

Legislative Council Service

Information Memorandum

DATE: July 6, 2016

DISCUSSION DRAFT

TO: Legislative Health and Human Services Committee Members

FROM: Shawn Mathis, Staff Attorney

SUBJECT: REGULATION OF BOARDING HOMES

You have requested information regarding the regulation of boarding homes. The following memorandum is submitted in compliance with that request. This memorandum does not address laws and regulations relating to other types of residential care facilities or settings, or Medicaid coverage for assisted living. Nor is it intended to serve as a comprehensive guide to laws and regulations addressing the abuse, neglect or exploitation of adults generally. Any opinions expressed are those of the author and do not necessarily reflect the opinions of the New Mexico Legislative Council or any other member of its staff.

WHAT IS A BOARDING HOME?

In August 2009, the *Austin American-Statesman* reported on a woman with a string of theft convictions who operated several boarding homes in Texas. Most recently, she had been caught opening a credit account in the name of one of her mentally disabled boarding home residents.¹ The *Statesman* noted that, at the time, boarding homes such as those operated by this

¹Joshunda Sanders and Eric Dexheimer, *Boarding homes face no oversight*, *Austin American-Statesman* (originally published on August 30, 2009) found at <http://www.statesman.com/news/local/archive-boarding-homes-face-no-oversight/nn...>

woman operated "largely out of sight, unlicensed and unregulated by any state or local agency".² In late 2013, two men who had been discharged from the New Mexico Behavioral Health Institute at Las Vegas to a local boarding home died of carbon monoxide poisoning in a shed that was "not designed or suitable for human occupancy".³ The elderly, veterans or those with mental illness or other disabilities often end up in unregulated boarding homes run by unscrupulous owners.⁴ According to former Texas State Senator Eliot Shapleigh, many of these homes are not properly maintained, are operated by persons whose criminal history is unknown and are not safe for those residing in them.⁵

The following is a list of types of housing that are not considered boarding homes:

- hotels;
- retirement communities;
- a monastery or convent;
- a domestic violence shelter;
- a sorority or fraternity house or dormitory associated with an institution of higher education;
- licensed facilities such as intermediate care facilities for individuals with intellectual disabilities (ICF/IID) [formerly intermediate care facilities for individuals with mental retardation (ICF/MR)]; and
- assisted living facilities.⁶

An understanding of what constitutes "assisted living" is helpful to the discussion of boarding homes. As of 2008, assisted living facilities were reported to be "one of the fastest growing forms of housing for the elderly, numbering more than 30,000 nationwide and housing

²*Id.*

³Disability Rights New Mexico, *Tragic and Preventable* (November 2014), Appendix 1.

⁴Texas State Senator Eliot Shapleigh, News Release (May 31, 2009).

⁵*Id.*

⁶City of San Antonio Boarding Home Inspection Program, *How to Identify a Boarding Home*, Appendix 14.

more than a million residents".⁷ Apparently, the term "assisted living" was first used, at least in part, as a marketing term to replace terms such as "board and care homes", "rest homes", "old-age homes" and "personal care homes".⁸ Assisted living "features individual rooms furnished by the resident"; "common areas for recreation, socializing, and physical therapy"; a common dining room with sit-down service; and "numerous staff, including nurses".⁹ According to the National Center for Assisted Living (NCAL), "assisted living communities provide housing, 24-hour staffing and a growing variety of services including assistance with activities of daily living (ADLs) such as bathing and dressing, and medication administration".¹⁰ Many of these care facilities also provide specialized services for those with Alzheimer's disease or other dementias.¹¹

The NCAL advises that, while many federal laws impact assisted living, states provide primary oversight of these communities.¹² According to a 2012 article published in conjunction with a national guardianship summit, "assisted living has no federal definition, and state terms differ".¹³ "As of 2007, forty-three states and the District of Columbia used the term 'assisted living' in a licensing statute or regulation, but the services offered vary widely."¹⁴ The article's authors note that the term could encompass boarding homes that provide limited supportive services and protective care and that charge far less than larger facilities that offer more

⁷Lawrence A. Frolick, Walter T. Burke, Michael Kirtland, *Housing Options for the Older Client*, 22 DEC Prob. & Prop. 40, 41 (November/December 2008), American Bar Association.

⁸*Id.*

⁹*Id.*

¹⁰National Center for Assisted Living, *Assisted Living State Regulatory Review 2013* (March 2013), Introduction.

¹¹*Id.*

¹²*Id.*

¹³Naomi Karp, Erica Wood and Amy Gioletti, *Choosing Home for Someone Else: Guardian Residential Decision-Making*, 2012 Utah L. Rev. 1445, 1449.

¹⁴*Id.*

comprehensive care.¹⁵ They note that the majority of assisted living residents pay privately and that in some states, Medicaid will pay for personal care services provided in assisted living.¹⁶

A HISTORY OF BOARDING HOME REGULATION IN NEW MEXICO

At one time, New Mexico regulated boarding homes that did not provide what are generally thought of as health care services. In 1970, the state's Health and Social Services Department adopted regulations governing boarding homes.¹⁷ These regulations defined "boarding home" as providing a combination of meals and shelter at the same location to two or more residents for pay or other consideration.¹⁸ The regulatory definition of "boarding home" expressly excluded any establishment "that also provides nursing or other care to residents who need assistance in daily living activities and is governed by other regulations of the department".¹⁹ The boarding home regulations included requirements for structures, exits, heating and ventilation, water, plumbing, waste, sanitation, electrical, fire and other safety measures, management and storage of food, linens, minimum floor space for resident rooms, storage and bathroom facilities.

In 1972, the Boarding Home Licensure Act was enacted.²⁰ This statute defined "boarding home" as "any business which offers to the public for a consideration, residential and eating accommodations for three or more non-transient persons, and which does not provide nursing care as one of its services".²¹ The Health and Social Services Department was directed to adopt regulations to carry out the provisions of the act.²² The act required boarding homes to be

¹⁵*Id.*

¹⁶*Id.*

¹⁷HSSD 70-5 (August 28, 1970), Appendix 2.

¹⁸*Id.*, (A)(1).

¹⁹*Id.*

²⁰Senate Bill 56, Laws 1972, Chapter 66, Appendix 3.

²¹*Id.*, Section 2(B).

²²HSSD 72-1 (May 22, 1972), Appendix 4.

licensed and inspected by the department.²³ Unless revoked or suspended, licenses were to be issued for a period of one year and were renewable for successive one-year periods.²⁴ If inspections revealed deficiencies, the law provided for temporary licensure to give the boarding home time to come into compliance.²⁵ A violation of the act or of any regulation promulgated pursuant to the act was a petty misdemeanor.²⁶ Regulations to implement the Boarding Home Licensure Act were promulgated in 1972 that defined "boarding home" as "an establishment that caters to the public and holds itself out as a place where a combination of rooming and eating is provided to three or more non-transient residents for pay and which does not provide nursing care or assistance in daily living activities".²⁷

The Boarding Home Licensure Act was repealed in 1973 with the enactment of the Public Health Act.²⁸ Only some of the provisions of the Boarding Home Licensure Act were retained in the Public Health Act. "Boarding home" was not defined; the sole reference to boarding homes was in the Public Health Act's definition of "health facility".²⁹ A boarding home not under the control of an institution of higher learning was considered a "health facility" for purposes of the Public Health Act.³⁰ The Health and Social Services Department was authorized to maintain and enforce regulations for the licensure of health facilities.³¹ A health facility was required to have a license issued by the department.³² Upon receipt of an application for a license, the department

²³Senate Bill 56, Laws 1972, Chapter 66, Section 4.

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*, Section 6.

²⁷HSSD 72-1 Section II (A).

²⁸Laws 1973, Section 25, Chapter 359, repealing Sections 60-1-3.1 through 60-1-3.6 NMSA 1953 (1973 Supp.).

²⁹Section 12-34-2(E) NMSA 1953.

³⁰*Id.*

³¹Section 12-34-3(I) NMSA 1953.

³²Section 12-34-5(A) NMSA 1953.

was required to promptly inspect a health facility for compliance with the department's regulations.³³ The Public Health Act provided for temporary licensure of a health facility and for a one-year non-transferable license, renewable for periods of one year.³⁴ The act permitted inspection of premises under certain circumstances to determine whether there were conditions dangerous to health or safety that were prohibited by fire, housing, sanitation, welfare, zoning or other laws or ordinances enacted to promote public well-being.³⁵

In 1976, the Health and Social Services Department promulgated regulations for "adult residential shelter care homes".³⁶ An "adult residential shelter care home" was defined as a facility operated "on a twenty-four hour basis to provide residential accommodation, personal services and social care to at least three but not more than fifteen individuals not related to the licensee, and who because of impaired capacity for self-care elect or require protective living accommodations but who do not have an illness, injury or disability for which regular medical care and twenty-four hour professional nursing services are required".³⁷ The level of supervision of residents and categories of services provided were more extensive than those offered by a boarding home and approximate those typically associated with assisted living.³⁸ While medications may be administered by licensed personnel in assisted living, the regulations for adult residential shelter care homes only authorized assistance with self-administration of medication. These adult shelter homes had to be licensed by the Institutional Licensing Section of the Health and Social Services Department.³⁹ These shelter homes were subject to surveys (inspections) and requirements that far exceeded those for boarding homes.⁴⁰

³³Section 12-34-5(C) NMSA 1953.

³⁴Section 12-34-5(E) NMSA 1953.

³⁵Sections 12-34-16 through 12-34-19 NMSA 1953.

³⁶HSSD 76-6 (September 24, 1976), Appendix 5.

³⁷*Id.*, Section 1(A)(1).

³⁸*Id.*, Section 1(A)(14).

³⁹*Id.*, Section 1(A)(9).

⁴⁰*Id.*, Section 1(D).

In 1986, the New Mexico State Health and Environment Department issued regulations to "consolidate and revise" regulations covering "a variety of health facilities for adults".⁴¹ These revisions superseded the 1972 regulations for boarding homes and the 1976 regulations for adult residential shelter care homes, discussed above. These regulations did not carry over the earlier definition of "boarding home". In its place were three categories of "boarding home": a "board and care home", a "half way home" and a "family care home".⁴²

The "board and care home" was defined as "a facility licensed to accept adults who because of diminished mental or physical capacity, find it difficult to care for themselves in their own residence and who choose to arrange for food, shelter, oversight and limited services such as laundry and transportation from a provider of board and care services".⁴³ The new regulations required a board and care home to be operated on a 24-hour basis, for a minimum of three and as "many residents" as it had the capacity to house, as determined by the Health Services Division of the Health and Environment Department.⁴⁴ Persons who required nursing care or who were not ambulatory could not be housed in this type of facility.⁴⁵ Residency was restricted to those who were able to perform daily living activities without assistance.⁴⁶ The board and care home was to provide oversight of residents such as reminding them about medication, meals and appointments and to monitor residents both onsite and offsite.⁴⁷

The 1986 revised regulations were 63 pages in length, covering requirements for structures, exits, heating and ventilation, water, plumbing, waste, sanitation, electrical, fire and other safety measures, management and storage of food, linens, minimum floor space for resident

⁴¹HED 86-3 (July 11, 1986), Appendix 6. These revisions also applied to community residential facilities for adult developmentally delayed individuals and residential treatment homes.

⁴²*Id.*, Paragraph 107(B).

⁴³*Id.*, Paragraph 107(B).

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.*

rooms, storage and bathroom facilities, personnel and recordkeeping.⁴⁸ Board and care homes were required to encourage and remind their residents to maintain a high degree of personal health, hygiene and grooming.⁴⁹

In 1990, the regulations governing residential shelter care and boarding home facilities were revised yet again, superseding the 1986 revisions.⁵⁰ The Public Health Division (PHD) of the New Mexico Health and Environment Department was delegated the responsibility for enforcing these regulations and designated as the licensing authority. These revised regulations kept the three subcategories of boarding home facilities, dropping the term "board and care home" and using "boarding home" instead.⁵¹ The regulations stated that a boarding home provider could offer "limited services" such as laundry and transportation in addition to food, shelter and oversight.⁵² Boarding homes with at least three residents were required to be licensed and operated on a 24-hour basis. A note to these regulations flagged a 1989 statutory change to New Mexico's guardianship law that prohibits an operator or employee of a boarding home from serving as a guardian for an incapacitated person, unless related to such person by affinity or consanguinity.⁵³ The 1990 revisions added a requirement of 16 hours of training approved by the PHD for staff members who assisted a resident with self-administration of medication.⁵⁴

In 1991, former Section 9-7-4 NMSA 1978 was repealed and a new section enacted. This law created the Department of Health (DOH) as a cabinet department and changed all references in law to the PHD of the Health and Environment Department to refer to the DOH.⁵⁵

⁴⁸HED 86-3 (July 11, 1986).

⁴⁹*Id.*, Paragraph 511(D).

⁵⁰HED 90-1 (January 11, 1990), Appendix 7.

⁵¹*Id.*, Paragraph 107(B)(1).

⁵²*Id.*

⁵³Section 45-5-311(A) NMSA 1978. This law remains in effect today.

⁵⁴HED 90-1 (January 11, 1990), Paragraph 404.

⁵⁵Section 9-7-4(A) and (B) NMSA 1978.

Accordingly, enforcement of boarding home regulations and licensure of boarding homes became the responsibility of the DOH.

In 2000, the DOH promulgated regulations for adult residential facilities operated for the maintenance or care of two or more adults (who were not related to the operator) "who need or desire assistance" with one or more ADLs.⁵⁶ Of note, these regulations exempted adult residential facilities with three or fewer residents from many requirements, including the submission of floor plans, building or zoning approvals, fire authority approvals or inspections, or environmental improvement kitchen approvals or inspections with the initial application for a license.⁵⁷ Adult residential facilities with three or fewer residents were also exempted from having to provide a current fire inspection report to apply for renewal of a license.⁵⁸ A facility licensed under these regulations was required to have a custodial drug permit from the Board of Pharmacy if it supervised the administration or self-administration of medication or safeguarded medications for residents.⁵⁹ Adult residential care facilities with one resident were exempted from this requirement.⁶⁰ While newly licensed or constructed adult residential care facilities were required to be protected by an automatic sprinkler system, sprinklers were not required for a facility serving eight or fewer residents if the facility "maintained prompt evacuation capability".⁶¹ Trailer and mobile homes could not be used if the facility housed more than three residents.⁶² Facilities with three or fewer residents were also excepted from accessibility requirements of the New Mexico Building Code and the federal Americans with Disabilities Act of 1990.⁶³

⁵⁶NMAC 7.8.2.2 (2000) (See Appendix 8A).

⁵⁷NMAC 7.8.2.8 (A)(4)(5)(6) and (7) (2000).

⁵⁸NMAC 7.8.2.8 (C)(3) (2000).

⁵⁹NMAC 7.8.2.35 (2000).

⁶⁰*Id.*

⁶¹NMAC 7.8.2.41(A) (2000).

⁶²NMAC 7.8.2.41(E) (2000).

⁶³NMAC 7.8.2.41(D) (2000).

CURRENT REGULATION OF BOARDING HOMES IN NEW MEXICO

The 2000 regulations for adult residential facilities were repealed and replaced in 2010 by regulations for assisted living facilities.⁶⁴ Under New Mexico's current Public Health Act, the DOH is authorized to regulate boarding homes because they are expressly referred to in the act's definition of "health facilities".⁶⁵ However, there is no current statutory or regulatory definition of "boarding home" or "boarding house". Nor is there any specific statutory or regulatory scheme aimed at regulating boarding homes generally. A boarding home is only regulated if it provides assistance with at least one ADL to two or more unrelated adults and, thus, falls under the DOH's assisted living facility rules.⁶⁶ These DOH rules define ADLs to include "personal functional activities" such as eating, dressing, oral hygiene, bathing, grooming, mobility and toileting.⁶⁷ "Assistance" means "prompting, encouragement, or hands-on help" with ADLs.⁶⁸ "Assistance with medication" means "support provided with medication delivery by non-licensed or non-certified paid staff and does not allow for the assessment of the side effects of medication".⁶⁹

In 2010, House Joint Memorial 34 requested the DOH to convene a committee to study the licensing of housing for persons following discharge from the New Mexico Behavioral Health Institute at Las Vegas and to consider additional regulations to set standards for such housing.⁷⁰ After meeting with stakeholders, and "due to state budget and DOH resource

⁶⁴History of NMAC 7.8.2 (2016).

⁶⁵Sections 24-1-2(D) and 24-1-3(I) NMSA 1978. A "boarding home" also falls under the definition of "care facility" in the rules of the Aging and Long-Term Services Department establishing guidelines for investigations. NMAC 8.11.3.7(H) (2016).

⁶⁶Letter from K. Lynn Gallagher to Representative James Roger Madalena, chair, and to Senator Gerald Ortiz y Pino, vice chair, Legislative Health and Human Services Committee (November 25, 2014) (see Appendix 8). Unlike the DOH's 2000 adult residential facility regulations, there are no exceptions to the requirements of the DOH's assisted living regulations for facilities that serve three or fewer residents. If a facility provides assistance of one or more ADLs to two or more adults, it falls under the assisted living regulations.

⁶⁷NMAC 7.8.2.7(B) (January 15, 2010) (See Appendix 8B).

⁶⁸NMAC 7.8.2.7(J) (January 15, 2010).

⁶⁹NMAC 7.8.2.7(K).

⁷⁰Report of the House Joint Memorial 34 Committee convened by the New Mexico Department of Health, *Study Licensure in Behavioral Health Care* (December 17, 2010) (see Appendix 8).

constraints", the committee recommended no new regulations.⁷¹ The committee recommended that the New Mexico Behavioral Health Institute at Las Vegas and the DOH's Division of Health Improvement work with the operators of such housing to develop standards.⁷²

As of November 25, 2014, the DOH indicated that it intended to clarify its rules to reinforce the fact that certain boarding homes are subject to assisted living facility rules.⁷³ However, if no health care services are being provided, the DOH has taken the position that boarding homes are governed by landlord-tenant laws and "the usual municipal authorities" that oversee housing.⁷⁴

WHAT OTHER LAWS APPLY TO BOARDING HOMES?

While this memorandum is not intended to provide a comprehensive look at the topic of abuse, neglect and exploitation, brief reference will be made to laws and regulations of the Aging and Long-Term Services Department (ALTSD) and of the Human Services Department (HSD) that are of note.

The ALTSD is required to investigate reports or referrals of abuse, neglect or exploitation pursuant to the Adult Protective Services Act.⁷⁵ The term "boarding home" does not appear in the act, although the act would appear to apply to boarding homes as it defines a "provider" as a private residence, health care worker or an unlicensed residential or non-residential entity that provides "personal, custodial or health care".⁷⁶ The protective services that the agency is authorized to provide are short term, and the agency is not authorized to close a facility.⁷⁷ It is,

⁷¹*Id.*

⁷²*Id.*

⁷³Letter from K. Lynn Gallagher to Representative James Roger Madalena, chair, and to Senator Gerald Ortiz y Pino, vice chair, Legislative Health and Human Services Committee (November 25, 2014).

⁷⁴*Id.*

⁷⁵Section 27-7-14 et seq. NMSA 1978; *Id.*, at Section 27-7-19(A)(3) NMSA 1978.

⁷⁶Section 27-7-16(R) NMSA 1978.

⁷⁷Section 27-7-21(A) NMSA 1978.

however, authorized to assess civil penalties against a caretaker (whether a facility, provider or individual) that interferes with an ALTSD investigation.⁷⁸

Pursuant to the Resident Abuse and Neglect Act, the HSD is required to issue rules and regulations to implement that act.⁷⁹ The act applies to care facilities and expressly includes boarding homes; however, the term "boarding home" is not defined in the act.⁸⁰ The Resident Abuse and Neglect Act provides criminal penalties for abuse or neglect that results in no harm, physical harm or great psychological harm, great physical harm or death of a resident.⁸¹ The act also provides criminal fines and penalties for exploitation of a resident's property, with penalties and fines increasing with the value of the property that has been illegally taken.⁸² The act also requires a person who is being compensated to provide care or services, and any other person with reasonable cause to believe that a resident is being abused, neglected or exploited, to report such information to the ALTSD pursuant to Section 27-7-30 NMSA 1978 of the Adult Protective Services Act.⁸³

HOW MANY BOARDING HOMES ARE THERE IN NEW MEXICO?

A boarding home facility with two or more residents subject to assisted living regulations is required to have a custodial drug permit from the Board of Pharmacy if the boarding home facility provides supervision of the self-administration of medication or safeguards medications

⁷⁸Section 27-7-19(F) NMSA 1978.

⁷⁹Section 30-47-10 NMSA 1978.

⁸⁰Section 30-47-3(B) NMSA 1978.

⁸¹Sections 30-47-4 and 30-47-5 NMSA 1978.

⁸²Section 30-47-6 NMSA 1978.

⁸³Section 30-47-9 NMSA 1978.

for residents.⁸⁴ According to records maintained by the Board of Pharmacy, there are 926 boarding homes in New Mexico with active custodial drug permits as of June 29, 2016.⁸⁵

Apparently, the DOH does not separately track boarding homes that serve two or more persons who need or want assistance with at least one ADL as a subset of assisted living facilities.⁸⁶ As of June 30, 2016, there were 204 licensed assisted living facilities in New Mexico, according to the DOH.⁸⁷ During the period 2014 through 2016, the DOH closed 10 assisted living facilities.⁸⁸

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.⁸⁹ At that time, Texas's Health and Human Services Commission (HHSC) estimated that there were approximately 1,000 boarding homes in that state.⁹⁰ 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.⁹¹ Under this legislation, a local government that opted to regulate boarding homes was required to:

⁸⁴NMAC 7.8.2.34 (2010).

⁸⁵See Appendix 9, a list of boarding homes from the Board of Pharmacy with active custodial drug permits as of June 29, 2016.

⁸⁶Email from Dawn Hunter, DOH (June 30, 2016), Appendix 10.

⁸⁷*Id.*

⁸⁸*Id.*

⁸⁹Texas State Senator Eliot Shapleigh, News Release (May 31, 2009).

⁹⁰*Id.*

⁹¹*Id.*; HB 216 (2009) last accessed at <http://www.legis.state.tx.us/tlodocs/81R/billtext/html/HB00216F.HTM> (see Appendix 11).

- inspect and investigate each boarding home before issuing a certificate of registration or renewal;
- maintain a registry of the boarding homes;
- inspect registered boarding homes at least once during a two-year registration period;
- set fees for the certificate of registration to cover administrative costs;
- provide education and outreach to owners and operators of boarding houses by a date specified in the legislation; and
- require that owners and operators of boarding homes hold a certificate of registration.

This legislation was developed with input from the HHSC.⁹² Of note, there was no appropriation attached to it.⁹³ In addition, legislation was passed to require the HHSC to study the issue of boarding homes and to report to the Texas legislature.⁹⁴

Since passage of HB 216, the HHSC has developed Boarding House Model Standards (Model Standards).⁹⁵ These standards define a "boarding home facility" as an establishment that "furnishes, in one or more buildings, lodging to three or more persons who are unrelated to the owner of the establishment by blood or marriage" and that provides "community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication" but not "personal care services".⁹⁶ "Assistance with self-administration of medication" means reminding a resident to take medication, opening and removing medications from a container, placing medication in a resident's hand or on a clean surface or box and reminding a resident when a prescription medication needs to be refilled.⁹⁷ "Personal care services" means: "1) assistance with meals,

⁹²Texas State Senator Eliot Shapleigh, News Release (May 31, 2009).

⁹³Joshunda Sanders and Eric Dexheimer, *Boarding homes face no oversight*, Austin American-Statesman (originally published on August 30, 2009) found at <http://www.statesman.com/news/local/archive-boarding-homes-face-no-oversight/nm...>

⁹⁴Texas State Senator Eliot Shapleigh, News Release (May 31, 2009).

⁹⁵See Texas Boarding House Model Standards, Appendix 12.

⁹⁶*Id.*, (A)(1) and (2).

⁹⁷*Id.*, (C)

dressings, movement, bathing or other personal needs or maintenance; 2) administration of medication by a person licensed to administer medications or the assistance with or supervision of medication; or 3) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person".⁹⁸ Since the definition of a boarding home facility expressly excludes assistance with ADLs and the administration of medication by licensed personnel, it differs from an assisted living facility.

Standard 1 of the Model Standards relates to construction and remodeling. Boarding homes are required to meet: applicable local zoning and building codes; federal, state and local fire codes and health and safety codes; and federal and state accessibility regulations.⁹⁹ Proper electric service, water, heating and cooling are required and must be in safe working condition.¹⁰⁰ There are also requirements for such things as occupancy, square footage, ceiling height of sleeping rooms, bathrooms, kitchens, beds, linens, storage, bedroom furniture and laundry facilities.¹⁰¹

Standard 2 of the Model Standards relates to sanitation requirements such as cleaning, pest control, water leaks, garbage and refuse, cleaning products, food preparation areas, refrigeration equipment, food supplies and meals.¹⁰² Standard 3 relates to the reporting and investigation of injuries, incidents and unusual accidents, as well as policies and procedures to ensure the health and safety of residents.¹⁰³ Standard 3 includes requirements to prevent financial exploitation of residents, as well as prohibiting financial misconduct or conflicts of interest on the part of the boarding home's owner or employees. Standard 4 addresses assistance with self-

⁹⁸*Id.*, (B)

⁹⁹*Id.*, Standard 1 (B).

¹⁰⁰*Id.*, Standard 1

¹⁰¹*Id.*

¹⁰²*Id.*, Standard 2.

¹⁰³*Id.*, Standard 3.

administration of medication. Standard 5 relates to in-service education of a boarding home's staff. Standard 6 addresses criminal background history checks of boarding home owners and employees. Standard 7 provides for the periodic assessment of boarding home residents by the owner/operator of a boarding home to ensure that residents are capable of self-administration of medication and basic personal care.¹⁰⁴

Following publication of the Model Standards, the HHSC delegated responsibility for the following to the Department of Aging and Disability Services:

- informing counties and municipalities about the Model Standards;
- making the standards readily available;
- alerting local governments who adopt the Model Standards of their obligation to submit annual reports and creating a mechanism to submit reports; and
- compiling the reports from local governments for a biennial report to the legislature.¹⁰⁵

As of September 30, 2014, there were four local governments in Texas that had adopted the Model Standards: the City of Brenham; the City of Dallas; the City of El Paso; and the City of San Antonio.¹⁰⁶ The speed with which the permitting of boarding homes and data collection regarding boarding homes has proceeded varies by locality. As of September 30, 2014, Brenham had not reported the total number of residents in boarding home facilities.¹⁰⁷ Dallas reported a total of 1,083 residents in boarding home facilities.¹⁰⁸ El Paso reported a total of 297 residents in boarding home facilities, with San Antonio reporting 156 residents in boarding home facilities.¹⁰⁹

¹⁰⁴*Id.*, Standard 7.

¹⁰⁵Health and Human Services Commission and the Texas Department of Aging and Disability Services, *Boarding Home Facilities Report to the Texas Legislature* (December 2014).

¹⁰⁶*Id.* at p. 2.

¹⁰⁷*Id.*

¹⁰⁸*Id.* at p. 3.

¹⁰⁹*Id.* at pages 3-4.

While ordinances follow the Model Standards, they may differ slightly.¹¹⁰ The City of Dallas uses the same definition of "boarding home facility" as the Model Standards. The City of San Antonio defines a "boarding home facility" as an establishment that "furnishes, in one or more buildings, lodging to *three or more elderly and/or disabled* persons who are unrelated to the owner of the establishment by blood or marriage, and that provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication" to residents who "*are capable of feeding, dressing, moving, self evacuating, bathing and attending to other personal needs or maintenance without assistance*".¹¹¹ "Assistance with self-administration of medication" means reminding a resident to take medication, opening and removing medications from a container, placing medication in a resident's hand or on a clean surface or box and reminding a resident when a prescription medication needs to be refilled.¹¹² San Antonio's definition of "boarding home facility" clearly distinguishes a boarding home from assisted living, as it expressly limits boarding home residents to those who do not need assistance with ADLs and does not contemplate the administration of medication by licensed personnel.

Of note, both the City of Dallas and the City of San Antonio have provisions in their ordinances regarding the relocation of residents in the event that a boarding home is closed. The ordinances provide that if the owner or operator of the boarding home does not promptly relocate residents upon receiving an order of closure from the city, the city will relocate residents and seek to recover costs of relocation from the owner and operator of the closed facility.¹¹³

A boarding home permit application for the City of San Antonio is provided in Appendix 14. The cost for issuance or renewal of a boarding home permit in San Antonio is \$1,000. A

¹¹⁰See Appendices 14 and 15, ordinances passed by the City of San Antonio and the City of Dallas and related materials.

¹¹¹Ordinance 2012-12-13-0971; Amending Chapter 16 of the City Code of San Antonio, Texas; Enacted as Article XX, Sec. 16-940 et seq. (effective March 1, 2013).

¹¹²*Id.*, Article XX, Sec. 16-941(2).

¹¹³Ordinance 2012-12-13-0971; Amending Chapter 16 of the City Code of San Antonio, Texas; Enacted as Article XX, Sec. 16-971(d)(4); Dallas City Code, Section 8A-40(h)(4).

Fact Sheet, Boarding Home Inspection Program Information and a Boarding Home Checklist are also provided in Appendix 14.

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