Study Licensure in Behavioral Health Care

Report Prepared by the House Joint Memorial 34 Committee

Convened by the New Mexico Department of Health

December 17, 2010

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House Joint Memorial 34 Report
Concerning Las Vegas New Mexico Behavioral Health Board & Care Homes

Executive Summary

House Joint Memorial 34 (HJM34) requested that the Department of Health (DOH) convene a committee to follow three directives concerning homes that provide housing and other services for individuals being discharged from the Behavioral Health Institute (BHI) in Las Vegas, New Mexico. The directives are:

1. Study the role of licensure in ensuring that persons in need of residential shelter care being discharged from the Behavioral Health Institute (BHI) at Las Vegas are admitted to the appropriate residential care facilities;

2. Consult with the State Ombudsman from the Aging and Long-Term Services Department (ALTSD); an association representing mental health providers; residents of residential care facilities; family members of persons with mental illness; the Behavioral Health Services Division of the Human Services Department (BHSD/HSD); and the single statewide entity for behavioral health services SSE) in identifying the necessary steps to comply with this request.

3. Consider the merits of developing additional regulations to set standards and oversee quality in residential care facilities that serve residents who do not meet the criteria to be placed in a licensed facility or who do not choose to live in a licensed residential care facility.

The memorial also requested that a report of the finding and recommendations be presented to the interim Legislative Health and Human Services Committee by December 1, 2010.

After meeting with consumers, advocates, home operators and other state entities who work with these providers and consumers, the following recommendations are offered:

1. Due to state budget and DOH resource constraints, refrain from initiating new regulations or processes for these homes at this time.

2. Have BHI and the Department of Health's Division of Health Improvement (DHI) work with operators to develop some minimum standards for these homes.

3. Oversee these providers through a contractual arrangement with BHI, BHSD or the SSE and NOT require the development of new regulations and new licensure categories.

4. Develop and implement regulations for these homes.

Background:

Homes offering room and board and some supports for individuals being discharged from the Behavioral Health Institute (formerly the Las Vegas Medical Center) have been in existence for many years. The room and board is often offered by local individuals and families. BHI maintains a list of 31 homes that accept discharged individuals . In the past two fiscal years, FY08 and FY09 BHI discharged more than 80 individuals each year to these local homes.

Directive 1: Study the role of licensure in ensuring that persons being discharged from the Behavioral Health Institute in need of residential shelter care are admitted to the appropriate residential care facilities.

"Licensure" is conducted on a number of different levels and, therefore, has different meanings. There is local licensure, which may be required by cities or counties for all entities that do business in their jurisdiction. For group homes in the Las Vegas area, this means they must get a business license and, because they are housing individuals, have an annual fire inspection to ensure the homes are fire safe.

The next level of possible licensure would be by DOH's Health Facility Licensing and Certification Bureau (HFLC) for homes or facilities that fall under one of the categories identified in the Public Health Act (see page 7 and 8) and that provide some sort of healthcare service. HFLC is responsible for initial and continuing state licensure and federal certification of facilities, including hospitals, which participate in the Medicare or Medicaid programs.

In state regulations and similar federal regulations governing the licensing and survey of hospitals, the following applies to discharge by hospitals:

NMAC 7.7.2.18 (K)

K. Discharge Planning.

(1) The governing body shall assure that the hospital maintains an effective, ongoing program coordinated with community resources to facilitate the provision of appropriate follow-up care to patients who are discharged.

(2) The hospital shall have current information on community resources available for continuing care of discharged patients.

(3) The discharge planning program shall:

a) have a mechanism to identify patients who require discharge planning to provide continuity of medical care to meet their identified needs;
b) initiate discharge planning in a timely manner;
c) identify the role of the patient's provider, nursing staff, social work staff, other appropriate staff, the patient, and the patient's family or representative in the initiation and implementation of the discharge planning process;
d) assure documentation in the medical record of the discharge plan;

e) allow for the timely and effective transmittal of all medical, social, economic information concerning the patient to persons responsible for subsequent care of the patient;
f) provide that every patient, or their legal representative receive relevant information concerning their health needs and is involved in his or her own discharge planning; and
g) be reviewed at least once a year to evaluate effectiveness.

Based on current state regulation, the only role DOH HFLC could have in hospital discharge planning is oversight of the hospital process and then only when doing a survey or an approved complaint investigation. When HFLC investigates a hospital complaint concerning discharge, it reviews the hospital's policies and procedures, assures the hospital meets standards, and determines if the hospital is following its appropriate policies and procedures. Additionally, the decision to discharge from the hospital and the determined level of care needed for the person being discharged is made by the appropriate medical staff at the hospital; HFLC has neither the experience, the training nor the authority to interfere with that decision. If it is determined during survey or investigation that a facility is not following its appropriate policies and procedures, HFLC can cite the facility and give it an opportunity to correct the deficiency. Otherwise, HFLC, as the state licensing entity, has no authority to interfere with a hospital's decision to discharge an individual to follow-up care.

Directive 2: Consult with the State Ombudsman (ALTSD); an association representing mental health providers; residents of residential care facilities; family members of persons with mental illness; the Behavioral Health Services Division (HSD); and the statewide entity for behavioral health services (Optum Health) in identifying the necessary steps to comply with this request.

After consulting with the required individuals and organizations, these concerns were identified, which would need to be addressed to move this process forward:

- **Funding for individuals in home settings**. Currently, most of these individuals only receive about $674 a month in Supplemental Security Income (SSI) as an income source. No other behavioral health funding from the state or federal government supports these individuals in home settings. SSI may not provide enough funding to support these individuals in these homes if the changes increase costs. This could drive some operators from this business.

- **Independent living vs. supported living homes**. Most individuals discharged from BHI are being discharged to independent living situations although they may not have the skills necessary to live independently. How can the level of support be determined for these individuals being discharged? Some individuals are capable of independent living but others require different levels of follow-up support. How are homes identified to ensure they can provide the level of care necessary for the person being discharged? This is not a regulatory issue but an issue for the Behavioral Health Collaborative, hospital providers, advocates and consumers.

- **An individual's right to choose.** If BHI determines an individual is ready to be discharged to independent or semi-independent living, that individual has the right to choose her or his placement location. If the state is not providing any financial assistance for the individual in her or his follow-up home choice and we are not identify necessary services, other than outpatient appointments, how do we have the authority to determine where they are to be discharged to? If they are being discharged to independent living settings we cannot regulate their individual rights or choice even if we think it is a "bad" choice.

- **Advocate concerns about overregulation.** As we have looked at these homes, many advocates have expressed concern that we will implement regulations and require life safety modifications that can be expensive. Their concern is that the cost of meeting the new regulations could drive these providers out of business or underground, and then the individuals needing this home access would have nowhere to go and could become homeless.

- **BHI's discharge and outpatient process.** Many individuals being discharged from BHI and the advocates who support them do not understand BHI's discharge and outpatient processes, and what follow-up services are available to individuals being discharged into the local community.

- **Resident/Home Agreement.** All of these homes should have an agreement that identifies the following:
  a. Responsibilities of the Facility;
  b. Responsibilities of the Resident;
  c. Responsibilities of the Resident's Legal Representative (Guardian and/or Representative Payee)

  At a minimum, the agreement should address the following key issues:
  1. Meals/food for residents (adequacy, schedules, menus and snacks/drinks),
  2. Privacy and dignity of residents,
  3. Protection of resident personal items,
  4. Use of residents funds (supplies, clothing, personal items),
  5. How personal medications will be handled within the home,
  6. Ability to have a voice in the home and address concerns and complaints without fear,
  7. Additional supports the boarding home will provide (transportation, activities, use of the telephone, etc), and
  8. Rules concerning visitors, facility hours, mail, and after hour access.

Meeting with Home Operators:

On November 10, 2010, a meeting was held with boarding home operators, local licensing and fire officials who work with these homes in Las Vegas. Information was collected from these individuals concerning the current status of boarding homes and what requirements, if any, they thought might be helpful for this study. Their input is as follows:

1. Operators believe there should be some minimum standards for the homes serving individuals being discharged from BHI and all operators should be held to the same standards.

2. Some operators have chosen to maintain Adult Residential Facility (ARF) licenses and were concerned with DOH's decision not to continue to license other operators.

3. Most operators present feel their facilities are addressing the issues raised by the committee. Their concern is that new, unsupervised operators have opened in the area and because there is no oversight, they are not appropriately serving residents. These new operators are identifying themselves as "room rental" homes so they can avoid having to provide the services other operators are providing.

4. Operators would like more assistance from BHI social work staff with their residents.

5. Operators would like training and support for their homes and staff to better assist residents. They would like to be included in trainings at BHI.

6. Some held concerns that the Environment Department rules regarding commercial kitchens would be implemented if there is formal regulatory oversight of these homes. Operators state that they could not afford to make those modifications.

7. The State Fire Marshall expressed concern that there is no oversight of these homes.

8. A draft checklist of items that could be reviewed in these homes was provided to the operators for comment and input. See Appendix B.

Directive 3: Consider the merits of developing additional regulations to set standards and oversee quality in residential care facilities that serve residents who do not meet the criteria to be placed in a licensed facility or who do not choose to live in a licensed residential care facility.

Definitions. According to the Public Health Act 24-1-2, health facilities are defined as "any health care entity identified in the Public Health Act which requires state licensure in order to provide health services." Specifically, it defines a health facility as:

> a public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, maternity home or shelter, adult daycare facility, nursing home, intermediate care facility, boarding home not under the control of an institution of higher learning, child care center, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary, community mental health center that serves both children and adults or adults only, residential treatment center that serves persons up to twenty-one years of age, community mental health center that serves only persons up to twenty-one years of age and day treatment center that serves persons up to twenty-one years of age or a health service organization operating as a freestanding hospice or a home health

> agency. The designation of these entities as health facilities is only for the purposes of definition in the Public Health Act and does not imply that a free-standing hospice or a home health agency is considered a health facility for the purposes of other provisions of state or federal laws. "Health facility" also includes those facilities that, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding. It does not include the offices and treatment rooms of licensed private practitioners;….

Another definition from the Public Health Act states:

> "a nonfederal facility or building, whether public or private, for-profit or nonprofit, that is used, operated or designed to provide health services, medical treatment, nursing services, rehabilitative services or preventive care."

Since these homes are identified as boarding homes that do not provide "health care services" and do not meet the current definition of "health facility," DOH does not have authority to license these homes.

Other States' Experience. In 2009, DOH gathered information on how other states deal with homes that serve individuals being discharged from hospitals that provide psychiatric/behavioral health care. DOH sent a survey to all states about their status, and of the 15 states that responded to the survey, only one regulated these homes and one other was in the process of developing and implementing regulations to provide oversight for these homes. The other states that responded considered these homes to be independent living homes that did not provide "health care" services and, therefore, were not required to hold licensure as health facilities.

The two states mentioned above that were or were about to regulate these homes identified that only those homes that were providing some sort of onsite behavioral health support, such as group or individual sessions, needed to be regulated. If they were truly just boarding homes, providing no services other then room and board, the states were not licensing them.

Past Attempts. Attempts have been made in the past by DOH to license some of these homes, under an adult residential facility (ARF) license. If a facility chooses to be licensed as an ARF, they MUST meet all licensure requirements.

Many of these home operators have determined they do not provide the type of services that are identified under ARF licensure and have chosen not to be licensed. They see themselves as boarding homes that provide no health care services and do not want more stringent requirements applied to them.

Based on the data collected from other states, the definitions in both statute and licensing regulation, and the fact that these homes in Las Vegas were not providing any service that could be identified as a health service, DOH elected not to pursue licensure regulations of these homes.

Recommendations:

A. Due to the state budget situation and DOH HFLC resource constraints, refrain from adding regulations for these homes until resources are available.

Any new work added to any of the possible state agencies that may need to be involved with oversight for these homes would be difficult without new or additional resources. If no new resources are available, a state agency would have to move its resources from providing oversight for current providers to providing oversight to any new providers.

B. Have DOH's NM Behavioral Health Institute (BHI) and the Division of Health Improvement work with operators to develop some minimum standards for these homes.

Since these homes do not fit under current statutory or regulatory standards, an attempt could be made to manage the issues through the BHI referral process. If the operators agree to a minimum set of standards, DHI could conduct initial review and BHI could maintain ongoing review. Only those homes initially meeting and continuing to meet standards would receive referrals from BHI. This is a less expensive recommendation compared to developing and implementing new regulations, but some new or added resources would need to be made available to both DHI and BHI to do the initial and continuing monitoring of these homes.

The one uncontrollable issue would be the choice of individuals being discharged from BHI. They may choose to go to a home that does not meet the minimum standards; DOH could do nothing about that choice.

C. Oversee these providers through a contractual arrangement with BHI, HSD's Behavioral Health Services Division (BHSD) or the single statewide entity (SSE) and NOT require the development of new regulations and new licensure categories.

A contractual agreement would not conflict with the efforts of the Statewide Behavioral Health Collaborative and the single state entity, which are responsible for determining and addressing the needs of all individuals seeking behavioral health care or support throughout the state. The Collaborative is looking at supportive housing and other areas of necessary support and intervention for individuals who are being discharged from institutions but who still need ongoing behavior/mental health supports. Establishing new rules and regulations could interfere with the efforts of the Collaborative or the SSE.

Costs or resources required to oversee these homes, could not be covered by the Collaborative, as it has not funding currently available for these home operators. The involved parties would have to commit to using available dollars to support this process.

D. Develop and implement regulations for these homes.

In order to accomplish this recommendation, the following would need to occur:

1. Redefine "health care services" to cover the supports that these homes provide to these individuals.

2. Legislative action would be required to define a new licensure category that would include this type of provider. Funding also would be required to add this new provider type, as it would be necessary hire and train additional staff for DHI/HFLC to conduct oversight and enforce the new regulations. No current staff is trained to provide this type of oversight to homes housing this population. DOH's Office of General Counsel also would face an additional burden in pursuing providers that operate without a license.

3. Work with home operators, the Behavioral Health Collaborative and HSD to develop regulations and standards for these homes.

4. Work through the publishing and public hearing process to have the regulations approved and implemented.

5. Identify all homes that are operating that would fall under the new regulations and either get them licensed or have them served with cease and desist orders.

6. The Behavioral Health Collaborative, the Single State Entity, and BHI would need to look at a mechanism to identify the needs of individuals being discharged from institutions like BHI and determine how to pay for those services in the boarding home setting.

The committee recommends that, in light of the current budget situation for the state, this recommendation, if chosen, be implemented over a number of years rather than immediately. It also could be coupled with the first recommendation to put into place some immediate oversight while the regulations are developed.

Other issues related to the Memorial:

1. The HJM 34 committee would like to express its concern that this memorial was only about BHI and Las Vegas. Many other individuals who need continued behavioral health support are discharged from other institutions across New Mexico and admitted to similar homes, facing the same issues. The committee would like to recommend that any decisions or actions taken to address this issue in the future include all institutions and individuals affected, not just those being discharged from BHI.

2. The Mental Health Association of New Mexico held focus groups with a number of consumers to get consumer input on their concerns about living in these homes (copies of this information available on request). Many significant issues were raised that are not related to the study of potential licensure of these homes. Examples are:

    A. Feeling that they, as consumers, are forced to live in Las Vegas rather than return to their home towns or places they choose.

B. Consumers believing they have no other option but to live in these type homes. They are not offered other options or choices.
C. Consumers feel the homes are charging or keeping too much from their SSI checks and they don't receive enough money that they can control and spend as they wish. Additionally, consumers say their tax returns and other monies are taken by the operators and not given to them.
D. Advocates believe that other resources, like food stamps, could be accessed by consumers, but there is no organized means of identifying these resources and communicating them to all consumers.
E. Consumers feel powerless or threatened to raise these issues for fear of some form of retaliation from home operators.

Please note some of these issues would be addressed if standards or regulations are developed and implemented. Those that have to do with other housing options and additional funding or resources are not regulatory, and would need to be addressed through the Behavioral Health Collaborative, the Single State Entity, BHSD or another entity.

Appendix A: HJM 34 Committee Membership List

Gennaro Avila	Consumer
Bette Betts	Aging and Long-Term Services Department (Clinical Dir)
Mathew Bowen	Consumer
Kim Carter	Human Services Department, Medical Assistance Division
Miguel Chavez	Disability Rights New Mexico
Karen Dannenbaum	Aging and Long-Term Services Department Ombudsman Program
Corrine Dominguez	NM Behavioral Health Institute
Sondra Everhart	Aging and Long-Term Services (State Ombudsman)
Patrica Gallegos	NM Department of Health
Roger Gillespie	NM Department of Health (DHI) (Chair)
Mark Graveline	Consumer
Peggy Gutierrez	Aging and Long-Term Services Department (APS)
Kathleen Hart	Aging and Long-Term Services Department (APS)
Michael Hubert	Human Services Dept., BHSD Office of Consumer Affairs
Lisa Lujan	New Mexico Behavioral Health Institute
Jane McGuigan	Human Services Department (BHSD)
Shereen Shantz	Human Services Department (BHSD)
Shela Silverman	Mental Health Association of New Mexico
Jana Spalding	Optum Health
Gail Trotter	Aging and Long-Term Services Department Ombudsman Program

Consumers who gave input through a focus group with the Mental Health Association of New Mexico at Richard's Drop in Center:

Merado Molinar, Rudy, Paul Jeffrey, Carlos, Marcus, Wmerson, Troy Daniel, Estella, Cindy, Patricia, Danny, Steve, Mr. Johnson, Alex, Tony Gallegos, Sonia, Robert, Perry and Max.

Community residents who participated in focus groups (consumers who live in personal housing): Michael Dowling; Ralph; Neela; Anthony; Martine; Leo Martinez; Albert; Jimmy C.; Jimmy Encinias.

Appendix B: Initial Oversight Checklist for Home Operators

Behavioral Health Home Review Checklist
Home Name _____
Home Address_____
Name of Operator/Administrator_____
Date of HFLC or BHI review_____
Name of Individual conducting the review_____

Standard/Requirement	Facility Observation/Review
1. Home/Facility walk through-Is the home clean and orderly?	
2. Is the home temperature appropriate for the current season?	
3. Is there a visible fire extinguisher in the home? Where and how many?	
4. Are all sleeping areas in appropriate rooms with windows and adequate lighting?	
5. Are resident's rights posted in a visible place in the home?	
6. Is the city or county business license posted in a visible place in the home?	
7. Is there a current (within the last 12 months) fire marshal report posted?	
7. Does the home have a signed agreement with each resident?	
8. Does the agreement spell out the home's responsibilities?	
9. Does the agreement spell our resident responsibilities?	
10. Does the agreement spell out the responsibilities of the representative payee or other individuals who are assisting the resident?	
11. Does the agreement spell out how much and how often the facility provides the resident with agreed upon spending money?	
12. Is there appropriate documentation of the provision of spending money?	
13. Does home have an internal resident complaint process?	
14. Is there documented evidence that the complaint process is being followed?	
15. Does the home have a means of accounting for and securing residents possessions?	
16. Does the home have a means to secure resident's medications? If that is part of the resident agreement?	
17. Has home staff taken the assistance w/self administration of medications course?	
18. Does the home maintain receipts for any resident purchase they make on behalf of the resident?	
19. Does the home assure resident privacy, in both sleeping and bathing areas?	
20. Is there a reasonable meal schedule posted in the home and spelled out in the resident agreement?	

21. Is a daily/weekly menu posted for all residents to see?	
22. Does the menu appear to provide adequate nutrition for the residents?	
23. Do meals being served match the menu?	
24. Are adequate supplies (soap, towels, cleaning supplies, etc) in evidence in the home?	
25. Are supplies to be provided by the home, per the resident agreement, being appropriately provided?	
26.Do residents look clean and appropriately groomed?	
27.Are residents dressed appropriately for the season?	
28. Is there local assistance and service information posted in the home?	
Home with more than 16 residents.	
Are sprinklers located throughout the home?	
Are there an adequate number of fire extinguishers available?	
Is there an adequate amount of space for each resident in shared sleeping spaces?	

Appendix C: HJM 34 Home Operator Meeting Attendees

Nov. 10, 2010 Meeting

NAME	Title
Linda Castellano	Home Operator
Ray Wolf	State Fire Marshal
Shela Silverman	Albuquerque Mental Health Association
Edward & Geri Crespin	Home Operators
Cruzita Crespin	Home Operator
Miguel Chavez	New Mexico Disability Rights
Rose Jarmillo	Home Operator
Anita Ortiz	Home Operator
Jeanette J. Larranaga	Home Operator
Bette Betts	ALTSD
Louella Garcia	ALTSD (APS)
Isabel Cavazos	Home Operator
Molly Gonzales	Home Operator
Yolanda Trujillo	Home Operator
Elizabeth & Walter Padilla	Home Operators
Phillip A. Mares	City of Las Vegas Fire Chief
Michael Hubert	BHSD Office of Consumer Affairs
Carlos Crespin	Home Operator
Peggy Bustos	ALTSD (APS)
Gerald Garcia	City of Las Vegas Zoning and Licensing
Priscella Crespin	Home Operator
Lorraine E. Gardino	City of Las Vegas Zoning and Licensing
Patricia Gallegos	DOH BHI
Elizabeth Crespin	Home Operator
Corrine Dominguez	DOH BHI
Lisa Lujan	DOH BHI
Roger Gillespie	DOH DHI
Gail Trotter	ALTSD (OMB)