

Regulation of Boarding Homes

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What is Assisted Living?

- Originally a marketing term to replace “rest home” “old age home”
- No federal definition, state definitions differ
- Individual rooms, furnished by resident
- Common areas: eat, socialize, physical therapy, recreate
- Numerous staff, including nurses
- Residents cannot perform one or more ADL: toileting, bathing, eating, dressing, getting in or out of chair or bed
- Medical needs can be handled without nursing home care
- Assistance with medications

What is a boarding home?

- States, not the federal government, define
- Definition has changed over time
- NM 1970-meals and shelter to 2 or more unrelated persons for pay; expressly excluded establishment providing nursing or other care to residents needing assistance with ADLs or facility otherwise regulated by the state
- NM 1970-regulated BH structures, exits, heating, ventilation, water, plumbing, sanitation, electrical, fire, management and storage of food, linens, minimum floor space for residents, storage, bathrooms.

What is a boarding home?

- NM 1972- Boarding Home Licensure Act and regulations
- Any business offering residential and eating accommodations to 3 or more persons for pay and not providing nursing care, or assistance in ADL
- Required licensure and inspection by Health and Social Services Department

What is a boarding home?

- NM 1973-Public Health Act repeals Boarding Home Licensure Act
- Does not define “boarding home” but includes “boarding home not operated by institution of higher education” in definition of “health facility”
- A “health facility” is required to be licensed, can be inspected to determine whether conditions threaten health or safety of residents (compliance with fire, housing, sanitation, zoning or other laws)

What is a boarding home?

- NM 1976-Regulations for Adult Residential Shelter Care Homes
- Operated on 24 hour basis
- Housing, personal services and social care to at least 3 but not more than 15 persons
- Residents have impaired capacity for self-care and elect or require protective living accommodations
- Do not have illness, injury or disability for which regular medical care and 24-hour nursing is required
- Assistance with administration of medication
- Licensure and inspections required
- Requirements exceeded those for BHs

What is a boarding home?

- NM 1986 Health and Environment Department consolidates regulations
- Variety of health facilities for adults (BH and adult residential shelter care home)
- 3 new categories of boarding home: “board and care home”, “half way house” and “family care home”

What is a boarding home?

- NM 1986 cont'd-BCH is facility licensed to accept 3 or more adults with diminished mental or physical capacity
- food, shelter, oversight and limited services such as laundry and transportation
- No residents needing nursing care or who were not ambulatory
- Restricted to residents capable of performing ADLs without assistance
- Reminding residents to take medication or of medical appointments, to maintain a high degree of personal hygiene and grooming
- Extensive requirements for structures, utilities, safety in addition to new personnel and record-keeping requirements

What is a boarding home?

- NM 1990- More regulatory revisions
- Public Health Division of the Health and Environment Department
- Kept the 3 BH categories
- BHs with at least 3 residents required to be licensed
- Change in NM guardianship law prohibiting BH owner or employee from serving as guardian (unless related)
- Added training requirement for BH staff members who assisted with self-administration of medication
- 1991, DOH established, replaces PHD/HED

What is a boarding home?

- NM 2000-DOH regulations for adult residential facilities
- Maintenance or care of at least 2 adults
- **In need of assistance with one or more ADLs**
- Numerous exemptions for facilities with 3 or fewer residents
 - Not required to provide floor plans, zoning, fire, kitchen inspections or approvals for initial licensure
 - Not required to meet ADA or NM Building Code accessibility requirements
 - Not required to show proof of fire inspection for license renewal
- ****All licensed facilities with more than 1 resident required to have custodial drug permit from Board of Pharmacy if providing assistance with medication or storing medications**
- No trailer or mobile homes if more than 3 residents

What is a boarding home?

- NM 2010 (Current)- Regulations for Assisted Living replace 2000 regulations
- No definition of “boarding home” but “boarding home” is included in definition of “health facilities”
- DOH is authorized to regulate health facilities
- BH only regulated if it provides assistance with at least one ADL to 2 or more residents
- ADLs are “personal functional activities” (eating, dressing, oral hygiene, bathing, grooming, mobility and toileting)

2010 HJM 34 Report

- Requests committee to study licensing of housing for persons discharged from BHI and consider additional regulations
- Due to budget and resource constraints, no new regulations recommended
- Recommends that BHI and DOH's Division of Health Improvement work with operators of housing to develop standards

DOH Response to LHHS 11/25/14

- DOH does not regulate BHs if no “health care services” are provided
- BHs that do not fall under Assisted Living regulations are governed by landlord-tenant laws and usual municipal authorities that oversee housing

Other laws

- Adult Protective Services Act – ALTSD to investigate reports or referrals of abuse, neglect or exploitation
- “boarding home” not defined, but appears to fall under general definition of “provider”
- ALTSD has no authority to shut down BH, only remove resident and provide temporary services
- ALTSD may assess civil penalties against provider for interference with investigation or removal

Other laws

- Resident Abuse and Neglect Act- HSD responsible for implementing act
- Applies to “care facilities”
- Expressly applies to “boarding homes”, but “boarding home” is not defined
- Act provides criminal penalties for abuse or neglect of resident
- Act provides criminal penalties and fines for financial exploitation of resident

How many boarding homes are there in NM?

- BH with 2 or more residents that is subject to assisted living regulations, and that assists with medication administration or stores medication is required to have custodial drug permit from Board of Pharmacy: 926 boarding homes have active custodial drug permits as of June 29, 2016
- DOH reports 204 licensed assisted living facilities as of June 30, 2016
- DOH does not track data on the number of residents in assisted living facilities, nor does it appear to track “boarding homes” as a subset of all assisted living facilities

Takeaways

- 2000 NM begins to regulate BHs as assisted living, particularly with reference to ADLs but exempts BHs with 3 or less residents from many requirements to ensure safe housing conditions, requires custodial drug permit if BH is assisting in administration of medication
- 2010 (current DOH regulations) regulate BHs as assisted living if providing assistance in 1 or more ADLs to 2 or more residents
- “assistance” means prompting, encouragement or hands-on help with ADLs

Takeaways

- Important to define “boarding home”
- Regulatory considerations
 - Broad v. specific applicability (type of physical plant)
 - Intensity or complexity of services
 - Functionality of residents
 - Reimbursable services
 - Cost and capacity of regulatory oversight
 - Most appropriate regulatory authority for the service venue