

To: Christopher Burmeister, DHI Director, Department of Health
From: Aging & Long-Term Services Department, Office of General Counsel
RE: Public Comments on Boarding Home Rules
Date: March 23, 2020

Boarding Home Rules Comments and Recommendations

Overall, the emergency Boarding Home rules seem to require a level of adherence expected from assisted living facilities (ALF). Such stringent requirements may be inappropriate, given that the needs of boarding home residents differ greatly from those in ALFs. An over-burdensome rule may result in a chilling effect on the existence of boarding homes. While regulation of these homes for basic life safety reasons is necessary, the current emergency rules will make it difficult for existing boarding homes to comply with DOH's requirements, given their limited revenue. The consequence may then be even fewer options for our vulnerable mentally ill population- which oftentimes subsist on \$775/month SSI. We suggest DOH simplify the rules so that the layperson who runs a boarding home can understand their responsibilities.

We recommend that DOH provide on-going technical assistance to boarding home owners to facilitate their compliance, and also to address issues that arise such as situations in which residents may no longer be able to perform personal care services or ADLs.

We also recommend that the civil monetary penalty be reduced.

"Registering" rather than licensing

Instead of "licensing" boarding homes, we suggest the boarding homes "register" with DOH and follow the standards imposed by DOH. Assisted living facilities and nursing homes are "licensed."

We also recommend DOH remove the conflict in the emergency rules between the scope in the proposed rule section 7.8.4.2, which says boarding homes come within the statutory definition of Subsection F of Section 24-1-2 [which is incorrectly cited as 24.1.2] NMSA 1978, but then in NMAC 7.8.4.9 (C)(a) lists "any licensed health facility as defined by the public health act Subsection F of 24-1-2, NMSA 1978" as an exemption from licensure.

Discharge

We suggest that DOH require facilities who are preparing discharge plans, such as NMBHI Adult Psychiatric Division or UNM Psychiatric, to only provide registered (or licensed) boarding homes as discharge planning options to patients. In other words, those facilities should not recommend unregistered/unlicensed boarding homes to patients during discharge planning.

Caregiver Criminal History Screening Act

We recommend DOH not utilize the Caregiver Criminal History Screening Act as a bar to registration/licensure. Either delete that section entirely, or have a list of specific convictions that would make an entity ineligible (similar to Texas' Model Standards list of convictions).

Specific Terms

We recommend you do not use “facility” in the rules when referencing boarding homes, especially since the emergency rules do not define facility. They should be distinct different from other facilities-such as skilled nursing facilities and ALFs.

Suggested examples from other states, and past NM proposed legislation

- New Mexico
2017 Legislation, sponsored by Debbie Armstrong. This proposed bill was amended by both chambers and ultimately passed both chambers, but the previous Governor vetoed it.
<https://nmlegis.gov/Sessions/17%20Regular/final/HB0085.pdf>

- Iowa
I.C.A. §1350.2. Required registration and reporting –rules--penalty
(only requires registration, and monitoring occurs through the state’s Inspections Division)

- Kansas
Kan. Admin. Regs. 22-11-8, Adult and boarding care homes

- Kentucky
KRS §216B.300.
(definition of boarding home is distinctly different from that of an ALF, and resident rights section is strong)

- Tennessee
See: RESIDENTIAL OCCUPANCIES - BOARD AND CARE, Tenn. Comp. R. & Regs. 0940-05-04-.06
See: RESIDENTIAL OCCUPANCIES - ONE- AND TWO-FAMILY DWELLINGS (TWO OR THREE CLIENTS),
Tenn. Comp. R. & Regs. 0940-05-04-.07

- Texas
THE TEXAS MODEL FOR REGULATING BOARDING HOMES
“Until passage of legislation in 2009, Texas followed the same approach as that currently followed by New Mexico, only regulating boarding homes if they provided services that are the hallmark of assisted living, such as medication administration or therapeutic services.... Texas House Bill (HB) 216 (2009) required the HHSC to develop model statewide standards for regulation of boarding homes, providing local governments with the option of regulating boarding homes.”
<https://www.nmlegis.gov/handouts/LHHS%20070616%20Item%201%20a%20Shawn%20Mathis,%20LCS,%20Boarding%20Homes%20Memorandum.pdf>

Texas’ model standards can be adapted for DOH’s rule-making purposes so that they can set these standards (rather than ask local governments to implement them the way Texas did). Their model can be found at

<http://boardinghome.org/wp-content/uploads/2013/12/BH-TexasBoardingHouseModelStandards-8-2010.pdf>