any

special needs you have. For example, the home administration should know about any physical or emotional health problems which you may have. The home should also know about any special dietary needs which you may have. The home may not admit anyone whose needs, including medical and dietary needs, it cannot meet.

Q. So the interview is for the home to learn about me and for me to learn about the home?

A. Yes. Once you know about each other, then you can decide whether you will move into the home. If you decide yes, and the home owner agrees, then you both sign the admission agreement and you move in.

**MONEY: Cash Benefits, Rent, PNA, Earned Income, Residents' Accounts, Representative Payees**

If you receive cash benefits in your own name, you have the right:

\* to open the envelope containing your check

- \* to cash the check yourself
- \* to a receipt when you pay the home
- \* if you sign your check over to the home, to receive your personal allowance within two business days.

### CASH BENEFITS

- Q. If I live in an adult home, can I receive cash benefits from the government?
- A. Yes, if you qualify. Most adult home residents receive some cash benefits.
- Q. What kinds of benefits do adult home residents receive?
- A. Many residents receive Supplemental Security Income (SSI), Social Security Disability (SSD) or Social Security retirement benefits. Some residents get a combination of these benefits. These benefits come once a month from the Social Security Administration (SSA).
- Some residents receive public assistance, which is

also called Home Relief, or welfare. The New York City Human Resources Administration sends these benefits twice a month.

Q. How much will I receive?

A. That depends upon what type of benefits you receive. If you receive only SSI or only public assistance and are a resident of an adult home in New York City, the monthly amount beginning January 1, 2004 is \$999.00. (The SSI rate is set by the New York State Legislature and changes every year.)

If you receive SSI and Social Security Disability (SSD) and/or other cash benefits, you get an extra \$20.00 per month for a total of \$1,019.00 in 2004.

Q. Do I get to keep this money?

A. The money is yours. It is mailed to you. You are entitled to open the envelope and to cash the check yourself, unless you have a representative payee. But you owe the home your rent each month, and if you don't

pay you can be evicted.

## RETROACTIVE PAYMENTS FROM THE SSA

Q. What is a retroactive payment?

A. The SSA will issue a retroactive payment for a variety of reasons:

- \* Many months have passed since you made your application for benefits. Upon approval the SSA will issue you a check for all the time that you were eligible to receive benefits.
- \* The SSA denied your original application for SSI. You appealed the denial and won. The SSA will issue you a retroactive check for all the months that you were eligible for benefits.

Q. How does this impact my SSI benefits?

A. You have six months to spend your retroactive payment before you lose your SSI benefits. (The month that you receive your check does not count as part of the six months that you have to spend down your retroactive payment.) However, if you

establish a Supplemental Needs Trust (Supplemental Needs Trusts are discussed in the following pages), you will continue receiving benefits even after the six-month spend down period has passed.

Remember, the SSA only allows you to have a \$2,000.00 savings account and a \$1,500.00 burial fund account (\$3,500.00 in total) after the six month spend down period in order to be eligible for SSI. If you have any more than this amount, you will not be eligible for SSI benefits. However as discussed above, if you establish a Supplemental Needs Trust, you will continue receiving SSI benefits even after the six month spend down period has passed.

- Q. What should I do if I receive a retroactive payment from the SSA?
- A. The most important thing that you can do if you have received a retroactive payment from the SSA, is to call a lawyer of your choice immediately. A

lawyer will help you understand your legal rights concerning your money.

MFY Legal Services has attorneys that can explain retroactive payments to you.

The SSI program allows recipients of large sums of money to establish certain trusts such as a Supplemental Needs Trust and still retain their SSI and Medicaid benefits. The trust places your money outside your control (it is in control of the trustee which you can designate). By establishing this particular trust, the SSA continues giving you your monthly SSI and you continue to receive Medicaid.

Q. How would a Supplemental Needs Trust benefit me?

A. By establishing a Supplemental Needs Trust, the trustee that you appoint has the legal authority to give you money from the trust to enhance the quality of your life. For example, your trustee could give you money from the Supplemental Needs

Trust to go on a trip to visit your family, take classes or buy a bicycle. If you are interested in setting up an SNT, you should consult with a lawyer to ensure the trust is properly established with a reputable trust.

- Q. Can the home charge me more rent because I have received a retroactive payment?
- A. The home cannot charge you more rent during the six months that you have to spend down your retroactive payment because you are still receiving SSI. For example if you receive a retroactive payment of \$23,000.00 in January, you have until July 30th to spend your retroactive payment. Remember January does not count as one of the six months because you received the retroactive payment in January.

However, after six months the home can seek to renegotiate your admission agreement if you have over \$3,500.00 in resources. The home can do this because the SSA will not issue you SSI as you have

over \$3500.00 in resources. It is important to know that as long as you receive SSI, the home cannot charge you more than the benefit rate (\$872.00 in 2004) set by the NY Legislature.

If you have chosen to set up a Supplemental Needs Trust with your retroactive payment, the home cannot increase your rent because you are still an SSI recipient and the retroactive payment is not within your control.

#### RENT

Q. How much do I have to pay?

A. Beginning January 1, 2004 New York City residents who receive SSI or welfare pay \$872.00 each month. The rest of your check is for your personal allowance. Personal allowance is discussed later in this handbook.

Q. What if I get other benefits?

A. If the total amount of your benefits is equal to

\$1019.00 or less, you pay \$872.00 rent. If, however, you receive more than \$1019.00 you can be charged a higher rent. But you must agree to the rate set.

Q. When I pay my rent, do I get a receipt?

A. Yes. You have the right to a rent receipt.

Q. Many residents sign their check over to the home.

Is this OK?

A. The choice is yours. You may find it more convenient just to sign the check over. If you do sign your check over, you are entitled to get your personal allowance within two business days.

However, you may also open your own checking/savings account, have your benefits directly deposited and pay your rent from that account.

#### PERSONAL NEEDS ALLOWANCE (PNA)

- Q. How much is the personal allowance?
- A. Beginning January 1, 2004, residents of homes in New York State who receive SSI or public assistance are entitled to receive a personal allowance of \$127.00 each month. Residents who receive SSI and Social Security Disability and/or other cash benefits receive an extra \$20.00 for a total of \$147.00.
- Q. Can the home owner ever withhold my personal allowance from me?
- A. Not legally. The personal allowance is yours. Even if Social Security is recovering an overpayment from your check, you are absolutely entitled to your full allowance.
- Q. What can I use my personal allowance for?
- A. Your personal allowance can be used for anything you wish. The choice is yours. You can buy newspapers, clothes, books, stamps or a meal in a restaurant. The home owner may not make you use

your personal allowance for things that the home must provide, like soap or toilet paper. Also, you can save your personal allowance. If you receive SSI, your savings cannot exceed \$2,000.00 during 2004. If you receive public assistance, your savings cannot exceed \$1,000 during 2004.

- Q. Does the amount of the personal allowance ever change?
- A. Yes. Each year your benefit rate may reflect a cost of living increase and your personal allowance may increase as a result.

#### EARNED INCOME

- Q. What happens if I work and earn money?
- A. The consequences of earning money depends upon the type of benefits you receive. If you are working or are considering working, consult your case manager or one of the organizations listed on the back page of this book.

## RESIDENTS' ACCOUNTS

Q. Do I have to let the home owner hold my personal allowance?

A. No. You have the right to hold your own personal allowance.

Q. But what if I want the home owner to hold my personal allowance?

A. The home owner is required to hold your personal allowance in an account maintained by the home if you choose.

Q. When can I get my money out of the personal allowance account?

A. The home owner must give you access to your money at least 4 hours a day, Monday through Friday. A schedule must be posted and may not be changed without 5 days' advance notice.

- Q. How do I find out how much is in my account?
- A. At least once every three months, or upon your request, the home owner must give or show you a statement of all deposits, withdrawals and the current balance in your account.
- Q. Can I close my account if I want to?
- A. Yes. If you decide that you no longer want the home owner to hold your money, you have the right to withdraw your entire balance.
- Q. What if I have other money that I want the home to hold?
- A. The home owner is permitted to hold money other than personal allowance in a separate account maintained by the home if you give written authorization.
- Q. If I do put my money in an account held by the home owner, do I get interest on the money?
- A. You get interest if the home owner keeps your money

in a bank account that gets interest. You should request that the home owner do so.

Q. How do I find out how much is in my account?

A. Ask the home owner for copies of the records. S/he is required to maintain records of all transactions.

Q. Will the home owner keep my valuables, other than my money, for safekeeping?

A. Yes. For any valuables received, the home owner must give you a receipt and must store your valuables safely.

#### REPRESENTATIVE PAYEES

Q. Are these rules about money different if I have a representative payee for my benefits?

A. No, the rules are the same.

The difference is that when you have a representative payee, your check is made

payable to someone else, like a relative, or the home itself. (Be cautious if you choose the home as your representative payee because a conflict of interest may arise between the home owner as landlord and yourself as beneficiary.)

Because the check is made payable to your payee, the payee receives the check and cashes it. You cannot cash it yourself. Your payee pays your rent and gives you your personal allowance.

- Q. What if I don't want to have a representative payee?
- A. If you don't want to have a representative payee or if you are dissatisfied with your present payee, you can appeal to the Social Security Administration.

If you can show that you can manage your money, then the payee will be removed. In order to

appeal, contact your Social Security office. If you want help, contact your case manager or an MFY lawyer.

#### OTHER GOVERNMENT BENEFITS

Q. Are adult home residents entitled to Medicaid?

A. In New York State everyone who receives SSI or public assistance is eligible for Medicaid, and should receive a Medicaid card.

Q. How do I get Medicaid?

A. If you are receiving public assistance or SSI, your Medicaid card will come automatically. If you are not receiving public assistance or SSI, you may be eligible for Medicaid but you must apply separately at the local Medicaid office. The home administration must help residents get their Medicaid. If you cannot go to the Medicaid office, you can send a representative or you can request a home visit by calling the Human Resources

Administration at (877) 472-8411 and following the instructions.

Q. Will Medicaid pay the cost of transportation to medical providers?

A. Yes. Your adult home should arrange transportation to medical providers.

Q. Can I keep my own Medicaid card?

A. Yes. The Medicaid card is yours. You have the right to keep it.

In many homes, the home administration holds the cards for the residents. You may find this to be convenient, but the choice is yours. If you want to keep your card yourself, you can.

Q. Am I entitled to Medicare benefits?

A. If you are over 65 years old or if you have received Social Security benefits for 2 years, you are automatically eligible for Medicare benefits.

- Q. What about food stamps? Do adult home residents get food stamps?
- A. No. Adult home residents are not eligible for food stamps.
- Q. What about veterans' benefits?
- A. If you are a disabled veteran, or a veteran over age 65, you may be eligible for benefits from the Veterans Administration (VA). For more information about veterans' benefits, call the VA at 1-800-827-1000 or an MFY lawyer.
- Q. What if I have more questions about government benefits?
- A. Government benefits are complicated. If you have questions, be sure to ask. You can ask the home administration. The home must help residents to obtain benefits to which they are entitled. You can also ask your case manager or an MFY lawyer.

## PERSONAL CARE

- \* Adult home residents are entitled to receive assistance with personal care needs.

Q. Why are adult home residents entitled to receive help with personal care needs?

A. Some adult home residents have difficulty caring for themselves, sometimes because of their age, sometimes because of physical or emotional illness.

Q. What kinds of personal care assistance can adult home residents get?

A. The home is required to provide assistance with the following:

- \* brushing or combing hair
- \* shaving
- \* nail care
- \* brushing teeth
- \* dressing

- \* bathing
- \* using the toilet
- \* eating in the dining room
- \* administering medication.

Q. How often can I get soap or toilet paper?

A. You are entitled to soap and toilet paper as needed. When you run out, notify the home immediately that you need more.

#### LINEN and LAUNDRY

- \* Residents are entitled to weekly linen service, and residents are entitled to free laundering of their clothes.

Q. Will the adult home provide me with linens?

A. Yes. The adult home is required to provide you with:

- \* two sheets and one pillowcase
- \* at least one blanket and one bedspread

\* towels and washcloths

\* soap and toilet paper.

Q. How often should I get clean sheets and towels?

A. Once a week, or more often if you need them.

Q. What about laundry service?

A. The home must launder your washable clothing free of charge.

Q. What if the home loses my clothes in the laundry?

A. If you can prove that you did not get all your clothes back, the home owner must pay to replace them. You might suggest to the home owner that each resident's clothes should be washed in a separate mesh bag. This should help prevent clothes from getting lost. If an item is not returned, report it to the administrator immediately.

If you believe that your clothes are getting lost in the laundry, you may wish to make a list of what

clothing you are sending to the laundry. The next page has a sample laundry list that you can use. When your laundry returns, check that all the items were returned. Keep this list for your records. Check to see that every item is returned to you.

Q. What if I want to wash my clothes myself?

A. The home might provide machines for your use free of charge. You may also free to go to a commercial laundry, but you would have to pay.

# LAUNDRY LIST

Date \_\_\_\_\_

\_\_\_\_\_ SHIRTS

\_\_\_\_\_ blue

\_\_\_\_\_ orange

\_\_\_\_\_ plaid

\_\_\_\_\_ red

\_\_\_\_\_ yellow

\_\_\_\_\_ Fill in colors if  
not listed above.

\_\_\_\_\_ PANTS IN TOTAL

colors: (circle) Red, pink, black, brown, tan,  
blue, purple, orange, gray, plaid, stripped or checked.

\_\_\_\_\_ Fill  
in color(s) of pants if not above.

\_\_\_\_\_ UNDERSHIRTS IN TOTAL

\_\_\_\_\_ UNDERPANTS IN TOTAL

\_\_\_\_\_ SOCKS IN TOTAL

\_\_\_\_\_ NIGHTCLOTHES

USE THE BACK OF THIS PAPER TO WRITE DOWN ANY LAUNDRY THAT YOU ARE HAVING WASHED THAT WAS NOT INCLUDED IN THE ABOVE LIST.

FURNITURE

Q. What furniture must the home provide?

A. Each resident must have in his or her room:

- \* a single bed, with a pillow
- \* a chair and a table
- \* a lamp with a shade
- \* a dresser and closet space
- \* curtains, blinds or shades on the windows
- \* lockable storage.

SECURITY

Q. What are the rules about keeping the home safe?

A. The home owner is responsible for supervising the home to protect you and to protect your property.

Q. How does the home owner do this?

A. There must be staff present and on duty at the home 24 hours a day, every day.

- Q. How should the staff make the home safe?
- A. For example, they should make sure that unauthorized people do not come into the home. This means that residents and their guests can come in, but that people who have no business in the home do not. Also, there must be at least one complete fire drill every year.
- Q. What about an emergency call system?
- A. Each room must have some device, like a bell, buzzer or phone.
- Q. What about protecting my property?
- A. Each resident must have lockable storage facilities in his or her room. You may wish to keep your valuables locked up in your room. Also the home will usually agree to store a resident's valuables. You should always be careful where you leave cash.
- Q. What can I do if something is stolen from my room?

A. Report any stolen property immediately to the home.

You may want to file a police report, too. The home is required to provide a secure environment, and depending upon the circumstances, you may have a legal claim against the home. You may want to contact CIAD, or an MFY lawyer to discuss the matter.

Q. What if I think someone at the home is responsible for stealing?

A. You should tell the home owner. You may also consult one of the organizations listed at the back of this book.

Q. Do I have to give the home owner a key to my room?

A. Yes. If your room has a lock the home owner has a right to the key to your room. A key is necessary so that the home owner can get into your room in case of an emergency.

## MEDICATION

You have the right:

- \* to choose your doctors
- \* to hold your Medicaid benefits card
- \* to hold your medication and take it yourself, if your doctor approves
- \* to help from the home in taking your medication
- \* to refuse to take your medication, but the operator must notify your doctor of your refusal, and if there is a danger of harm to you, you may be hospitalized.

Q. The staff at the home gives me medication. Do I have to take it?

A. No. You cannot be forced to take medication. However, before you decide not to take it, you should first speak with your doctor and with your case manager. Not taking medication could endanger your health and might lead to your hospitalization.

- Q. What if there are unpleasant side effects to my medication? Should I stop taking it?
- A. Again, before you decide not to take it, you should discuss the situation with your doctor and case manager and explain the unpleasant side effects. Ask if your medication can be changed to lessen the unpleasant side effects.
- Q. What if I do want to take my medication, but I don't want the home's help. Can I take it myself?
- A. As long as your doctor states in writing that you are "capable of self-administration," and as long as you keep the home informed of all your medications, you can retain and take your medication.
- Q. Suppose I want to take my medication myself, but my doctor disagrees.
- A. You should discuss this carefully with your doctor. If you still cannot agree, you may wish to get an

opinion from another doctor and perhaps even change doctors.

Q. Can I pick my own doctors?

A. Yes. You are free to choose your own doctors. The doctors provided by the home may be more convenient, because they come to the home and accept Medicaid, but the choice is yours.

Remember, not all doctors accept Medicaid. To find out what doctors in your area accept Medicaid, call the Medicaid Telephone Inquiry Number at (518) 486-9057.

Q. What if I am found to be capable of self-administering my medication but I want the home to store my medication. Can I do this?

A. Yes. You can ask the home to store your medication. When it is time to take it, ask for it. You should be sure that the label on the bottle is the same as your prescription.

- Q. If I am found to be capable of self-administering my medication, how can I get my own medication?
- A. You do it just like anyone else does. First, your doctor writes you a prescription for your medication. Second, you take the prescription to a pharmacy and you purchase the medication with your Medicaid card. Third, you take the medication according to the directions on the prescription. Remember, you must let the home know what medication(s) you are taking. Also you must store your medications in a place where other residents, including roommates, cannot access them.
- Q. What are Medicaid "co-payments"?
- A. Some Medicaid recipients may be asked to pay for part of the cost of their medical care when they go to a doctor, a hospital or a pharmacy. This payment is called a "co-payment" or "co-pay". This co-pay may be requested, for example, for a prescription.
- (Note that drugs to treat mental illness are exempt from co-pays.)

- Q. Do I have to pay the co-payments?
- A. At the time you receive the medical service, such as a prescription, you may be asked for a co-payment. You are not required to make the co-payment if you cannot afford it. Many residents who rely solely on monthly allowances cannot afford to make co-payments.
- Q. What can I do if I cannot afford to pay?
- A. If you cannot afford to make the co-payment, simply tell the pharmacist "I cannot afford to pay." If you are presented with a written bill, simply write on the bill "I cannot afford to pay." Remember that unpaid co-payments are simply debts, and state and federal laws govern how and when debts may be collected. If you believe that you are being pressured to pay, you may want to call an MFY attorney to discuss it.
- Q. Must the provider continue to give me services if I

cannot afford to pay?

- A. Yes. If you are denied services, such as a prescription, because you stated you are unable to pay, call the Medicaid Helpline at 1-800-541-2831. Have the name and telephone number of the provider when you call.

Q. Can the home take the co-payments from my monthly allowance?

- A. No, the home cannot take the co-payment from you monthly allowance. If you are pressured by the home to pay the co-pay or to sign a form authorizing co-pays to be taken from your allowance, contact DOH, CIAD or an MFY attorney immediately.

#### FOOD

- \* You have a right to three meals a day, plus an evening snack.

- Q. Are there rules about food in adult homes?
- A. Yes. The home must provide you three meals a day, plus an evening snack. Menus must be posted where residents and visitors can see them.
- Q. Can these meals be served at any time?
- A. No. These meals must be served at regularly scheduled times. The evening meal can be no earlier than 4:30 p.m. Breakfast must be served within 15 hours of the evening meal. For example, if dinner is served at 5:00 p.m., breakfast can be served no later than 8:00 a.m. the next morning.
- Q. What about the quality of the food?
- A. The State's rules say that the meals must be "balanced, nutritious and adequate in amount and content to meet daily dietary needs."
- Q. Do the rules say more? For example, can the home serve cold cuts at lunch and at dinner?
- A. There must be a hot main course either at lunch or

at dinner.

Q. What about beverages?

A. At every meal there must be water, milk, coffee, tea and a hot decaffeinated beverage.

Q. What about special diets, for example, for persons with diabetes?

A. You should let the home know about any special diet before you move in and you should get a letter from your doctor describing the diet. If the home accepts you for residence, it must provide you with this diet.

Q. Am I entitled to silverware and cups appropriate to the meal?

A. Yes. The home must provide each resident with cutlery, napkins and cups suitable for each meal. The home may not serve you on paper plates, or give you plastic utensils to use.

## HEAT and AIR CONDITIONING

- Q. What are the rules on heating in adult homes?
- A. Whenever the outside temperature is below 65°, the temperature in resident bedrooms and in common areas, like the dining room, must be at least 68°.
- Q. Is there a different rule for night and day hours?
- A. No. The rules are the same day and night.
- Q. What about air conditioning?
- A. The rules do not require homes to have air conditioning. There might be something in your admission agreement about air conditioning, so take a look at your copy of the agreement.
- Q. Are there any rules about cooling the home in the summer?
- A. Yes. Whenever the outside temperature reaches 80°, the home must do the following things:
- \* take measures to maintain a comfortable

environment

- \* monitor inside temperature, as well as resident exposure and reactions to heat
- \* provide plenty of water or juice and encourage residents to drink them.
- \* arrange for health care, if needed
- \* arrange for temporary relocation of residents, if needed.

Also, whenever the temperature in residents' rooms reaches 85°, the home must do the following things:

- \* If your room has an air conditioner installed, the home must turn on the air conditioner even if you can't afford to pay for it.
- \* If some residents' rooms do not have air conditioning, the home must provide a common area where all residents may go in which the temperature is maintained below 85°.

Q. What if my medication makes me uncomfortable in hot weather?

A. Ask your doctor about your medication. Some

medications do have side effects in hot weather.

Let the home owner know.

## VISITORS

\* Residents can have visitors.

\* Residents can have visitors in their rooms  
with their roommate's permission.

Q. Sometimes the home owner does not allow my  
relatives or friends in to see me. Can s/he do  
that?

A. Not legally. You have a right under the Adult Home  
Access Law to visits during a period of at least  
ten hours between 9:00 a.m. and 8:00 p.m. daily.  
The visiting hours may be made longer by the home  
owner.

Q. Who else besides my relatives and friends can  
visit?

A. Your lawyers, legal representatives and case

managers can visit. People from community organizations that provide free services or that help you get needed services can also visit.

Q. Can the home owner keep anyone out?

A. Yes. The home can keep out people who would directly endanger the safety of the residents.

Q. Can I have visitors in my room?

A. Yes. You can have visitors in your room. If you have a roommate, you must get your roommate's permission.

Q. What if I do not want to see someone?

A. You have the right to refuse visitors. It is the home owner's responsibility to keep uninvited people out of the home.

Q. What can I do if I have any problems or questions regarding my rights to have visitors?

A. You can contact DOH, your case manager, your

residents' council, CIAD, an MFY lawyer or any of the organizations listed at the back of this book.

### MAIL and TELEPHONE

- \* Residents have the right to receive their mail unopened.
- \* Residents must have a telephone where they can make calls.

Q. The home opens my mail. Can they do that?

A. Not legally. You have the right to receive your mail unopened.

Q. Even my benefits check?

A. Yes. You have the right to receive your check unopened. You can then decide what to do with it. The exception is when you have a representative payee. For example, if the home is your representative payee, the home can open your check and cash it.

Q. What about telephones? Do I have a right to a telephone?

A. The home owner must provide one telephone for every 40 residents for outgoing calls. Usually the home provides pay telephones.

Q. Am I entitled to a phone in my room?

A. The home does not have to provide one. You can pay the telephone company for a phone in your room, if you choose. If you receive SSI, Medicaid or Safety Net Assistance, you are also eligible for Lifeline, a program that enables people to obtain affordable phone service through Verizon. Lifeline customers pay \$5.00 for phone installation, \$1.00 per month for phone service, plus 10¢ per local outgoing call. To inquire about Lifeline phone installation, call Verizon at (212) 890-1550 if you live in Manhattan, or (718) 890-1550 from any of the other four boros of New York City.

## RESIDENTS' COUNCIL

- \* You have the right to organize a residents' council.
- \* The home must help to organize councils.

Q. What is a residents' council?

A. A residents' council is a group of residents, run by residents, which meets periodically to address problems and concerns of the residents. All residents in the home are eligible to participate.

Q. Do all homes have residents' councils?

A. All homes are required by law to have a residents' council which is self-governing.

Q. Who can participate in a residents' council?

A. All residents in the home are eligible to participate.

Q. What is the relationship between the residents

council and the home owner?

- A. The home owner must encourage the organization of a residents' council. S/he must make sure that the residents' council is run by the residents. S/he must appoint a staff person to receive complaints from the residents' council, and be sure that a staff supervisor is present at residents' council meetings when the council requests. The home owner must make a written reply to the residents' council concerning complaints raised by the council.

Q. How often can a residents' council meet?

A. The council can meet as often as the residents wish.

Q. What if I want help organizing a council in my home?

A. Call the Coalition of Institutionalized Aged and Disabled, c/o Hunter-Brookdale Center on Aging at (212) 481-7572.

## COMPLAINTS and GRIEVANCES

- Q. Besides making complaints through the residents' council, how else can I make complaints about my adult home?
- A. If you have a complaint about your adult home, you should do the following:
1. Make sure to keep careful records detailing your complaint. Write down what occurred and when, whom you spoke to at the home about your complaint, any response you receive from the home and the names of anyone who witnessed or participated in the event about which you are complaining. Ask the home for copies of any documents you are presented or asked to sign. Keep copies of all relevant documents.
  2. Bring your complaint to the attention of one, or preferably all, of the below agencies:
    - a. Call the Commission on the Quality of Care (CQC) at (800) 624-4143. CQC investigates complaints about care and treatment in adult homes.
    - b. Call DOH at (866) 893-6772. If you live in an adult home in New York City, you can also write to DOH's Adult Home Facility regional office at 5 Penn Plaza, 5<sup>th</sup> Floor, New York, NY 10001. DOH investigates complaints about adult homes. If

DOH finds a violation of the rules, it can take action against the home.

- c. Call the Coalition of Institutionalized Aged and Disabled (CIAD) at (212) 481-7572. Or, you can write to CIAD c/o Brookdale Center for Aging, 425 East 25<sup>th</sup> Street, New York, NY 10010.
- d. If you do not receive a satisfactory response after trying the above, call MFY Legal Services at 212-464-8110.

Q. Can the home owner punish me for making a complaint?

A. Not legally. The home owner cannot punish, harass or evict you for speaking up for your rights or the rights of other residents.

### EVICCTIONS

- \* The home owner must go to court to evict you permanently.
- \* You can be temporarily removed to the hospital, only in emergencies, without a court order.

Q. Can I be evicted from the home?

A. Yes. You can be evicted:

- (1) if you do not pay your monthly rent, or
- (2) if you become so ill that you cannot receive necessary care in the home, or

- (3) if your behavior is dangerous to yourself or others, or
- (4) if your behavior is repeatedly disruptive, or
- (5) if the home is being closed.

You cannot be evicted:

- (1) if you make a complaint about the home, or
- (2) if your income is reduced due to an overpayment, or
- (3) if you demand your full personal allowance even if your income has been reduced due to an overpayment, or
- (4) if you contact a lawyer, or
- (5) simply because you were temporarily hospitalized.

Q. Does the home have to take me to court to evict me?

A. Yes. In order to remove you permanently from the home, the home owner must take you to court. You can be removed temporarily without a court order, but we will discuss that later.

Q. What happens if I sign an agreement with the home owner to leave voluntarily?

A. This agreement might not be enforceable, depending upon the circumstances under which it was signed.

Q. What will happen if the home owner takes me to court to evict me?

A. The first step is a written "30-day notice" of termination. The

home owner must give you this paper, which explains why s/he wants you to leave.

Q. Do I have to leave when I get a "30-day notice"?

A. No. You do not have to leave unless a court orders you to leave.

A "30-day notice" is not a court order. After you get a "30-day notice," you should contact an MFY lawyer right away at (212) 464-8110.

Q. You said that the "30-day notice" was the first step. What is the second step?

A. The second step is court papers. These papers can come only after the 30 days have passed. These papers are called a "petition" and a "notice of petition." The home owner must give you these papers if s/he wants to evict you.

If you receive a "petition" and "notice of petition," it is very important for you to get legal help immediately.

Q. After I get these court papers, do I have to leave the home?

A. No. You have the right to a trial. At the trial, the home owner must prove the case against you. You will have to leave only if the judge rules against you.

- Q. What if I owe the home money, but I don't have it? Won't the judge put me out?
- A. Not necessarily. It may be possible to get funds from welfare to prevent eviction. The judge will usually give you time to get this money, and in fact the home must assist in obtaining the money.

#### TEMPORARY INVOLUNTARY HOSPITALIZATIONS

- Q. You stated above that the home owner can put me out temporarily without a court order. What does this mean?
- A. The home owner can remove you from the home immediately, without a 30-day notice or court papers, only:
- (1) if you become so sick that you need to be hospitalized, or
  - (2) if you become a danger to yourself or to others.
- Q. How do these temporary removals happen?
- A. If the home administration wants to move you because you're sick, they must arrange for your transfer to a hospital or to another appropriate treatment facility.

If the home administration thinks you are a danger to yourself or to others, they will usually call the police. When the police come, they can take you to a psychiatric emergency room. A doctor

will examine you and may order you admitted into the hospital.

This is called an emergency involuntary commitment.

Q. What should I do if the home wants to send me to the psychiatric hospital and I do not want to go?

A. The most important thing that you can do is to remain calm: take a deep breath and count to ten or suggest, on your own, that you go upstairs to your room so that you can calm down.

Another thing you can do to try to prevent your removal from the home to the hospital is to say to the staff: I was upset before, but now I am calm. If this does not work, it is in your best interest to remain cool, calm and collected.

Call an attorney and inform her/him that you are being removed from the home against your will. Also if you believe that too many residents in your home are being hospitalized, call an attorney at and tell her/him what is happening at your home.

Q. How am I removed from the home?

A. An ambulance usually transports you to an emergency room where you are seen by a psychiatrist. This is your opportunity to show the doctor that you are calm and in control of yourself. You want to make a favorable impression upon the psychiatrist. If you are

hostile, guarded and angry, the doctor will be more likely to have you involuntarily admitted to the hospital. Try to remember how long the doctor examines you.

Q. What else happens at the hospital?

A. If the doctor at the hospital determines that you pose a danger to yourself or to others, you will be admitted as an Emergency Admission. At that time, you have the right to retain an attorney to challenge your confinement. Mental Hygiene Legal Services should be notified that you have been involuntarily admitted, visit you and inform you of your rights. If you want to contact Mental Hygiene Legal Services (MHLS), the hospital must give you its phone number. You always have the right to challenge your involuntary hospitalization.

Within 48 hours of your involuntary emergency admission, a board certified psychiatrist must make a determination of whether you need to be admitted to the hospital. If the doctor determines yes, the hospital can keep you up to fifteen days. Within this fifteen day period, the hospital can release you or decide they want to keep you. Again, it is in your best interest to impress upon the doctor that you are well and in control of yourself.

The hospital must then convert you from emergency admission to two physician certificate ("2PC") status. This means that two psychiatrists

must determine that you cannot be released because you pose a danger to yourself or others. The hospital now has the authority to keep you for up to sixty days.

If you are converted to 2PC status, you have a right to challenge the hospital's determination at a hearing. A Mental Hygiene Legal Services attorney will represent you free of charge. At the hearing, the court will determine whether you pose a danger to yourself or others. If the court rules that you are not a danger to yourself or others, you will be released. If the court rules against you, you must remain in the hospital.

Q. What are my rights if I am involuntarily committed to a hospital?

A. The most important right is that you can get a lawyer from the Mental Hygiene Legal Service (MHLS). MHLS has an office in most psychiatric hospitals. If you want to be released, this lawyer can help you to get a hearing within 5 days. If you do not ask for a hearing, you must be discharged within 15 days unless you agree to remain voluntarily or unless the hospital takes further steps to retain you.

Q. Suppose I signed myself into the hospital voluntarily or I changed my status from involuntary commitment to voluntary commitment, can I change my mind and get out of the hospital immediately?

A. No, if you signed yourself into the hospital or changed your status from involuntary commitment to voluntary commitment, and you want to get out, you must notify the hospital staff in writing. The hospital must either release you or apply for a court order within 72 hours. You again have the right to get help from an MHLS lawyer.

Q. After my hospitalization is over, can I return to the home?

A. Yes. You have the right to return. These removals are temporary and you have not been "discharged" from the home. As long as your doctor states that an adult home is appropriate, you can return when the emergency passes. In other words, when you recover your health, you can go back to the home.

Q. If I want to return, can the home require me to undergo a "screening" process again?

A. No. As long as your doctor states that a home is appropriate for you, you have the right to return. You cannot be treated as a new applicant to the home. However, you will need to provide the home with updated medical information.

Q. What happens if the home refuses to allow me back?

A. Immediately contact DOH and an MFY lawyer at 212 464-8110. If you do not have this phone number with you, ask the hospital staff for

it.

Q. Will I continue to receive SSI while I am in the hospital?

A. Your SSI can continue for three calendar months while you are hospitalized if a physician certifies to Social Security that your stay is not likely to exceed three months. This should be done as soon as you are admitted. In addition, SSI recipients can get money from welfare to pay up to 6 more months' rent while hospitalized plus 4 additional months' rent to prevent eviction for nonpayment of rent, totaling 13 protected months.

#### MOVING OUT

Q. All these questions have been about the home owner trying to put me out. What if I want to leave?

A. You are free to leave at any time.

Q. What about a refund of rent if I move out?

A. In order to get a refund of your rent you may want to give your home advance notice of your decision to leave. Most admission agreements state that the resident should give 30 days' advance notice.

## ORGANIZATIONS THAT HELP ADULT HOME RESIDENTS

For assistance in enforcing the rights discussed in this handbook, residents may consult the following organizations:

1. The Adult Home Advocacy Project of MFY Legal Services, Inc., 299 Broadway, 4th Floor, New York, NY 10007, (212) 464-8110. MFY provides free legal services in civil matters to adult home residents.
2. The Coalition of Institutionalized Aged and Disabled (CIAD) helps residents of adult homes and nursing homes to organize residents' councils and helps existing councils to address problems related to resident care. Contact CIAD at c/o Hunter-Brookdale Center on Aging, 425 E. 25<sup>th</sup> St., New York, NY 10010, (212) 481-7572.
3. The Commission on Quality of Care investigates complaints about care and treatment in adult homes that serve individuals with mental disabilities. Complaints can come directly from residents or from any source and can be made by calling (800) 624-4143. CQC may also be able to refer a resident to a regional advocacy program.
4. The New York City Long Term Care Ombudservice Program, c/o New York Foundation for Senior Citizens, 11 Park Place, Suite 1111, New York, NY 10007 (212) 962-2720. The Ombudservice Program works with residents, and the family and friends of residents, to improve the lives of adult home and nursing home residents.
5. The New York State Department of Health, Division of Home and Community Based Care (DOH) is the government agency which licenses and regulates adult homes. You can file a complaint by calling (866) 893-6772 or writing to DOH at 5 Penn Plaza, 5<sup>th</sup> Floor, New York, NY 10001.