



# DISABILITY RIGHTS NEW MEXICO

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*Promoting and Protecting the Rights of Persons with Disabilities*

## ASSURING OVERSIGHT OF BOARDING HOMES HOUSING PERSONS WITH MENTAL ILLNESS OR OTHER DISABILITIES LHHS PRESENTATION 7/6/2016

Current law authorizes oversight but it is not happening

- Public Health Act specifically includes boarding homes in the definition of “health facility” without limitation. 24-1-2.D NMSA 1978. Every health facility operating in the state must be licensed by the Department of Health (DOH). 24-1-5.A NMSA 1978.
  - DOH position: they don’t regulate and license unless a boarding home provides assistance with activities of daily living (ADLs) for two or more residents unrelated to owner/operator and is thus covered by regulations governing Assisted Living facilities (7.8.2 NMAC).
  - DOH promised LHHS nearly 2 years ago that it would clarify inclusion of boarding homes under these rules, but they have not done so.
  - Few if any boarding homes apply for licensure as Assisted Living facilities. DOH appears to ignore the reality that boarding homes serving persons with mental illness consistently provide assistance with ADLs and thus should be licensed.
- The Long Term Care Ombudsman Act specifically provides authority to visit any boarding home that provides assistance with ADLs to any residents, and to assist such residents. 28-17-3, 28-17-4 NMSA 1978.
  - LTCO monitoring and visitation of boarding homes is limited at best

### **DRNM Recommendations For Legislation To Address This Problem**

- Amendments to Public Health Act
  - Definitions (24-1-2 NMSA 1978): Define “boarding home” for purpose of this act as any facility providing lodging for pay for one or more persons unrelated to owner or operator who receive assistance from the owner/operator, including prompting or verbal cueing as well as hands-on help, in performing one or more ADLs, unless the facility is covered by some other facility definition under the act (such as a nursing home)  
*Rationale: This definition will make it clear that a boarding home that provides assistance with ADLs is a health facility that is required to be licensed by DOH, while excluding boarding homes which are simply landlord/tenant arrangements.*
  - Licensure of health facilities (24-1-5 NMSA 1978): Require DOH to investigate any referral/allegation of a boarding home covered by the new definition but

operating without a license, or when DOH has probable cause to believe that a home is being operated without a license.

*Rationale: This will require DOH to be more proactive in oversight of boarding homes that serve persons with mental illness or other disabilities.*

- Amendments to the MH/DD Code
  - Require in-patient facilities serving persons with mental illness who have been involuntarily committed pursuant to the MH/DD Code to screen boarding homes or other health facilities that are included on any list of options provided to patients as part of discharge planning, to make sure that such facilities are appropriately licensed. Such a provision could be inserted at 43-1-9.C.6, which deals with discharges from such facilities.  
*Rationale: The Behavioral Health Institute, and probably other facilities, provide information about housing options as part of the discharge process; the discharging facility should make sure that any boarding homes on such resource lists are licensed.*
- Amendments to the Long Term Care Ombudsman Act
  - Require the LTC Ombudsman, or an agency under contract to the office, to periodically visit boarding homes that are subject to, or reasonably appear to be subject to, visitation by the LTCO.  
*Rationale: Visitation by the LTC Ombudsman can help flag any significant concerns about conditions in a boarding home or the well-being of the residents.*
- Add funding in HB 2 to cover the additional costs required to implement these provisions.