
Report on Texas Boarding Houses

H.B. 1168



**Submitted to the Governor
and the Texas Legislature**
January 2009

Members of the 81st Texas Legislature,

In compliance with House Bill (HB) 1168, 80th Legislature, Regular Session, 2007, the Texas Health and Human Services Commission (HHSC) contracted with Health Management Associates to prepare this report outlining methods for regulating boarding houses, including recommendations on clarifying the authority of and granting additional authority to counties and municipalities to establish health and safety standards for boarding houses.

The report highlights issues for legislative consideration surrounding boarding houses in the state, primarily concerns surrounding the care and treatment of the aged, disabled and mentally ill. As indicated in the report, very few housing options are available for these individuals given their low income level. Boarding houses have developed as an alternative option to the lack of appropriate and affordable housing for these individuals. Despite filling that void, there is a considerable amount of concern for boarding house residents, particularly unsafe environments and access to personal care services.

HMA has included fourteen recommendations in the report, grouped in three categories: strengthening housing options, strengthening enforcement and monitoring, and better education regarding boarding houses. One of the recommendations includes increasing the availability of Community-based Alternatives (CBA) waiver slots to allow for more Medicaid-funded assisted living options for these individuals. If more CBA slots were available, individuals would not need to rely on boarding houses and would be able to receive personal care services that they are currently unable to receive in boarding houses. In the report, HMA recommends that the Legislature create a new funding item that would provide housing stipends to mental health consumers. The stipend would act as a voucher that would give consumers choice among eligible facilities. The intended benefits of this recommendation would be to improve housing quality and increase overall capacity of safe, affordable housing options.

In recommendation #2, HMA proposes that the Department of State Health Services maintain a registry of boarding house operators in the state. As discussed in the report, this recommendation is brought forward as a less expensive option than licensure while still providing a mechanism for the state to locate boarding homes. However, the report includes a caution that a registry may give consumers a mistaken perception that the state is regulating the quality of boarding houses. Additionally, due to the transient nature of boarding houses the report notes that a registry would be labor intensive to maintain. HB 669, 79th Legislature, Regular Session, 2005, created a task force which investigated boarding house registration and found that given the difficulty in identifying the establishments, registration could not be a comprehensive solution.

HHSC stands ready to assist members of the legislature review this complex issue and work for a solution that will benefit Texans.

HMA

HEALTH MANAGEMENT ASSOCIATES

Report on Texas Boarding Houses

PRESENTED TO

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

DECEMBER 16, 2008

*Research and Consulting in the Fields of Health and Human Services Policy, Health Economics
and Finance, Program Evaluation, Data Analysis, and Health System Restructuring*

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Executive Summary

The Texas Health and Human Services Commission (HHSC) contracted with Health Management Associates (HMA) to conduct a study of Texas boarding houses and to draft a report on a systematic approach for ensuring the health, safety and well-being of Texans residing in boarding houses. The contract for this work began in May 2008 and all data gathering to support the findings in this report occurred during 2008. Research and data collection for this report involved the following components: stakeholder assessments; development of a database of known boarding houses; interviews with boarding house operators; a review of best practices in regulation in other states; and a review of local Texas ordinances.

What is a Boarding House?

The term “boarding house” is not explicitly defined in Texas statute or the Texas Administrative Code. However, House Bill (HB) 1168, 80th Legislature (2007), which required the study that is the impetus for this report, defines a boarding house as—

“an establishment that:

- (A) provides services, including community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services to three or more elderly persons or disabled persons residing in the boarding house who are unrelated to the owner or proprietor of the establishment;
- (B) is not:
 - (i) required to be licensed under Chapter 142 [Home and Community Support Services], 242 [Convalescent and Nursing Homes and Related Institutions], 246 [Continuing Care Facilities licensed by the Texas Department of Insurance], 247 [Assisted Living Facilities], or 252 [Intermediate Care Facilities for the Mentally Retarded], Health and Safety Code; or
 - (ii) exempt from licensing under Section 142.003(a)(19) or 247.004(4), Health and Safety Code; and
- (C) is not a:
 - (i) child-care facility as defined by Section 42.002, Human Resources Code;
 - (ii) family violence center as defined by Section 51.002, Human Resources Code;
 - (iii) hotel as defined by Section 156.001, Tax Code;
 - (iv) retirement community;
 - (v) monastery or convent; or
 - (vi) sorority or fraternity house or other dormitory affiliated with an institution of higher education.”

HMA surveyed current boarding house owners and operators and found that, of the houses surveyed, over 75 percent of the boarding houses were owned versus rented properties. On average, the boarding houses surveyed had been in operation approximately 11 years and typically were able to accommodate about 19 residents.

How Many Boarding Houses Are There in Texas?

Based on existing federal, state and local databases, this study was able to identify 845 boarding houses spanning all areas of the state. However, since boarding houses are very difficult to identify and locate, there are undoubtedly more houses in existence. The majority of boarding houses were found to be in urban areas: Houston, El Paso, Dallas, San Antonio and Austin.

Who Lives in Boarding Houses?

Boarding houses tend to serve either people with behavioral health disorders, people who are elderly or persons with disabilities. Of the homes surveyed, people with a mental illness were reported to represent 29 percent of the residents, and the aging population (i.e., older than 64) was reported to represent 37 percent. Of those houses surveyed, 20 percent had residents with a physical disability, 11 percent of residents were reported to have substance abuse problems and nine percent had a cognitive disability. It is important to note, however, that the available databases tended to be focused more towards houses with aging residents, so these statistics apply to the survey database only and may not generalize to all boarding houses.

Of the boarding houses we surveyed, the residents' incomes were, on average, under \$650 per month, or less than \$7,800 dollars per year. Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) were the predominant sources of income. More than one-third of the tenants of boarding houses had lived in the boarding house for four years or more and the remainder for three months to three years.

Due to their poverty and disability, boarding house residents are vulnerable to financial exploitation and unsafe or unsanitary living conditions. Their medical and social needs may also go unmet. Many residents in boarding houses have a high likelihood of needing personal care, medical, mental health and social services.

How Are Boarding Houses Regulated?

In Texas, with the exception of individually reported and investigated cases of abuse, neglect or exploitation through the Department of Family and Protective Services (DFPS), state agencies currently do not have the authority to require inspection or oversight of boarding houses. DFPS Adult Protective Services has the authority to investigate abuse, neglect or exploitation of a resident of a boarding house, including self-neglect.

Local communities do have the authority to regulate boarding houses, but specific regulation of boarding houses is not widespread at the local level. The most common forms of local regulation are limited to standard zoning codes, food establishment regulations and building standards. Some localities, such as Dallas, Austin and El Paso, also require licensure or certification of boarding houses within their borders. However, where cities have specific regulation, consistency across the local ordinances is lacking.

It is important to note that boarding houses are distinguished from illegally unlicensed assisted living facilities, which are regulated under Chapter 247 of the Health and Safety Code. Whether a residential establishment is required to be licensed as an assisted living facility depends on its size and the types of services provided to residents. An establishment is required to be licensed as an assisted living facility if it:

- Has four or more residents; and
- Provides personal care services to at least one of the residents.

In the general public, there is frequently confusion about the distinction between boarding houses and illegally unlicensed assisted living facilities. In some cases, this has contributed to confusion about how to approach developing policy to ensure the health, safety and well-being of Texans residing in boarding houses.

Do Other States Regulate Boarding Houses?

Most states do not regulate boarding houses. Forty-two states were identified as not regulating boarding houses. HMA found that the states that license boarding houses include: Florida, Montana, New Jersey, Washington and Wyoming. Examples of communities in other states that license boarding houses include Jefferson County, Alabama and Milwaukee, Wisconsin. States that register boarding houses include Kentucky, Oregon and Minnesota. Some states have extensive, statewide rules to license or register boarding houses, while others have minimal requirements. Requirements usually cover areas such as staffing, food and nutrition, health and safety, sanitation, management of client funds, laundry and building maintenance.

What Are the Key Findings Regarding Boarding Houses?

Boarding houses have developed and exist primarily to address a low-income *housing* need for the very poor and disabled. There is a lack of appropriate and affordable alternatives to boarding houses, particularly for people with mental illness who may have behaviors or other issues that prevent them from being able to use other housing alternatives. Regulatory solutions must walk a delicate balance between ensuring safe housing and not contributing to increased homelessness.

Although establishments housing more than three residents are not legally permitted to perform personal care services for residents unless the establishment is licensed as an assisted living facility, many boarding houses serve clients with significant mental health and medical needs. Unless boarding house staff members are appropriately trained to recognize problems and assist clients in obtaining health and social services, many of these residents' needs will likely go unmet.

Stakeholders reported that some residents were disruptive to the community. Businesses are often concerned with keeping mentally ill individuals off the streets. Neighborhoods and neighborhood associations complain about panhandling, behavior problems and public urination. As a consequence, elected officials are concerned with responding to complaints about local boarding houses raised by their constituents.

Several stakeholders reported that some boarding houses are unacceptably dangerous and that some operators exploit vulnerable residents. Numerous reports and news articles have chronicled the fact that some boarding houses present unsafe and unsanitary conditions for residents. Some establishments are unclean, not adequately heated or cooled, in need of critical repairs, only offer food sporadically and house residents who have severe behavior problems and may, without adequate treatment and intervention, present a danger to themselves or other residents.

Stakeholders also report that other boarding house operators strive to provide a decent and compassionate living environment with few resources. The current level of state funding for state contracted services for the mentally ill and aged is often not sufficient to provide for the basic health and housing needs of boarding house residents. From the perspective of boarding house operators, Texas' current regulatory framework and the lack of state funding support for residential care offers few incentives to become licensed.

The "Type E" assisted living facility licensure category was developed to encourage licensure of small facility providers that primarily serve people with mental illness who only need general supervision and medication assistance. Since the Type E licensure category was added to the assisted living facility standards in 2001, only approximately 20 facilities have become Type E licensed assisted living facilities. As a result, this category has yet to develop into a widely available housing resource for people with mental illnesses.

What Can Texas Do to Lessen the Concerns About Boarding Houses?

Based on the findings of our report, HMA put forward a number of policy options for HHSC to consider. These options addressed the need to strengthen housing options for low-income people with disabilities, enhance oversight of boarding houses and improve education and outreach provided to boarding houses. While any of these options, if enacted independently, would likely improve the state's ability to ensure the well being of residents of boarding houses, an effective solution will require comprehensive and multi-pronged strategies.

Strengthen Housing Options for Very Low-income Elderly, Disabled and Mentally Ill Texans

- The Texas Legislature should create a new, distinct funding item within the Department of State Health Services (DSHS) that would offer housing stipends to mental health consumers who, via the state's standard assessment for mental health services, are judged in need of housing assistance.
- HHSC should lead an effort to explore whether current Medicaid policy options offer a feasible means of offering personal care to people with serious mental illnesses.
- State and local communities should support the development of supported housing for persons with mental illness.
- The availability of Community-based Alternatives (CBA) waiver slots should be increased statewide to help expand Medicaid-funded assisted living options for the poor or near poor aged and disabled.

Strengthen Enforcement and Monitoring of Boarding Houses

- The Texas Statutes should be revised to include a definition of “boarding house.”
- Boarding house owners should be required to register with the state. The state should impose a modest fee for registering, sufficient to cover the costs of maintaining the registry. The state should also propose a \$200 fine for boarding houses which do not register with the state, once they have been advised that they must register.
- The state should revise the Type E licensure category to better reflect the type of small, limited service facilities for residents with mental illness that this category was designed for.
- The 81st Texas Legislature should consider establishing a criminal penalty for boarding house operators that knowingly operate dangerous facilities.
- The state should not rely on, or require, counties or municipalities to specifically regulate boarding houses located within their borders. However, the HHSC, through coordination with the relevant agencies, should conduct outreach to reinforce the existing authority municipalities have to regulate boarding houses. Similarly, while not specific to boarding houses, these agencies should conduct outreach to reinforce the existing authority municipalities have to establish, by ordinance, a procedure for emergency closure of unsafe and illegally unlicensed assisted living facilities.
- HHSC should make grant funding available for local governments, particularly those with large clusters of boarding houses. The grant funding would be used to support local efforts aimed at helping to address the needs of the boarding house population.

Better Educate Boarding House Owners, Local Mental Health Authorities (LMHAs) and Local Communities

- HHSC, in coordination with the relevant agencies, should provide materials to boarding houses explaining the services they may provide and information about licensure.
- HHSC, in coordination with the relevant agencies, should revise the Texas Administrative Code and the LMHA contract language to clarify that LMHAs are not prohibited from referring clients to boarding houses that are not subject to licensure (i.e., those that do not provide personal care services).
- HHSC, in coordination with relevant agencies, should educate community agencies and stakeholders about the state and local roles and responsibilities regarding regulation.

Background

The Texas Health and Human Services Commission (HHSC) contracted with Health Management Associates (HMA) to conduct a study of Texas boarding houses and to draft a report on a systematic approach for ensuring the health, safety and well-being of Texans residing in boarding houses. The contract for this work began in May 2008 and all data gathering to support the findings in this report occurred during 2008.

Research and data collection for this report involved the following components:

1. Stakeholder assessments
2. Development of a database of known boarding houses
3. Interviews with boarding house operators
4. A review of best practices in regulation in other states
5. A review of local Texas ordinances

The methodology used in each of these stages of research and data collection is described in the related section of the report.

Overview and History of Boarding Houses in Texas

Many citizens in Texas live in the kinds of establishments that are commonly referred to as boarding houses. These establishments provide room and board and their residents tend to be aged, disabled, mentally ill or have a history of substance abuse. They are also low-income and may be vulnerable to financial exploitation and unsafe or unsanitary living conditions. Their medical and social needs may also go unmet.

Although boarding houses typically serve some of the state's more vulnerable populations, they do not require state licensure. Any regulation or licensure requirements would have to occur at the local level and, with the exception of large cities like Austin, El Paso and Dallas, local regulation of boarding houses is rare.

Boarding houses are, by definition, distinguishable from assisted living facilities, which do require state licensure. Chapter 247 of the Health and Safety Code requires state licensure as an assisted living facility of any establishment that provides food and shelter to four or more persons, and personal care services to at least one of those persons. Personal care services include helping a resident with feeding, bathing, personal hygiene or ambulation. Supervision or administration of medications is also considered a personal care service and is prohibited without the required licensure under Chapter 247. Despite these clear requirements, however, stakeholders report that personal care services are being provided by some establishments without the necessary licensure as an assisted living facility.

To a large degree, boarding house issues stem from the fact that although these establishments are a de facto part of the state's housing options for the seriously mentally ill and for aged individuals, they are not regulated by the state and are subject to widely varying levels of local oversight and regulation. For persons with mental illness, very little housing support funding is

available. Also, for those establishments operating with a low profit margin, little financial or other incentives to pursue licensure as an assisted living facility exist, even if personal care is being provided (or should be being provided in order to meet the needs of its residents).

Compounding this problem is the fact that the boarding house population with mental illness typically may not have any income beyond federal Supplemental Security Income (SSI) benefits. Currently, SSI benefits pay \$637 a month or about \$21 a day. That amount must cover all room, board and personal needs. A number of states supplement the SSI check with an additional amount of state benefits; Texas does not. Consequently, the boarding house residential option has developed in response to the needs of a group of persons with very low income. Boarding houses are very much a stop gap between some basic level of shelter and food and outright homelessness.

Poor quality boarding houses, as well as establishments that should be licensed as an assisted living facility under Chapter 247 of the Health and Safety Code, have proven to be a difficult policy challenge for the state, as evidenced by the many attempts to deal with the issues over the years. Some selected examples include:

- **76th Legislature (1999).** In October 1998, The Senate Interim Committee on Home Health and Assisted Living Facilities recommended that personal care facilities be termed assisted living facilities under state law and that a new category of licensure be created for facilities that supervise individuals needing medication assistance. This recommendation led to the state's creation of the "Type E" category of assisted living. The Type E program is geared towards smaller facilities with residents whose personal care needs are limited to general supervision and medication monitoring (e.g., individuals with mental illness) and who can self-evacuate from the building in case of an emergency.
- **79th Legislature (2005).** House Bill (HB) 669 focused on the best way to identify lawfully operating unlicensed residential facilities (i.e., establishments that provide personal care for three residents or less) and the feasibility of requiring registration of these entities with the state. The HB 669 task force concluded that registration was feasible if additional funding was made available, but that registration alone did not equate to regulatory oversight and could not be a comprehensive solution, given the difficulty in identifying all of these types of establishments.
- **79th Legislature (2005).** Senate Bill (SB) 6 required HHSC to develop pilot sites in one urban and one rural county to better identify unlicensed assisted living facilities, i.e., establishments providing personal care services without a license under Chapter 247 of the Health and Safety Code, and to enforce the licensing requirements. Prior to this session, the Department of Aging and Disability Services (DADS) and their predecessor agency, the Department of Human Services, worked with task forces in Harris and Bexar counties to improve enforcement efforts. In response to SB 6, DADS worked with Atascosa County for the rural task force and with the pre-existing Bexar County task force for the urban site. The task force concluded that illegally unlicensed assisted living facilities were less of an issue in rural areas and did not recommend mandatory expansion of the pilot.

- **79th Legislature (2005).** SB 1055 required HHSC to convene a work group to study whether the definition of an assisted living facility should be changed to permit certain establishments to provide personal care without being licensed as an assisted living facility. If an establishment does not provide personal care services and does not require its residents to obtain personal care services through its home health agency, residents can obtain these services through a resource independent of the establishment without the establishment having to be licensed. Attorney General Opinion GA-0403 concluded that an establishment that furnishes food and shelter to four or more residents and requires those persons to obtain personal care services through the proprietor's licensed home health agency is an assisted living facility and must be licensed. After reviewing the regulations, policy issues and the related Attorney General opinion, the work group did not recommend any regulatory changes.
- **80th Legislature (2007).** During this session, the Legislature passed HB 1168, which in lieu of appropriations for a boarding house regulation pilot program, required the study that is the impetus for this report. The legislation requires that this study make recommendations "regarding the most effective method for regulating boarding houses, including recommendations on whether clarifying the authority of and granting additional authority to counties and municipalities to establish health and safety standards for boarding houses is recommended."

The Texas issues regarding boarding houses are far from unique. Many other states have also struggled with boarding house problems, such as the quality of care for boarding house residents, and this report will address some of the regulatory responses in some of those states. In the course of examining practices in other states, interviewing Texas stakeholders who have a role in the effort to improve boarding house safety and quality and interviewing boarding house operators, a number of broad themes have emerged and are addressed in this report:

- Boarding houses have developed and exist primarily to address a low-income *housing* need for the very poor and disabled. Regulatory solutions must walk a delicate balance between ensuring safe housing and not contributing to homelessness.
- Several stakeholders report that some boarding houses are unacceptably dangerous and that some operators exploit vulnerable residents. In these situations, aggressive protection against exploitation and closure of the boarding house or other appropriate enforcement is the only viable and humane alternative.
- Stakeholders also report that other boarding house operators strive to provide a decent and compassionate living environment with few resources. The current level of state funding for state contracted services for the mentally ill and aged does little to support these operators (such as providing supplemental housing funding). Also, some of the existing assisted living licensure requirements may discourage these providers from becoming licensed as an assisted living facility and providing needed personal care services to their residents.

- Beyond basic health and safety, boarding houses that primarily serve residents with mental illness and residents who are aged present different sets of issues. Regulatory and policy solutions need to be tailored to these two distinct populations.
- Well-operated boarding houses play a role in preventing homelessness, state psychiatric hospital use and preventing or delaying nursing home use, as well as reducing the local and state costs associated with these resources, including the local burden of homeless populations. A relatively small investment on behalf of residents eligible for state-funded mental health services or Medicaid long-term care services could help support well-run homes operating legally and increase the safe housing options for two of the state's most vulnerable populations.
- Multiple state and local entities have a role in relation to boarding house issues: The Department of Family and Protective Services (DFPS) investigates reports of abuse or neglect in boarding houses. The Department of State Health Services (DSHS) provides funding for local mental health services for boarding house residents, through Local Mental Health Authorities (LMHAs). DADS investigates allegations of unlicensed assisted living facilities (i.e., facilities that may be providing personal care without a required license). Local authorities set building and fire code requirements, and may require licensure of boarding houses or otherwise specifically regulate boarding houses.

This report attempts to address some of the core, underlying housing, financing and policy problems that have contributed to the persistence of boarding house issues in Texas. The problems related to the boarding house industry are not unsolvable or intractable. However, the solution must be comprehensive and involve both “carrots and sticks.” Only a comprehensive, multi-pronged strategy is likely to move this industry towards a system that provides appropriate safeguards for at-risk individuals and ensures that boarding houses are not a nuisance or a safety risk for the local communities in which they operate.

Problem Definition

Consumers, advocates, family members and state policy makers have all raised serious concerns about the care and treatment of people who are aged or have disabilities (particularly mental disabilities) that are residing in boarding houses. Concerns include unsafe or inappropriate environments, unlicensed provision of personal care services, financial improprieties, lack of effective oversight and unaddressed or inadequate medical or mental health care. Despite concerns about the safety and appropriateness of boarding house placement, often few other housing alternatives for the residents of these establishments are available.¹ This scarcity of housing options is primarily because the occupants' incomes are so low.

These concerns have prompted the Texas Legislature to call for a study and recommendations regarding the most effective method for resolving concerns about boarding houses, including recommendations on whether clarifying the authority of and granting additional authority to counties and municipalities to establish health and safety standards for boarding houses is recommended.

1. What Are Boarding Houses?

The term "boarding house" is not explicitly defined in Texas statute or the Texas Administrative Code. According to a Report by the Senate Interim Committee on Assisted Living Facilities, until 1991 the term "boarding home" was defined under the Texas Mental Health Code as "a residence or establishment that, in addition to food and shelter, provides services that meet some need beyond the basic provision of food and shelter to four or more persons who are not related to the owner or operator of the residence or establishment." LMHAs were required to register certain boarding homes that cared for people with mental illness, although this requirement was removed as part of the reorganization of health and human service agencies under HB 7 (72nd Legislature).²

Section 247.004 of the Health and Safety Code, which describes exemptions to the assisted living licensure requirements, characterizes a "boarding facility" as an establishment that "has rooms for rent and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services but that does not provide personal care services."

HB 1168 defines "boarding house" in a way that differs somewhat from the "boarding facility" definition in Chapter 247 (e.g., the boarding house definition requires at least three residents instead of the four residents required by the boarding facility definition; the boarding house definition refers to entities that serve only the elderly and disabled). However, as required for

¹ *Transforming Housing for People with Psychiatric Disabilities Report*. HHS Pub. No. 4173. Rockville, MD: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 2006.

² Senate Interim Committee on Home Health and Assisted Living Facilities, Report to the 76th Texas Legislature, October 1998.

the purposes of the HB 1168 study, the definition of boarding house in HB 1168 is the definition that is used in this report.

House Bill 1168 defines a boarding house as—

“an establishment that:

- (D) provides services, including community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services to three or more elderly persons or disabled persons residing in the boarding house who are unrelated to the owner or proprietor of the establishment;
- (E) is not:
 - (i) required to be licensed under Chapter 142 [Home and Community Support Services], 242 [Convalescent and Nursing Homes and Related Institutions], 246 [Continuing Care Facilities], 247 [Assisted Living Facilities], or 252 [Intermediate Care Facilities for the Mentally Retarded], Health and Safety Code; or
 - (ii) exempt from licensing under Section 142.003(a)(19) or 247.004(4), Health and Safety Code; and
- (F) is not a:
 - (i) child-care facility as defined by Section 42.002, Human Resources Code;
 - (ii) family violence center as defined by Section 51.002, Human Resources Code;
 - (iii) hotel as defined by Section 156.001, Tax Code;
 - (iv) retirement community;
 - (v) monastery or convent; or
 - (vi) sorority or fraternity house or other dormitory affiliated with an institution of higher education.”

HB 1168’s definition of boarding house does not necessarily reflect common usage of the term and does not cover all the different kinds of establishments associated with the problems identified in the contract for this work, including establishments that illegally provide personal care services without a license under Chapter 247 of the Health and Safety Code. For these reasons, this report also includes findings and recommendations about unlicensed assisted living facilities. In this report, “unlicensed assisted living facilities” are defined as any establishment that provides room and board that is subject to licensure as an assisted living facility because it also provides personal care services, but is operating illegally without a license under Chapter 247.

Boarding houses, as defined in HB 1168, are distinguished from assisted living facilities (historically referred to as personal care homes) because assisted living facilities provide personal care services and must obtain licensure from DADS. Section 247.002 of the Health and

Safety Code defines an “assisted living facility” as an establishment that: (A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and (B) provides personal care services. Any facility that meets this definition must obtain the appropriate licensure under Chapter 247.

Personal care services are defined as: (A) assistance with meals, dressing, movement, bathing, or other personal needs or maintenance; (B) the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or (C) 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.

2. *How Are Boarding Houses Regulated?*

Federal Oversight. The federal government has historically played a very limited role in monitoring or regulating the quality of services provided by boarding houses. In 1976, Congress enacted the Keys Amendment to the Social Security Act³, which requires states to annually certify to the U.S. Department of Health and Human Services that they have adopted and are enforcing standards for residential facilities in which a significant number of residents are receiving SSI benefits. (Boarding houses are one of several facility types that fall into the category of residential facilities.) Theoretically, the Social Security Administration can reduce SSI payments for facilities with substandard conditions, but this sanction is virtually never imposed, because it would have the effect of punishing SSI recipients by reducing their benefits.⁴ Aside from this generally unused mechanism, no other federal oversight governs boarding houses and the federal government has little direct involvement with the industry. This lack of federal involvement is largely because boarding houses do not directly receive any federal reimbursement.

State Oversight. In Texas, with the exception of individually reported and investigated cases of abuse, neglect or exploitation through DFPS, state agencies currently do not have the authority to require inspection of boarding houses.

As mentioned above, boarding houses are different from unlicensed assisted living facilities. DADS investigates allegations that a facility is operating in violation of Chapter 247 of the Health and Safety Code because it should be licensed as an assisted living facility. Whether a residential establishment is required to be licensed by DADS depends on its size and the types of services provided to residents. An establishment is not required to be licensed by DADS as an assisted living facility if it:

- Has three or fewer residents, even if personal care services are offered to those residents;
- or

³ Social Security Act, Section 1616 (e).

⁴ *Transforming Housing for People with Psychiatric Disabilities Report*. HHS Pub. No. 4173. Rockville, MD: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 2006.

- Does not provide any personal care services, regardless of the number of residents.

If a facility has more than three residents and provides personal care services to any of them, the facility is required under state law to be licensed as an assisted living facility. However, HMA notes that *the need for personal care services or the personal characteristics of individuals residing in the establishment are not relevant to the determination of whether the business is operating in violation of Chapter 247*. In other words, a boarding house resident may have personal care needs, but if the boarding house does not provide personal care services, DADS does not have the authority to regulate the boarding house. If a boarding house resident is not obtaining needed personal care services, DFPS has the authority to investigate the individual's abuse or self-neglect.

Licensing requirements for assisted living facilities under Chapter 247 generally focus on fire safety, sanitation, basic safety, staffing requirements and the characteristics of residents who can be admitted. Texas law and rules stipulate four types of licensure for assisted living facilities, all of which are regulated under Chapter 247 of the Health and Safety Code and Title 40, Chapter 92 of the Texas Administrative Code:

- **Type A** - In a Type A facility, a resident must be physically and mentally capable of evacuating the facility unassisted. This designation may include mobile, non-ambulatory persons such as those who are in wheelchairs or electric carts and have the capacity to transfer and evacuate themselves in an emergency. The resident does not require routine attendance during nighttime sleeping hours and must be capable of following directions under emergency conditions.
- **Type B** - In a Type B facility, a resident may require staff assistance to evacuate and may be incapable of following directions under emergency conditions. Residents may require attendance during nighttime sleeping hours. A resident may not be permanently bedfast, but may require assistance in transferring to and from a wheelchair.
- **Type C** - A Type C facility is a four-bed facility which meets the minimum standards and program rules for enrollment with DADS as an adult foster care facility contracted to provide long-term services and supports through Medicaid or Title XX.
- **Type E** - In a Type E facility, a resident must be physically and mentally capable of evacuating the facility unassisted. This designation may include persons who are mobile, although non-ambulatory, such as persons in wheelchairs or electric carts that have the capacity to transfer and evacuate themselves in an emergency. They must not require routine attendance during nighttime sleeping hours and must be capable of following directions under emergency conditions. Type E facilities may only provide medication supervision and general supervision of residents' welfare. Type E facilities may not provide substantial assistance with the activities of daily living such as assistance with meals, dressing, movement, bathing or other personal needs or maintenance.

Typical enforcement tools used in the regulation of assisted living facilities and other types of residential and health care facilities are suspension of payment, license revocation, the imposition of intermediary sanctions, such as the ability to admit patients, or fines and penalties

for continuous poor care. However, these remedies are difficult, if not impossible, to apply to boarding houses, since boarding houses do not have a license that can be revoked by DADS, do not have a payment source that can be suspended and do not rely on the state or other public entities for resident referrals. Technically, Texas could use the 1976 Keys amendment to work with the Social Security Administration to reduce SSI payments to poorly performing residential facilities. However, this strategy would inadvertently harm SSI recipients by reducing their benefits and would be administratively cumbersome.

While DADS does not regulate boarding houses, as mentioned previously, it does have the authority to investigate allegations that an establishment may be operating in violation of Chapter 247 of the Health and Safety Code. When DADS receives a complaint that an establishment is providing personal care services illegally, the complaint is evaluated to determine whether there is the possibility of an immediate threat to the residents. If such is the case, the threat is investigated within 24 hours. Non-immediate threats to residents are classified as high, medium or low; these are investigated within 14, 30 and 45 days respectively. Typically, the first time that DADS finds an establishment that is operating in violation of the statute (i.e., housing four or more people and offering personal care services to one or more persons without having an assisted living facility license), DADS will advise the operator in writing that he or she has two options: (1) reduce the number of residents in the house to three or fewer or (2) provide only room and board to residents. The operator is required to respond, and advise the state of the action taken to comply. If an operator continues to operate in violation of Chapter 247, based on a follow-up investigation, DADS will pursue injunctive relief and may file a lawsuit seeking civil penalties for each violation. During these legal actions, DADS may be represented by either the Office of the Attorney General or a local prosecutor. An operator who has a history of operating without a license, or has had a license expired, revoked or denied, is not offered the opportunity to come into compliance.

Local Oversight. With the exception of some large cities, little oversight or regulation has occurred at the local level even though cities do have authority to regulate boarding houses. One locality that has attempted a comprehensive strategy of boarding house oversight is the Dallas area (described later in this report). Dallas requires boarding houses to be inspected and obtain certificates of occupancy as part of a boarding house ordinance the city passed in 1998.

3. *Who Lives in Boarding Houses?*

The most common characteristic of residents of boarding houses is poverty. In most cases, residents of boarding houses, particularly those who rely on SSI benefits, live there because other affordable housing options are not available. To illustrate, in 2006, the national average rent for a one-bedroom apartment was \$715 per month, or approximately 113 percent of monthly SSI income.⁵ The average price for an apartment in Houston or Dallas ranged from \$715 to \$750, not including utilities. Utilities add about another \$100 to the apartment cost.⁶

⁵ Technical Assistance Collaborative, Inc., and Consortium for Citizens with Disabilities, *Priced Out in 2006*. Available at <http://www.tacinc.org/Docs/HH/PricedOutIn2006.pdf>.

⁶ Texas Apartments, available at Rent.com: <http://www.rent.com/rentals/texas/>.

In addition to being low-income, many boarding house residents have psychiatric disabilities. These individuals generally have few housing options, due to reasons connected to stigma and poverty. For individuals with disabilities significant enough to qualify for SSI, their monthly SSI benefit is \$637 per month,⁷ an amount that is insufficient to rent an inexpensive apartment in most parts of Texas and cover food and other expenses. Unlike some states, Texas does not supplement SSI, so no additional state-funded income is available for clients of boarding houses. Thus, even for individuals who pay their entire SSI check towards rent (leaving the individual without any discretionary income for transportation expenses, personal items, etc.) the boarding house operator would have to provide food and shelter for the individual on about \$21 per day. While Texas does offer a personal needs allowance, it does so only for clients in a Medicaid facility, such as a nursing home, where residents get a personal needs allowance of \$60 per month, per individual. No such personal needs allowance is available for residents of boarding houses.

In some boarding houses, residents who receive SSI benefits are required by the facility operators to turn over their entire monthly check by making the operator their representative payee. While this situation can be reasonable in some cases, it places the resident at a severe disadvantage in dealing with a facility that is abusive or derelict in its responsibilities. It can also interfere with a resident's attempts to move to a different location.

Establishments that are not required to be licensed may be more willing than licensed facilities to take the poorest and most troubled residents who have no other housing options. Licensed facilities generally are more expensive than establishments that are not required to be licensed, putting these facilities beyond the financial reach of individuals who are poor and who also need housing in an environment that provides supervision and oversight.

4. How Many Boarding Houses Exist in Texas?

Historically, knowing how many boarding houses are operating in Texas has been difficult because they are not reported on a statewide basis to any one public entity. Some national studies provide an indication of the size of the boarding house industry. However, these studies targeted "board and care homes" that provide food, shelter *and personal care services*. The definition of boarding houses in HB 1168, by excluding homes required to be licensed as assisted living facilities under Chapter 247 of the Texas Health and Safety Code, omits establishments that provide personal care services. Thus, while these estimates are for a different type of facility than boarding houses as defined in HB 1168, they provide an indication of the potential size of the combined Texas boarding house and assisted living facility industry.

National Estimates. Studies in the early 1990s estimated that approximately 34,000 licensed board and care homes serve about 600,000 residents and an additional 28,000 unlicensed homes serve about 400,000 residents across the entire United States. Of the total licensed board and

⁷ Social Security Administration. Social Security Online, available at <http://www.ssa.gov/ssi/text-benefits-ussi.htm>.

care homes, research has estimated that as many as 33 percent of the residents have a mental illness diagnosis.⁸

State Estimates. No current estimate that quantifies the number of boarding houses in Texas is available. An estimate of the number of boarding houses was contained in the fiscal note for HB 1168, which estimated that in FY 2007 3,141 homes serving the elderly or persons with disabilities statewide would fall under the requirements of the bill. Because boarding houses are not required by Texas law to be licensed, registered or otherwise regulated, an accurate count is difficult to produce. No single entity is charged with oversight. Establishments that are not required to be licensed are thought by many industry experts to be the fastest growing segment of the overall room and board industry and are also more likely to serve people with psychiatric disabilities.⁹

In Dallas, city officials estimate that at least 350 boarding houses are housing approximately 2,500 people.¹⁰ However, the city probably did not apply the HB 1168 definition of “boarding house” when providing its estimates. Dallas City officials believe that room and board establishments can fall under approximately 13 possible land-use definitions—from lodging residences to hotels and motels—and typically refer to these establishments collectively as “group homes.”

5. What Are the Current Concerns Regarding Use of Boarding Houses?

Many concerns about boarding houses have been brought to the attention of civic and state leaders, including unsafe conditions, inappropriate environments, financial improprieties, lack of effective oversight and unaddressed needs or inadequate medical or mental health care.

Safety Concerns. Numerous reports and news articles have chronicled the fact that some boarding houses present unsafe and unsanitary conditions for residents.¹¹ Some establishments are unclean, not adequately heated or cooled, in need of critical repairs, only offer food sporadically and house residents who have severe behavior problems and may, without adequate treatment and intervention, present a danger to themselves or other residents.

Isolation and Inappropriate Environments. Many boarding houses provide environments that are in conflict with both the community integration mandate contained in the *Olmstead v. L.C. and E.W.* decision and the movement to adopt a recovery orientation recommended in the President’s New Freedom Commission on Mental Health. Residents may be isolated and have few opportunities for community involvement.

⁸ *Transforming Housing for People with Psychiatric Disabilities Report*. HHS Pub. No. 4173. Rockville, MD: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 2006.

⁹ *Transforming Housing for People with Psychiatric Disabilities Report*. HHS Pub. No. 4173. Rockville, MD: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 2006.

¹⁰ Dallas Morning News, *Troubled residents languish in flophouses*, April 29, 2007, available at <http://www.dallasnews.com/sharedcontent/dws/news/localnews/stories/042907dnentflophouses.38f1a20.html>.

¹¹ See, for example, Dallas Morning News, *Troubled residents languish in flophouses*, April 29, 2007 or New York Times, *Illegal boarding houses pit city’s laws against lack of alternatives*, January 22, 2008.

Lack of Effective Oversight. States and local communities across the country have struggled with ways to ensure that establishments that provide care to at-risk populations have effective oversight. Despite the ongoing efforts to evaluate the concerns associated with at-risk individuals who live in boarding houses, little change has occurred. This lack of progress may be tied to the fact that many stakeholders believe that efforts to strengthen regulatory requirements will result in closures and increase the likelihood that boarding house residents will become homeless.

Financial Improprieties. Some boarding house operators require residents on SSI to name the facility operator as their representative payee. While this can be a legitimate arrangement, it also presents an opportunity for financial exploitation where residents can lose control over their finances and lose the ability to relocate from unsafe environments.

Inadequate Medical or Mental Health Care. Although facilities housing more than three residents are not legally permitted to perform personal care services for residents unless they are licensed as an assisted living facility, many boarding houses serve clients with significant mental health and medical needs. Unless staff members are appropriately trained to recognize problems (e.g., signs of dementia or psychosis) and assist clients in obtaining health care services (e.g., reminding them of medical appointments), many of these residents' needs will likely go unmet.

Stakeholders Assessment

Methodology

The stakeholders assessment was developed based on interviews with key stakeholders who have an interest in boarding houses. Stakeholders interviewed included representatives of state agencies, local officials, LMHAs, Area Agencies on Aging (AAAs), consumers, advocates and legislators. A complete list of stakeholders is provided in **Appendix B**.

Most interviews were conducted in person, with a small percentage conducted over the phone. A standard interview tool was developed to guide the interviews, although all interviews were structured to be open-ended to maximize the ability of respondents to inform the discussion and provide viewpoints that may not have otherwise been considered.

Once all interviews were complete, the key findings were summarized to create an assessment of the issues facing boarding houses from a stakeholder perspective.

Findings

Stakeholders generally had similar views regarding whether and how the boarding house industry should be overseen. Where different or conflicting input was obtained from stakeholders, we have noted the lack of consensus. Key findings from the stakeholder assessments are described below.

- The stakeholders interviewed believe that boarding houses fall into one of two categories:
 - Those for people with behavioral health disorders: These houses are believed to typically be the source of most complaints around boarding houses since they have clients with behavior problems due to mental health and/or substance abuse issues. Additionally, these individuals often, for a variety of reasons, are not receiving the services necessary to manage their behavioral health disorders.
 - Those for people who are aged: These houses are believed to be more likely to operate within the law, since residents receive personal care services from outside entities (e.g., a home health care agency). These houses serve an important role in the continuum between living independently and living in a nursing home and tend to generate fewer complaints, even when the care quality is poor.
- Texas does not have a sanctioned continuum of housing options for people with severe mental illnesses (SMI). Boarding houses have become part of a largely unsanctioned and unregulated continuum of housing for people with SMI.
- Housing that is safe and stable is a critical component of recovery for people with SMI.
- Personal care as a litmus test for when licensure is required poses a challenge for both operators and state regulators.

- Operators who serve clients with SMI but who for various reasons do not want to pursue licensure or who cannot meet licensure standards can either:
 - Not provide personal care (including medication services) despite the fact that the majority of their residents need this service and are likely to deteriorate without it; or
 - Provide the service needed by their residents, but then operate in violation of the assisted living facility requirements set forth in Chapter 247 of the Health and Safety Code.
- Short of conducting round the clock, on-site visits to all establishments that provide room and board, the nature of personal care makes knowing if an establishment is providing personal care difficult for regulators. Currently, a complaint being made to DADS is the mechanism to trigger an on-site inspection to determine if personal care services are being provided in violation of Chapter 247 of the Health and Safety Code. Because both residents and their providers fear that the resident may lose his housing, residents may be hesitant about lodging a complaint. When complaints are made, DADS regulators investigate and determine whether the establishment is providing personal care services in violation of Chapter 247. Since such investigations are complaint-driven and residents and their providers may be reluctant to file a complaint, DADS faces a clear challenge in knowing which establishments are boarding houses and which establishments are unlicensed assisted living facilities providing personal care in violation of Chapter 247.
- Characteristics of people who reside in boarding houses include:
 - Poverty – Many residents subsist on SSI income, which in 2008 is \$637 per month for an individual.
 - Isolation – Most residents have no or very limited family or other social supports.
 - Health conditions – Many residents have significant mental health or physical health needs.
 - Housing needs – Few other housing options exist for boarding house residents.
 - Other disorders – Many residents have co-occurring substance abuse disorders.
 - Adults – Most residents are adults; very few, if any, minors live in boarding houses.
- Reasons why individuals may live in boarding houses:
 - Poverty – Many individuals cannot afford anything else on their income (such as a *licensed* assisted living facility or an independent apartment).
 - Choice – Individuals may feel more comfortable in a place where they have contact with staff and other individuals with similar needs. HMA notes that

“choice” in this context was driven largely by the fact that few other options exist, such as a robust network of supported housing.

- Housing needs – Very few other housing options exist, particularly for clients with behavior problems (which can be linked to mental illness, substance abuse or both). Additionally, some percentage of people in boarding houses may have criminal histories, which will make them ineligible for federal Section 8 funds.
- Reasons why individuals may live in unlicensed assisted living facilities:
 - Assistance/supervision – Individuals may need the level of assistance/supervision that an operator of an unlicensed assisted living facility provides.
 - Level of staffing – Individuals are looking for housing that is *staffed*, i.e., provides services such as medication assistance, case management and general oversight. If an individual is coming out of a state hospital or has SMI, the individual may need more services than are provided in single room occupancy facilities, an independent apartment, or a boarding house.
- Most stakeholders recognize the challenge the state faces in calls for more regulation, since granting authority to regulate boarding houses creates resource challenges and may create a misperception that state regulation will address the complete spectrum of concerns raised in relation to boarding houses.
- Stakeholders differ on how they see the role of regulation. Some stakeholders feel that expanded regulatory authority or more aggressive enforcement of current regulations is the answer to the problem. Other stakeholders feel that more regulation would create more homelessness if the low-cost housing option provided by boarding houses were eliminated.
- Some stakeholders do not see any significant benefit to having local communities take a greater role in oversight and regulation and suggested that increased local oversight pushes the cost and responsibility on to local government, which is no more likely to be able to deal with this problem than the state.
- Some stakeholders feel that the current regulatory system, or lack thereof, is not effective and have implemented local efforts such as enforcement task forces to close poor facilities and raise the standards and local code enforcement effectiveness for operating boarding houses.
- Stakeholders are approaching this issue from many different vantage points.
 - Advocates and consumers are concerned with resident welfare, independence and safety.
 - Businesses are often concerned with keeping mentally ill clients off the streets. Some local businesses want the boarding house operators to limit an individual’s ability to leave the home.

- Mental health service providers (such as LMHAs) are “caught in the middle” since they serve clients in boarding houses and are frequently asked for housing referrals, but both mental health authorities and state psychiatric hospitals commonly interpret the Texas Administrative Code to mean they are prohibited from referring clients to an “unlicensed facility.”
- Neighborhoods and neighborhood associations complain about panhandling, behavior problems, public urination, etc.
- Elected officials are concerned with responding to complaints about local boarding houses raised by their constituents.
- Description of boarding houses and operators
 - Many boarding houses are rented rather than owned by the operators. Homes in rental units may “open or close overnight.”
 - Many boarding houses house multiple clients to a room. Stakeholders in the mental health arena believed that crowded facilities are more likely to exacerbate behavior problems, but are often the only facilities willing to take clients with behavior problems.
- Poorly operated boarding houses may impede recovery from mental illness and foster a sense of isolation and dependence.
- Housing may be “the missing link” in a path to recovery for many clients with mental illness. Mental health professionals stated that it is difficult to stabilize someone who is not in stable housing. Medications need to be held in reliable, stable locations, and they “can’t treat folks very successfully who are under the bridge.”
- Stakeholders are aware of and concerned about the consequences of increased regulation without simultaneously creating other, more appropriate housing options and funding for treatment, noting that if existing boarding houses are put out of business by regulatory requirements, then the burden on state hospitals, homeless shelters and criminal justice is likely to grow.
- Funded community care options are more available for the aged and physically disabled (though not adequate for the need), than for the SMI population. This lack of funding results in boarding houses, funded only by a client’s SSI check or other small income, filling the supportive housing gap.
- Providing oversight to at-risk individuals who reside in boarding houses is confounded by state policies on where state mental health facilities (SMHFs) and LMHAs can refer consumers. Title 25, Part I, Chapter 412, Section 412.202 of the Texas Administrative Code states that “[a] SMHF or LMHA may not refer a person to an assisted living facility that is not licensed under the Health and Safety Code.” While the Code is silent on boarding houses, interviewees stated that most LMHAs and SMHFs interpret this to mean that any housing provider to which they refer a client must be licensed.

- Since both LMHAs and state hospitals infer that they are prohibited from referring clients to unlicensed facilities, any problems associated with boarding houses occurs outside of open policy discussions. Improving the system will require open policy discussions.
- Perception of existing rules serves to limit the involvement of LMHAs and SMHFs in performing any oversight of the appropriateness of a person's living situation if they reside in an establishment that is not licensed by DADS (i.e., legal boarding houses and illegally unlicensed assisted living facilities).
- Availability of housing resources is limited:
 - LMHAs as well as other mental health stakeholders noted that housing money has diminished, and specifically referenced decreases in PATH and Tenant-based Rental Assistance.
 - Housing support is deteriorating, contributing to the problem and the use of boarding houses to fill the gap between living independently and homelessness.
- Stakeholders are aware of unlicensed establishments providing personal care, particularly around medication administration, which renders these establishments unlicensed assisted living facilities.
- Some stakeholders report that current licensure standards for Type E facilities do not sufficiently reflect the specific needs (e.g., mental health needs) and type of oversight necessary for establishments that primarily serve clients with mental illness who are capable of self-evacuation.

The Boarding House Database

Methodology

HMA used a variety of strategies to develop a comprehensive database of currently operating boarding houses in Texas. HMA obtained addresses of unlicensed establishments from DADS, the AAAs and the Adult Protective Services division within DFPS. These lists were merged, and any duplicate listings eliminated. Additional facilities were added using both internet searches and inquiries to agencies likely to refer clients to boarding houses. All potential entries to the boarding house database were checked against a listing of active facilities licensed as assisted living facilities under Chapter 247 of the Health and Safety Code. This assisted living facility list was generated by DADS on May 26, 2008. Any establishment that was included on this list of licensed facilities was not included in the boarding house database.

HMA contacted agencies most likely to have knowledge of boarding houses to request lists of houses. Since the population in boarding houses was assumed, based on previous research, to be comprised of either people with mental illnesses or people who are elderly, HMA requested assistance from providers and stakeholders familiar with these two constituencies. HMA contacted, via the Texas Council on Mental Health and Mental Retardation Centers, all 41 LMHAs to request contact information on boarding houses in the LMHA's service area. The response from the LMHAs was limited, with ten LMHAs responding to the survey in general and nine providing contact information on boarding houses in their service area. This low response rate is likely due to the fact that the contract that LMHAs have with the state includes the following provision: "A SMHF or LMHA may not refer a person to an assisted living facility that is not licensed under the Texas Health and Safety Code."¹² Some LMHAs may interpret this to mean that any housing provider that they refer a client to must be licensed, and thus they are reluctant to provide information that would suggest that they have knowledge of unlicensed housing. HMA contacted the DADS' Long Term Care Ombudsman's Office along with the Managing Local Ombudsmen at the 28 regional AAAs. These organizations assisted HMA by providing information on known locations from their Access database. This listing included locations that were previously identified as operating either in violation of Chapter 247 (which were referred for regulatory enforcement) or were not subject to licensure because of the size (three or fewer residents) or because no personal care services were being provided.

HMA also fully researched a SSI database provided by HHSC. When first received, this SSI database had over 30,000 address entries including any addresses in Texas to which multiple SSI checks were mailed. HMA designed an algorithm to identify and remove all long-term care facilities, transient and homeless shelters. Once these entries were removed, approximately 4,800 entries remained. HMA then performed between four and seven web searches on each remaining entry to determine if they appeared to be boarding houses. Any address that could possibly be a boarding house was screened against the licensed facilities database. All low-income housing, mobile home parks, licensed facilities and substantially incomplete addresses

¹² Texas Administrative Code, Title 25, Part I, Chapter 412, Subchapter D, Section 412.202.

were deleted. The SSI database yielded a total of seven confirmed boarding houses which HMA verified with subsequent interviews and added to the final boarding house database.

The low response rate from the LMHAs, compared to the extensive list of boarding houses provided by the AAAs, may have skewed the boarding house database to disproportionately represent boarding houses that primarily serve people who are elderly as opposed to those that serve people with mental illnesses. In order to correct this limitation, HMA contacted other key mental health stakeholders, such as advocates and other housing providers that serve people with mental illnesses. In almost all cases, the individuals contacted were reluctant to provide names of boarding houses, citing a concern that they would be putting the boarding house at risk for greater scrutiny by state regulators. HMA believes that the database does not include a considerable number of boarding houses that primarily serve people with mental illness.

HMA recognizes that the fact that the database may under-represent the number of boarding houses that primarily serve people with mental illness is a potential limitation of the study. HMA considered this limitation when using the boarding house database to draw conclusions about the characteristics of the boarding house industry. The database is a snap shot of boarding houses that HMA was able to locate in the summer of 2008. When interviews were conducted with boarding house staff or operators, HMA found frequently that the boarding houses' phone numbers had changed or been disconnected. Stakeholders also reported that boarding house operations moved often. All of these factors would have resulted in fewer houses being added to the database than the potential universe of boarding houses in Texas. Also, historical estimates on the number of boarding houses in Texas may have been too high.

Findings

The final boarding house database included 845 entries, spanning all 11 Texas Health and Human Service regions. The majority of boarding houses were found to be in urban areas. Region 6, home to both Houston and Galveston, had a total of 257 entries, while Region 10, which includes El Paso, had 167. The Dallas area, Region 3, had a total of 149 homes. Region 8, the San Antonio area, and Region 7, the Austin area, had 72 and 92 homes, respectively. Regions with the fewest number of boarding houses were Regions 1, 2, 4 and 9, which are predominantly rural areas.

Figure 1. Number of Boarding Houses Identified by the HMA Database, By HHSC Region

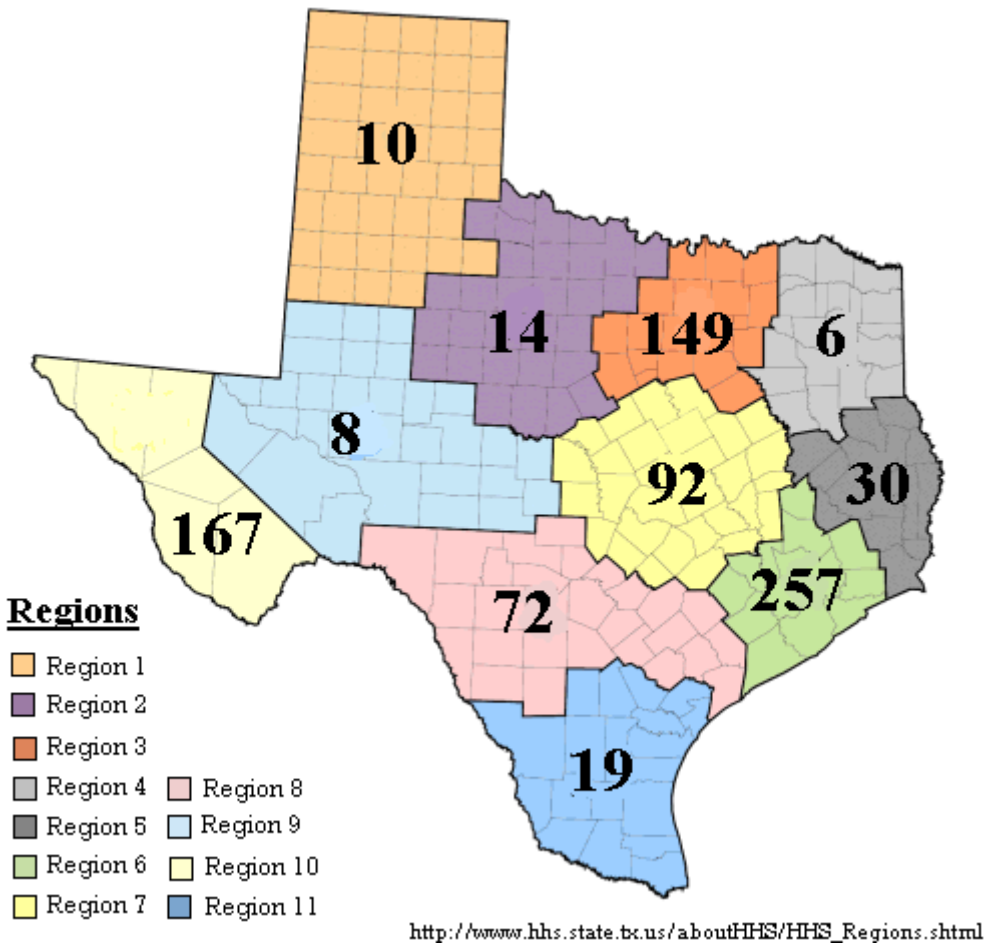


Figure 1, above, represents only those boarding houses identified and included in the boarding house database. The numbers are not exhaustive, and may exclude a number of existing boarding houses that stakeholders, for whatever reason, were reluctant to identify. Boarding houses that serve the SMI population, in particular, may not be adequately represented in **Figure 1**.

The Boarding House Interviews

Methodology

A total of 62 interviews were conducted with boarding house operators. All of the interviews were conducted by phone with either the owner of the boarding house or a manager or other staff familiar with the home's operations. A standard script was developed for each interview (See **Appendix C**). Interviews were conducted in either English or Spanish. The telephone survey included an introduction about the purpose of the survey, as well as information about the use of the survey response data, and was comprised of 16 questions. The survey gathered data about the boarding house as well as the demographics and service needs of the people who live there. Additionally, the survey included a question about the operator's reasons for not seeking state licensure. Interviews were conducted in the summer and fall of 2008. Interviewees were selected from the boarding house database. The sample selected was chosen to offer broad geographic representation and to ensure inclusion of both urban and rural respondents in the interview pool. The need to assure this representation and to begin conducting interviews prior to completing the development of the database prevented the interview sample from being chosen at random.

From July to October 2008, over 80 hours of calling time occurred to administer the boarding house survey. HMA encountered several challenges to obtaining a high survey completion response. Because of the somewhat transient nature of boarding houses, the predominant challenge was that the telephone numbers of more than 160 boarding houses in the database had either been disconnected or had a "no longer in service" recording. Secondly, some operators did not want to participate in the survey. Specifically, although the survey was conducted in Spanish, the majority of the homes in the El Paso area declined to participate, perhaps, although it cannot be confirmed, around concerns related to undocumented workers or residents. Thirdly, some of the homes indicated that they were a licensed facility (and thus not a boarding house as defined for the purposes of this study), although the establishment was not listed on the DADS licensed assisted living facility list of May 2008 we used as a cross-reference. As a result of these challenges, particularly the issue of the large percentage of numbers that were no longer in service, the findings from the interviews conducted of boarding houses from the database are likely more reflective of boarding houses that are more established and less reflective of boarding houses that are more transient and likely to be open for only short periods of time.

Findings

A total of 874 telephone calls were made that resulted in a total of 62 completed interviews. Fifty-eight percent of the interviews (36) were conducted with the owners of the boarding houses; 31 percent (19) with the on-site manager or operator; and 11 percent (7) with other staff members. Over 75 percent (47) of the boarding houses were owned (versus rented) properties. On average, the 62 boarding houses surveyed had been in operation 11 years and were able to accommodate 19 (18.7) residents and had 16 (15.6) residents in the home currently. Respondents to the survey said that more than one-third (36 percent) of the tenants had lived in the

respective boarding house for four years or more and the remainder for three months to three years. Of the homes surveyed, people with a mental illness were reported to represent 29 percent of the residents, and the aging population (i.e., older than 64) was reported to represent 37 percent. Of those houses surveyed, 20 percent had residents with a physical disability, 11 percent of residents were reported to have substance abuse problems and 9 percent had a cognitive disability.

The homes interviewed ranged from single family, one-story houses to apartment-type housing. Residents paid an average rent of \$650 or less per month. The higher monthly rental rates in excess of \$650 were the boarding houses that primarily had populations that were elderly or receiving hospice care. SSI, Social Security Disability Insurance (SSDI), family support and employment income were the primary sources of income for the tenants in the boarding houses.

When the survey respondents were asked about whether they would consider providing personal care services, 19 percent (12) indicated they did not intend to provide personal care services. One-third (20) of the respondents indicated that all of the following were reasons not to pursue licensure as an assisted living facility under Chapter 247 of the Health and Safety Code:

- The cost of meeting health and safety requirements;
- Staff recruitment and retention training; and
- Dealing with state oversight.

Several respondents voiced concerns about licensing agencies' staff and their ability to adequately understand boarding houses and how they differ from other facilities (e.g., nursing homes, adult foster care, etc.). While the interviewees were not specifically asked about whether they were aware of licensing requirements, their responses did indicate that they knew about licensing requirements under Chapter 247. Thus any lack of licensure was likely not a result of inadequate information on the part of boarding house operators. Additionally, some survey respondents offered to participate in an advisory capacity to assist the state with a review of the Texas boarding house industry and participate in a dialogue about related operational improvements.

Type E Assisted Living Facility Interviews

Methodology

Owners and operators of Type E facilities were interviewed to determine why this form of licensure, created to make licensure more feasible for small, unlicensed establishments who perform limited personal care (i.e., only medication supervision), is used by so few facilities.

HMA attempted to conduct phone interviews with all 20 facilities that were listed as a Type E facility as of May 26, 2008. Interviews with representatives of 14 of the facilities were completed during the summer of 2008. The facilities not interviewed either did not return messages, had a number that was not working or did not answer the phone.

Findings

As a result of recommendations made by the Senate Interim Committee on Home Health and Assisted Living Facilities, a new category of assisted living facility licensure was created for small facilities (16 beds or fewer) that serve people with general supervision and medication assistance needs only.¹³ This new licensure category was termed “Type E” and became available in 2002. The rationale provided by the Senate Interim Committee for creating this new category of licensure noted that this new type of licensure category could help LMHAs identify such facilities and provide better outreach.

Type E facilities may serve between four and sixteen residents who have self-evacuation capability (i.e., the ability to exit the facility in three minutes or less). Type E licensure requirements related to the Life and Safety Code are less stringent than those found in Type A, based on the fact that residents of Type E facilities must: be able to self-evacuate, not require routine attendance during nighttime sleeping hours, and be capable of following directions under emergency conditions.

HMA’s analysis of existing Type E facilities led to the following conclusions:

- Type E licensure is not widely used – only 20 facilities (as of May 2008) are licensed under this category.
- The Type E licensure category is being used more by corporate providers than by independent operators – 11 of the 20 Type E facilities are corporate entities, such as Wood Care Centers or Welcome House Incorporated.
- Type E facilities are concentrated in the San Antonio area. Eight facilities are in the San Antonio area, all of which appear to be independently owned (i.e., not corporate entities). The only other area with multiple Type E facilities is Dallas, with four facilities, although three of the four are owned by Welcome House Incorporated and are designed to serve residents with HIV/AIDS.

¹³ Senate Interim Committee on Home Health and Assisted Living Facilities, Report to the 76th Texas Legislature, October 1998, p. 69.

- All of the representatives of Type E facilities interviewed used Type E because it involves less stringent regulatory requirements than Type A, the other form of licensure that would be appropriate for their facilities.
- All of the representatives of Type E facilities interviewed said they believed that the Type E licensure category was not represented in terms of the types of training programs offered by DADS to licensed facilities, which they felt were geared more to facilities that care for residents of larger institutions, such as nursing homes, who require extensive personal care services.
- Interviews with the representatives of facilities that were independently owned and operated indicated these operators had the following in common:
 - All served a population that was primarily SMI. One facility exclusively served veterans with schizophrenia who were referred by the Veteran’s Administration.
 - All said financial viability was extremely challenging. One charged an average of \$500 per month, another charged based on a sliding scale and the third would not share payment rates.
 - All used at least some shared bedrooms for residents.
 - The average length of stay for residents was generally long – around five years.
 - All indicated they were aware of other providers that were having trouble meeting licensure requirements or navigating the licensure process.
 - All felt that the trainings provided by DADS and interactions with DADS officials could be improved if DADS were to recognize that the clients in Type E facilities tend to have distinctly different needs than those in larger facilities serving populations with greater personal care needs. Interviewees specifically noted that their clients tended to have serious mental illnesses such as schizophrenia as opposed to significant physical health needs that would be more likely in residents of Type B assisted living facilities and nursing facilities.

Other States – Best Practices

Methodology

The study design proposed that HMA would perform a high-level study to identify states that have addressed or are addressing boarding house regulation. HMA sent a survey to all 50 states which asked five basic questions:

- Does the state register or license boarding houses?
- If the state does not license boarding houses, does the state exempt boarding houses from licensure, and does the state reference boarding homes in statute or otherwise have a definition of boarding homes?
- Are you aware of any local communities that regulate boarding homes?
- Are you aware of any non-regulatory approaches that state or local governments use to assist persons residing in boarding homes?
- Do you have any other observations that you would like to make about boarding homes?

HMA followed up at least twice with states that did not respond initially. If, after two to three e-mail contacts a state did not respond, HMA researched the statutes and rules of that state to determine whether the state licensed or regulated boarding houses. For those states that appeared to regulate, HMA followed up with phone calls. HMA also followed up with phone calls to local communities that were identified by the states as regulating boarding houses. A limitation on the findings is that states who did not respond may regulate what Texas defines as a boarding house, per the definition in HB 1168, but it may be named differently in another state; therefore, statutory or rule searches may not find all regulatory references. Also, an important note is that states have varied and sometimes complex regulatory schemes. A key criteria used was whether the establishment was *not* permitted to provide personal care. If this was the case, we considered the requirements to align with the HB 1168 definition of a boarding house.

The two critical defining elements in the HB 1168 definition of “boarding house” and most of the statutes are whether an establishment is permitted to provide personal care and whether staff at the establishment can supervise the administration of medication. In most states personal care is defined as assistance with activities of daily living such as bathing, dressing, feeding, hygiene and ambulation. Supervision of medication usually means reminding the resident to take medications and helping them to remove them from the bottle or packaging.

In some cases states have ascending licensure requirements, with a boarding house constituting the minimum level. These states were categorized as regulating boarding houses. Finally, states most often do not regulate very small establishments, but the numerical cutoffs vary, usually from three to six residents. We considered these size limitations to be roughly similar to the HB 1168 definition of three or more unrelated persons.

Findings

Perhaps the most significant finding of the survey is that most states do not regulate boarding houses. Forty-two states were identified as not regulating boarding houses. Among the states that do regulate boarding houses in some form, regulation usually occurs in one of two places: a health or human services agency or a department of community affairs or commerce. Generally speaking, if the boarding house is regulated in community affairs, the rules are strongest in the areas of physical requirements. If they are regulated through the health and human services agencies, they will typically include more provisions for an assessment of the resident and limitations on the health services a resident may receive in the establishment.

HMA prepared detailed profiles of the eight states and two local communities who either license or register boarding houses. States which HMA found that license boarding houses include: Florida, Montana, New Jersey, Washington and Wyoming. Examples of communities that license boarding houses include Jefferson County, Alabama and Milwaukee, Wisconsin. States that register boarding houses include Kentucky, Oregon and Minnesota. Profiles of the regulatory requirements of states and local communities can be found in **Appendix D**.

In reviewing the states and local communities that do regulate boarding houses or similar room and board establishments, they typically have requirements in the following areas¹⁴:

- Client assessment and monitoring
- Service agreements with local agencies
- Medication administration
- Food and nutrition
- Coordination of health services
- Restricted egress from the establishment
- Resident records
- Staffing
- Licensee criminal history and background
- Staff training
- Owner and operator responsibilities
- Policies and procedures
- Fires and incidents
- Resident rights
- Safety and sanitation
- Other physical requirements
- Laundry
- Maintenance and housekeeping
- Enforcement
- Hearings and appeals

State and local agency staff commented often that they did not have adequate staff to meet their inspection requirements, and that they gave priority to nursing home inspections because of the

¹⁴ It is important to note that the HB 1168 definition of boarding house is not the definition of boarding house used in other states.

sanctions that the Centers for Medicare and Medicaid Services can levy if surveys are not completed on time. In Texas, the average time between the receipt of a complaint regarding unlicensed assisted living facilities and the investigation of a complaint, was 50 days in FY 2008. According to the DADS' prioritization standards, complaints that allege that the resident may be facing an immediate threat should be investigated within 24 hours. Complaints which allege a high, although not immediate, threat should be investigated within 14 days. Medium-level, non-immediate threats should be investigated within 30 days, and low-level, non-immediate threats are investigated within 45 days. The agency's complaint data indicates that their complaints alleging immediate potential harm to the residents are investigated according to these time frames, but complaint investigations for lower-level threats do not meet established time frames. Forty-seven percent of complaints that any type of a facility was violating state, federal or local laws were substantiated in 2007.

State survey agencies were generally unaware of other creative approaches that might be used as alternatives to boarding houses. HMA found that one of the most promising alternatives for persons with mental disabilities, long-term health disorders, long-term unemployment or chronic substance abuse is supportive housing programs. These projects offer affordable housing with a series of support services such as life-skills training, social services referral, job training, financial management assistance, individualized support services and counseling. Staff at a supported services housing facility do not provide health care services or personal care services, but help refer clients to necessary services.

A typical supported housing project consists of an apartment building, with strong security and house rules. A typical unit is a studio apartment of about 400 square feet. The mission of the housing operation can be tailored by the local community housing board to address a specific community problem, such as chronic homelessness. The buildings are financed with a combination of funds, including state housing trust funds, U.S. Department of Housing and Urban Development funds, state tax credits and private bank financing. The bonds are retired with rent payments from the clients and specially designated Section 8 Housing vouchers. Services that support the residents are usually financed with state and local grant funding. Health services are not provided on the site.

National Church Residences in Columbus, Ohio has two such housing operations and is poised to open a third. Cities which have been active in the nation in developing this kind of initiative usually do so at the request of the local community. Active areas of the country for supported housing are Phoenix, Chicago, New York, Minnesota and Columbus. The Chief Development Officer at National Church Residences reported that competition for state housing funds is stiff and a strong track record is important in the application process.

Other recommendations regarding boarding houses were included in a significant national study entitled *Transforming Housing for Persons with Psychiatric Disabilities*¹⁵. These recommendations include:

¹⁵ *Transforming Housing for People with Psychiatric Disabilities Report*. HHS Pub. No. 4173. Rockville, MD: Center for Mental Health services, Substance Abuse and Mental Health Services Administration, 2006.

1. Increasing the personal needs allowance for persons in boarding houses
2. Peer support, community outreach and education
3. Stronger Ombudsman programs
4. Stronger regulation of boarding houses - The study found that homes that were more closely regulated had stronger performance on some, but not all indicators of quality
5. A "Bill of Rights" for residents of boarding houses

HMA notes that these recommendations apply to establishments that provide personal care (i.e., licensed and unlicensed assisted living facilities) *and* those that do not (i.e., boarding houses as defined in HB 1168).

Local Ordinances – Texas

Methodology

The contract for this work requires HMA to identify local orders and ordinances that regulate boarding houses in Texas. In order to accomplish this task, HMA originally planned on working with the Texas Municipal League to identify and contact a select group of municipalities about their boarding house regulations, if any. Specifically, HMA proposed surveying the city attorney or mayor's office with a state-approved boarding house regulation questionnaire.

HMA contacted representatives of the Texas Municipal League, who stated that the league did not have any information relevant to the project, but did suggest that HMA contact the Texas District and County Attorneys Association. The only contact information HMA was able to obtain from the Texas District and County Attorneys Association was a list of county attorneys and their mailing addresses. The association was not able to share phone numbers or e-mail addresses, which likely contributed to the low survey participation rate. Only 20 out of 170 county attorneys responded to HMA's survey questionnaire (12 percent).

HMA supplemented its low survey participation rate by targeting the municipalities with at least four boarding houses as indicated by the boarding house database. HMA targeted these municipalities because HMA believed they would be more likely to engage in boarding house regulation due to the number of boarding houses operating within their borders.

After identifying the municipalities with at least four identified boarding houses within their borders, HMA reviewed each municipality's ordinances online to determine whether boarding houses were regulated and, if so, the kind of regulation. If the ordinances were not available online, HMA contacted the city attorney to determine whether the city regulated boarding houses. HMA also contacted counties in which the targeted cities were located in order to ascertain whether boarding houses were regulated at the county level.

Where HMA found examples of local regulation outside of standard zoning codes, food establishment regulations, fair housing codes and public accommodation standards, HMA contacted at least one official in the locality to discuss the regulatory scheme and its effectiveness in further detail.

Findings

Although local governments have the freedom and authority to act, specific regulation of boarding houses is not widespread at the local level. Based on our review of selected municipal ordinances, as well as the survey responses we received from county attorneys, we found that many localities do not specifically regulate boarding houses and that where regulation exists, it typically exists at the municipality, not county, level. Out of the 20 counties that responded to HMA's survey questionnaire, none indicated the existence of a county level order or ordinance. Some county attorneys recommended contacting city officials instead. HMA's informal phone conversations with district attorneys, county attorneys and county health departments produced similar results. Some counties expressed a belief that the responsibility for regulating boarding houses rested with the state.

According to our targeted research, at least 16 municipalities and one county regulate boarding houses in Texas. What we found, however, is that typical regulation at the local level is only in the form of indirect regulation. Boarding houses are frequently regulated by way of standard zoning requirements, food establishment regulations, waste and sewage standards, fair housing codes and public accommodation standards. This type of regulation applies to other businesses, such as restaurants and hotels, as well as housing units and establishments that could be considered boarding houses as defined in HB 1168.

Despite the finding that where regulation exists it is most typically in the form of indirect regulation, some municipalities do regulate boarding houses more specifically. These more specific forms of regulation range from boarding house building standards to county certification, city licensure or enforcement of state assisted living facility licensure requirements. In most cases, however, local ordinances do not address the need for protecting the medical, mental health, social and other needs of boarding house residents.

Out of the 17 localities that regulate boarding houses in some manner, **Table 1** below highlights those municipalities and counties that specifically regulate boarding houses in the form of building standards, county certification, city licensure or enforcement of state licensure requirements. This list was created based on the survey responses received, as well as a targeted review of certain municipal ordinances. This list is not exhaustive. If a city was not identified as having four or more boarding houses within their borders by the HMA database, their ordinances were not reviewed and will not be reflected in the results below.

HMA notes that the localities that specifically regulate boarding houses do not use the definition of “boarding house” provided in HB 1168. Each locality applies its own definition, and unlike the HB 1168 definition, these definitions typically do not exclude facilities that provide personal care services.

Table 1. Local Regulation of Boarding Houses

City/County	Is licensure, certification or registration required?	Type of Regulation			
		Planning, Development, Building or Fire Code	Hotel and Lodging Code	Health Code	Welfare Code
Arlington	No	X			
Austin	Yes	X			
Dallas	Yes	X			
Dallas County	Yes				X
Denton	No	X			

City/County	Is licensure, certification or registration required?	Type of Regulation			
		Planning, Development, Building or Fire Code	Hotel and Lodging Code	Health Code	Welfare Code
El Paso	Yes		X		
Fort Worth	No ¹⁶	X			
Garland	No	X			
San Antonio	No	X			

Examples of local ordinances that specifically regulate boarding houses outside of standard zoning codes, food establishment regulations, fair housing codes and public accommodation standards are listed below.

City of Austin. The City of Austin regulates boarding houses under its Land Development code. “Boarding house” is defined as “a building other than a hotel, where lodging and meals for six or more unrelated persons are provided for compensation.” (Sec 1301. of Chapter 25-12) Boarding houses must pay an application fee and obtain a license from the city, which will not be granted until the city determines that the owner has complied with all applicable ordinances and rules. (Sec. 1305-1307 of Chapter 25-12) Operating without a boarding house license is a misdemeanor punishable by a fine not to exceed \$2,000 per offense. (Sec. 1304 of Chapter 25-12)

Building officials maintain inspection rights over boarding houses to make sure they are not in violation of applicable housing or building codes. Licenses can be suspended or revoked for failure to comply with the prescribed standards. (Sec. 1308 of Chapter 25-12)

In Austin, the responsibility for overseeing boarding houses was recently transferred from the Watershed Protection and Development Review Department, which is in charge of building inspections and related activities, to the Code Compliance Department. The transfer occurred because the Watershed Protection and Development Review Department was not in a position to conduct the inspections necessary to keep all boarding house licenses up-to-date.

In order to obtain a boarding house license in Austin, an entity must comply with applicable zoning requirements and certificate of occupancy standards. Boarding houses are not inspected prior to city licensure, but an annual inspection is required as a condition of licensure. In the past year, the Code Compliance Department has focused on making sure all boarding house licenses are up-to-date and that unlicensed facilities obtain the required licensure. The department also follows up on any boarding house-related complaints. If a boarding house does not meet applicable zoning requirements or certificate of occupancy standards, the city will shut

¹⁶ Although the Fort Worth code specifies that boarding houses should be licensed and inspected as a multi-family dwelling, the city code was actually drafted in error according to code compliance staff and boarding houses do not need to be licensed as multi-family dwellings.

it down. According to Code Compliance staff, the number of boarding houses it finds operating outside of applicable standards has grown as a result of the recent housing crisis.

If the Code Compliance Department encounters a boarding house that appears to be housing four or more persons and providing personal or medical care to any of these persons, or should otherwise be licensed by the state as an assisted living facility, the department refers that case to the state.

The city is very aware of the issues surrounding boarding houses. In fact, a community worker was recently hired to assist the Code Compliance team. This community worker helps make sure that displaced residents find suitable housing when a facility is shut down. The community worker is also available to help refer residents with special needs to available community resources.

In practice, the boarding houses that are subject to regulation in Austin are student housing and low-income housing facilities. Group homes, such as those that house the developmentally disabled or individuals with substance abuse problems, largely fall outside of city regulation. According to the Code Compliance Department, group homes are protected under the federal Fair Housing Act pursuant to *City of Edmonds v. Oxford House, Inc.* (1995), a U.S. Supreme Court decision.

In *Edmonds*, a group home housing approximately 12 recovering substance abusers was located in a neighborhood zoned for single family residences. The city defined "family" as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons." When the city learned that the group home was operating in a neighborhood zoned for single family residences, it issued criminal citations against the home. The group home argued that the city's actions violated the Fair Housing Act (FHA), which declares it unlawful "[to] discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of... that buyer or renter."

At issue in this case was whether the city's ordinance governing areas zoned for single-family residences qualified for exemption from FHA scrutiny as "reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a building." Because the city's definition of family had the effect of restricting the maximum number of *unrelated* persons that could live together in a neighborhood zoned for single-family residences, but did not similarly restrict the number of *related* persons that could live together in the same neighborhood, the Supreme Court held that the city's ordinance was not exempt from the FHA. The FHA exemption applied only to occupancy limits that applied generally, not those that distinguished between different populations (such as related and unrelated persons).

Austin's Code Compliance Department interprets the *Edmonds* decision as interfering with its ability to regulate boarding houses where the boarding house can be characterized as a group home (e.g., establishments that house the developmentally disabled or recovering substance abusers). According to Austin Code Compliance staff, they receive many complaints regarding group homes that they are largely unable to address.

City of El Paso. The City of El Paso regulates boarding houses, referred to as “lodginghouses,” under its hotel and lodging code. Lodginghouses are defined as follows:

“any building or part of a building where four or more rooms, or eight or more beds, whichever accommodates the smaller number of persons, are offered at any one time as lodgings for compensation, whether with or without meals, except hotels, tourist courts and motels, and except light housekeeping rooms where bedclothes are not furnished.” (Sec. 17.08.010)

All lodginghouses in El Paso must obtain a city license and pay an annual fee. The city shares licensure information with the director of the city-county health unit and the chief of the fire department. (Sec. 17.08.120)

Lodginghouses must meet a variety of standards related to cleanliness, safety and health. For example, the ordinance directs how often bed sheets must be changed, how many bathroom facilities must be provided based on the number of residents, the frequency of sweeping the floors, etc. (Sec. 17.08.140). Licenses can be suspended or revoked for failure to comply with the prescribed standards. If a person operates a lodginghouse without a valid license, or does not meet the prescribed standards, they will be guilty of a misdemeanor punishable by fine.

Until recently, the City of El Paso required persons to obtain a special permit from the director of the city-county health district if their lodginghouse was serving persons of unsound mind. (Sec. 17.08.160—repealed) However, because “unsound mind” was not defined in the ordinance, and due to the difficulty the city-county health district was having in determining whether an individual was of “unsound mind,” this portion of the city ordinance was repealed.

City staff believe El Paso’s ordinance is effective insofar as it is intended, which is to ensure that the boarding house building infrastructure is sound and that certain basic health standards are met. Boarding houses are inspected prior to licensing and on an annual basis thereafter. The city also investigates all complaints received. If a boarding house or other facility appears to be housing four or more persons and providing medical care or other personal care services to any of those persons without the requisite assisted living facility license under Chapter 247 of the Health and Safety Code, city inspectors will notify the facility of their non-compliance and the need to obtain the necessary state licensure. Historically, most facilities obtain the necessary state licensure. The city representative interviewed could remember only two facilities in recent history that were shut down because they did not obtain the necessary state licensure but continued to provide personal care services.

Although city inspectors help ensure that facilities obtain the requisite city and/or state licensure where it does not exist, they believe they are not equipped to determine whether resident medical or other needs are being met. City staff believe that the city’s building and licensure standards easily fall under their realm of expertise, but also believe that state or county health department staff must become more involved in addressing the medical and personal needs of boarding house residents.

In addition to its lodginghouse regulations, HMA notes that El Paso appears to be the only municipality¹⁷ that has implemented Section 247.031 of the Health and Safety Code. This section authorizes municipalities to adopt ordinances that outlaw the operation of establishments that violate the assisted living facility requirements in Chapter 247. El Paso has adopted a local ordinance that gives the city the authority to seek civil, criminal or injunctive relief when a facility is operating in violation of the assisted living facility licensure requirements. El Paso's ordinance requires state licensure of assisted living facilities within their borders and grants an enforcement official the power to inspect any facility "purporting to be providing personal care services" to ensure that it is licensed and operating legally. (Sec. 5.46.040) The enforcement official is required to report to the Texas Department of Human Services (now DADS) any assisted living facility that poses a threat to the health and safety of its residents or an establishment that is operating without a valid assisted living facility license. (Sec. 5.46.040)

City of Forth Worth. Like other cities, the City of Fort Worth regulates boarding houses under its zoning ordinance. However, this city's zoning regulation is unique because it specifically requires boarding houses to comply with certain standards for the benefit of its residents. For example, no more than two occupants per sleeping room are permitted; rooms must comply with minimum size standards; and there must be at least one bathroom on every level. (Sec. 5.017A, Zoning Regulations)

According to the City of Forth Worth code of ordinances, boarding houses should also be regulated as multi-family dwellings under the city's building code. In this part of the code, boarding houses are referred to as lodging houses, which are defined as "a building other than a hotel, occupied as a single housekeeping unit, where lodging or meals are provided for five (5) or more persons for compensation, pursuant to previous arrangements, but not for the public or transients." (Sec. 7-394, Buildings)

All multi-family dwellings, which by definition in the city code include lodging houses, must obtain a certificate of occupancy. They must also register annually with the city's code compliance director and pay annual fees. Failure to obtain a certificate of occupancy and failure to register are offenses punishable by law. (Sec. 7-400 to 7-403, Buildings) The city inspects multi-family dwellings as often as deemed necessary, but no less than once every two years. (Sec. 7-403, Buildings) Both criminal and civil remedies, including injunctive relief, are available if a lodging house fails to comply with the multi-family dwelling home standards. (Sec. 7-416 and 7-417, Buildings)

Although the Fort Worth code specifies that boarding houses should be licensed and inspected as a multi-family dwelling and regulated as set forth above, code compliance staff indicated that the city code was actually drafted in error. In October of 2007, the city amended the section of the city code regarding multi-family dwellings. During this amendment process, boarding houses were accidentally included in the definition of "multi-family dwellings." According to

¹⁷ The City of Garland also regulates assisted living facilities, as defined in Chapter 247 of the Health and Safety Code, as well as other senior living facilities, but its regulation is limited to setting development and design standards of the facility. Garland's ordinance does not cover licensing or enforcement issues. (Sec. 34.50, et al)

code compliance staff, boarding houses have never been inspected or licensed by the city as a multi-family dwelling and there is no intention to make this change in practice in the future. Code compliance staff believe that an amendment to the code correcting the discrepancy between regulation and practice will be made in 2009. This means that boarding house regulation in Fort Worth is, in practice, limited to zoning-related activities, which only take place prior to a facility becoming zoned as a boarding house.

Code compliance staff indicate that they generally do not come across boarding house-related issues as a function of their positions, but that they may investigate two to three boarding house-related complaints a year. They also indicated that they do not believe many boarding houses exist in the Fort Worth area, although HMA's boarding house database indicates the existence of at least 37 boarding houses.

City of Garland. The City of Garland does not specifically regulate boarding houses, but it requires assisted living facilities, as defined under Chapter 247 of the Health and Safety Code and other facilities that serve seniors, to meet certain development standards. If a boarding house is designed to serve seniors, it will be regulated as an "independent senior living facility" by the city.

An independent senior living facility is defined as "a facility containing dwelling units, accessory uses and support services specifically designed for occupancy by persons 60 years of age or older." The definition includes facilities "for persons who are fully ambulatory or who require no medical or personal assistance or supervision, as well as accommodations for persons who require only limited or intermittent medical or personal assistance." (Sec. 34.50)

Both independent senior living facilities and assisted living facilities must meet prescribed development standards set forth in the city ordinance, but they are not required to be licensed or certified by the city. These development standards impact such characteristics as density, height, storage place, room size, parking, landscaping, lighting, signage, etc. (Sec. 34.50, et. al) The code does not specify whether the city has any enforcement power in the event of non-compliance with city or state standards; it appears the city's power is limited to reviewing building plans and providing initial approval if the plans meet the code's requirements.

According to city staff, all rental property must be licensed and registered with the Code Compliance Department, so the health and safety of boarding house residents will also be protected in this manner. Multi-family dwelling rental units are inspected annually for basic health and safety issues. If the Code Compliance Department receives a tenant complaint, the department will investigate the complaint. Although city staff could not recall an instance where a facility was found to be operating without the required assisted living facility licensure under Chapter 247, it indicated that in these cases it would refer the case to the state. It would not normally enforce a violation of state law.

Dallas. Both the City of Dallas and Dallas County regulate boarding houses. Boarding houses are regulated in Dallas County by virtue of being a service provider under the county's welfare system. The county provides welfare assistance, including shelter assistance and room and board, to low-income county residents under Section 54-51, et al., of its ordinance code. By

providing financial assistance to boarding house operators who comply with various requirements, Dallas County has potential leverage over boarding houses in its borders.

If the boarding house provides shelter assistance only, HMA interprets that the code does not require certification of the boarding house. However, in order to qualify for reimbursement from the county, the housing must not be unhealthy or unsafe. (Sec. 54-75)

If the boarding house provides more than shelter assistance, additional provisions apply. For example, in order to qualify for a daily reimbursement rate, the boarding house must be certified, enter an agreement with the county and agree to provide a minimum standard of care and services. (Sec. 54-82 and 54-85) Further, the individual must need the services, such as meal preparation, laundry, etc., for medical reasons.

In order to apply for certification by the county, the room and board operator must submit in writing a description of the services proposed; the number of individuals to be served; personnel numbers, qualification and assignments; and copies of licenses or certifications. (Sec. 54-85) County staff must conduct onsite visits before certifying the room and board facility and establishing its reimbursement rate. Certified facilities are reviewed on a semi-annual basis thereafter.

Additional provisions apply if the boarding house provides services to a mentally ill or terminally ill individual. If a mentally ill or terminally ill individual resides in a room and board facility, reimbursement to the facility is only available if the individual meets certain conditions. These conditions are as follows:

- The individual must need services such as meal preparation, laundry, etc.
- The individual may need assistance with administering medication.
- The individual must require and accept group or individual counseling, and/or medication management and/or supervision by staff. (Sec. 54-84)

In addition, the facility must meet certain service standards. For example, facilities providing services to clients with mental illness must provide: 1) Basic services (not defined); 2) Special care services, including group counseling, individual and family counseling and education, special medical care, job assistance, psychiatric consultation services, self-help support groups; and 3) Adequate staff to provide basic and support services or access for patients to mental health services. (Sec. 54-84) County human services staff investigate complaints and indications of non-compliance with the ordinance. Based on the magnitude of any deficiency found, the individuals receiving welfare assistance may be removed from the facility. (Sec. 54-85)

In the City of Dallas, a boarding house-like entity could fall under at least thirteen possible land use definitions. These potential land uses include lodging residence uses, institutional and community service uses and hotel and motel uses. The general term “group home” is typically used to refer to these various forms of group living.

According to city staff, group homes in the City of Dallas are inspected prior to opening and according to a regular schedule thereafter. This schedule varies depending on the land use involved. The city also inspects group homes after receiving a complaint from the community.

A multi-disciplinary group home inspection team was recently formed to help improve regulation and oversight of group homes in Dallas. This team is composed of a fire inspector, case worker, building inspector and code compliance officer. Like the community worker used in Austin, the case worker assists with displacement issues when a facility is shut down and is also available to help refer residents with special needs to available community resources. This multi-disciplinary team concept is very new, but preliminary feedback and results have been positive.

When the group home inspection team encounters a facility that should be licensed under state law as an assisted living facility, the case is referred to the state. According to city staff, however, the state may not be able to follow-up immediately due to its limited resources. Also, because the state provides a temporary period for the facility to come into compliance, a significant time may pass between the date of referral to the state and the date the facility is shut down, if required. During this time period the facility may continue to operate unless the facility is also violating a city ordinance that the city can use to force closure.

City staff indicate that problems often occur in Dallas because an entity that was originally established under one land use may over time transform into an entity that should actually be meeting other land use standards. Other problems include “people issues” such as overcrowding and resident medical or other needs not being addressed. City staff believe they are equipped to handle the land use issues, but need support from the state to address many of the “people” issues involved in boarding house regulation. City staff did not indicate which state entity they believed was in the best position to provide such assistance.

Commonalities and Differences of Local Regulation. Regulation of boarding houses at the local level is not standardized. Some localities regulate boarding houses and some do not regulate boarding houses. The most common form of regulation comes in the form of zoning codes, food establishment regulations, fair housing codes and public accommodation standards. Of those localities that regulate boarding houses, we found a number of similarities and differences:

- **Regulatory body.** Municipalities are much more likely to regulate boarding houses than counties. HMA located only one county that adopted an ordinance impacting boarding houses. This county was Dallas County, which regulates boarding houses to the extent they participate in the county welfare system.
- **Definition and terminology.** Depending on the locality, boarding houses may be referred to as a “lodging house,” “boarding home,” “boardinghouse,” “multi-family dwelling” or “room and board facility.” The definition of boarding house used in HB 1168 is not being used at the local level. In fact, no standard definition of boarding house exists. When boarding houses are defined, however, they are typically described as any building housing at least three to six unrelated persons for compensation.
- **Type of regulation.** Most local ordinances that regulate boarding houses come in the form of zoning codes, food establishment regulations, fair housing codes and public accommodation standards. Many boarding house regulations also prescribe certain building standards. However, at least four localities require city licensure, certification or registration of boarding houses. These localities include Austin, El Paso, Dallas

County (to the extent the facility participates in the county welfare system) and the City of Dallas. Some localities refer unlicensed assisted living facilities to the state, but only El Paso has adopted a local ordinance that gives the city the authority to seek civil, criminal or injunctive relief when a facility is operating in violation of the assisted living facility licensure requirements in Chapter 247.

- **Medical and other needs.** Local regulation largely does not address the medical or mental health needs of boarding house residents. However, Dallas County has adopted specific standards for boarding houses serving residents with special needs that participate in the county welfare system. The Dallas County welfare system will not reimburse boarding houses providing services to the terminally ill or mentally ill unless the services meet certain minimum standards.
- **Inspection rights.** Certain municipalities, including Austin, El Paso and Dallas County, provide inspection rights to city officials. These inspection rights permit city officials to determine the condition of boarding houses and similar facilities, and to determine whether a facility is operating unlawfully. For example, Dallas County visits facilities before placing county welfare recipients in the facility, and on a semi-annual basis thereafter.
- **Penalties.** Available penalties range from license suspension or revocation to criminal penalties in the form of a misdemeanor punishable by a fine. Typical fines are in the amount of \$2,000. Injunctive relief (i.e., shutting down a facility) is available under some municipal ordinances. In Dallas County, which regulates boarding houses under its welfare system, residents may be removed from the facility if deficiencies are determined to be critical.

Discussion of Key Findings

The following findings are those that HMA determined have the most relevance for setting new policy directions related to boarding houses. These findings were developed from a review of all of the various data sources used by HMA in this study (e.g., stakeholder assessment, boarding house interviews, national research, etc.) and thus represent findings where HMA identified strong consensus or alignment among the various sources of information. The findings are grouped by issue area.

Characteristics of Boarding Houses and Boarding House Residents

Finding #1: Boarding houses tend to serve either people with behavioral health disorders, people who are elderly or persons with disabilities.

- Boarding houses for people with behavioral health disorders: These houses are typically the source of most complaints around boarding houses since they have clients with behavior problems and who typically do not have access to personal care services.
- Boarding houses for people who are aged: These homes may operate less visibly, since their residents may be less likely to be mobile and disruptive in the community. These houses meet a need in the continuum between living independently and living in a nursing facility, particularly for individuals with low incomes, and tend to generate fewer complaints, even when the service quality is poor.

Finding #2: Many residents in boarding houses have a high likelihood of needing personal care services, as well as medical, mental health and social services. Interviews with both stakeholders and boarding house operators indicated that people in boarding houses in Texas have significant personal care needs. This finding is also echoed in national research on boarding houses.¹⁸ In addition, the interviews with boarding house representatives and staff indicate that residents need medical, mental health and social services. The boarding house representatives reported that 29 percent of their residents had mental health problems, 37 percent were elderly (including persons with Alzheimer's disease and/or in hospice care), 20 percent had a physical disability, 9 percent had a cognitive disability and 11 percent had substance abuse issues. Additionally, survey respondents replied that some of the residents also had AIDS, but did not specify a number.

Finding #3: Boarding houses are frequently used as long-term housing, as opposed to transitional or short-term housing. Of the boarding houses we interviewed, one-third of the persons residing in a boarding house in Texas had lived there four years or more and the remainder for three months to three years.

Finding #4: Boarding house residents have very low incomes. The poverty level and lack of resources of boarding house residents makes it difficult for even well-intentioned providers

¹⁸ *Transforming Housing for People with Psychiatric Disabilities Report*. HHS Pub. No. 4173. Rockville, MD: Center for Mental Health services, Substance Abuse and Mental Health Services Administration, 2006.

to offer adequate housing and oversight to clients with disabilities. This lack of resources was noted by almost all of the stakeholders we interviewed and confirmed by the interviews with boarding house operators. Of the boarding houses we surveyed, the residents' incomes were, on average, under \$650 per month. SSI and SSDI were the predominant sources of income. In 2008, SSI for an individual is \$637 per month; SSDI varies according to the individual's work history – in 2008 the estimated average benefit per month for an individual is \$1,004¹⁹. Looked at from the perspective of federal poverty levels, individuals whose only income is SSI would be well below the poverty level and an individual whose income was the average SSDI payment would be at less than 120 percent of the 2008 federal poverty level. (The federal poverty level for 2008 considers anyone with an individual annual income of less than \$10,400 to be in poverty.)

Current Texas Regulatory Policies

Finding #5: Texas law does not contain a standard definition of a boarding house. The definition in HB 1168 is not consistent with the exemption in Section 247.004 of the Health and Safety Code.

Finding #6: An accurate way of knowing how many boarding houses are in operation does not exist. Boarding houses, by definition in HB 1168, are not subject to licensure, and no entity is responsible for keeping a listing. The only registry required to be kept by DADS includes any type of establishment against which a complaint has been filed for illegally operating an assisted living facility. Other reasons that boarding houses are difficult to track are:

- Referral agencies may be reticent to report an illegally operating establishment for fear that they will be perceived as referring to an unlicensed facility.
- Many parties fear that a resident may lose his housing if a complaint is lodged.
- Operators go in and out of business frequently.
- Operators are wary of state oversight.

Finding #7: Providers, operators and local communities lack understanding about several regulatory issues. These issues include:

- The difference between a legally operating boarding house and an illegally unlicensed assisted living facility.
- The procedures that DADS must follow in order to afford an illegally operating assisted living facility an opportunity to correct its operations or cease doing business.
- The potential benefits of licensure as an assisted living facility in the event that an establishment houses a person with personal care needs.

Finding #8: State staff is insufficient to investigate, in a timely manner, complaints that personal care is being provided in an unlicensed facility. According to DADS, complaints

¹⁹ National Service Inclusion Project *Fact Sheet: What are Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI)?* Available at <http://www.nationalserviceresources.org/node/17901>.

alleging an immediate threat to a resident are investigated quickly and according to established standards. Complaint investigations of a more routine nature are not timely.

Finding #9: Whether or not personal care is provided is a key litmus test for when licensure is required. Operators who serve clients with personal care needs but who for various reasons do not want to pursue licensure or who cannot meet licensure standards can either:

- Not provide personal care (including medication services) despite the fact that many of their residents have a significant need for personal care and are likely to deteriorate without it; or
- Provide the service needed by their residents, which then means the establishment is operating in violation of Chapter 247 of the Health and Safety Code.

Finding #10: From the perspective of boarding house operators, Texas' current regulatory framework and the lack of state funding support for residential care offers few incentives to become licensed. Establishments that are illegally providing personal care without an assisted living facility license, as well as boarding houses that would like to provide personal care but do not due to the licensure requirements, have little incentive to become licensed, since licensure entails “up front” costs to comply with facility and program standards and is not associated with access to any additional payment source for resident care. Similarly, operators face little *disincentive* to operate illegally (i.e., provide personal care without a license), since detection only results in civil, as opposed to criminal, sanctions.

Finding #11: The Department of State Health Services (DSHS) administrative rules, designed to ensure that persons who are mentally ill are not referred to unsafe or inadequate housing, has been interpreted by SMHFs and LMHAs so narrowly as to preclude referral to any unlicensed establishment, even if it is not subject to licensure under Chapter 247 of the Health and Safety Code. Texas Administrative Code, Title 25, Part I, Chapter 412, Subchapter D, Section 412.202, states that “A SMHF or LMHA may not refer a person to an assisted living facility that is not licensed under the Texas Health and Safety Code.” While the Code is silent on boarding houses, stakeholders stated that most LMHAs and SMHFs interpret this rule to mean that any housing provider to which they refer a client must be licensed. This rule, and the way it has been interpreted by some local authorities and state hospitals, has served to limit the role of LMHAs and SMHFs in performing any oversight of appropriateness of a person’s living situation if they reside in an establishment that is not licensed (legally or illegally).

Finding #12: The “Type E” assisted living category was developed to encourage licensure of small facility providers that primarily serve people with mental illness who need general supervision and medication assistance. However, Type E has yet to develop into an effective and widely available housing resource for LMHAs. Only 20 Type E facilities exist in the state. More growth in the number of Type E-licensed facilities could help to reduce the number of unlicensed establishments that may be providing personal care illegally, open up more housing resources for low-income persons with mental illness and other disabilities and improve the quality of care for vulnerable residents. The current Type E program regulations are viewed by Type E operators as being more appropriate for larger institutional-type facilities than the smaller homes serving people with mental illnesses for which Type E was intended. Operators

of potential Type E facilities are often only taking in boarders and providing meals, shelter and medication supervision, and are not providing a full array of personal care services. Operators of these homes may be providing care for as little as \$21 dollars per day. The Type E regulations set admission, assessment and service provision expectations that may be beyond the scope of what is feasible for facility operators who must set affordable rents for people whose sole income is SSI. This finding does not apply to the Type E life safety requirements, which appear to be appropriately geared towards the smaller Type E settings, while establishing reasonable fire and safety requirements.

Finding #13: Local and state stakeholders report that some establishments are simply unacceptably dangerous, due to the housing's condition, sanitation, food safety or negligent operation. These establishments are operated by individuals that may have a history of repeatedly jeopardizing their residents' health and safety. Interviews with different stakeholder groups suggest that this type of operator, when confronted by state or local regulatory authorities, may simply move residents or the residence itself, and then reappear in a new location that poses the same threat to resident safety at the new address. DADS has the authority to close licensed assisted living facilities and relocate residents under Section 247.042 of the Health and Safety Code. DADS may also close unlicensed facilities and relocate residents if a court order has been obtained. However, DADS does not have authority over establishments that are not required to be licensed as an assisted living facility. As the system presently operates, some individuals are not deterred from willfully continuing to operate dangerous establishments that place vulnerable individuals' lives at risk. In addition, these chronic "bad operators" are only subject to the civil lawsuit process; local prosecutors do not presently have the option of pursuing criminal charges against bad operators, particularly repeat offenders.

Other States' Regulatory Strategies

Finding #14: The vast majority of states (40) do not regulate boarding houses. Eight states do regulate these establishments, five of which administer a licensure program (Washington, New Jersey, Florida, Wyoming and Illinois). Two of these states license boarding houses through their community affairs departments along with hotels, motels and resorts. Four states register boarding houses (Kentucky, Oregon, Minnesota and Montana). These states' licensure or registration rules range from very basic requirements to those in extreme detail.

Finding #15: Of those states that do regulate boarding houses, the rules varied in scope and complexity. The states we interviewed suggested that they were short of staff to adequately inspect the boarding houses. When states regulated boarding houses through the department of public health, many reported giving priority to nursing home regulation, largely due to the financial penalties that the federal government levies for states that do not meet survey schedules.

Local and Municipal Ordinances

Finding #16: No standard definition of boarding house exists at the local level. Both HB 1168 and Chapter 247 of the Health and Safety Code provide potential standard definitions of boarding houses. However, these state definitions are not being used by local governments. In fact, no standard definition of boarding house is used at the local level. Municipal ordinances typically define boarding houses as any building housing at least three to six unrelated persons for compensation. Whether community meals or other services must be provided in order to be characterized as a boarding house under the local ordinance varies from location to location.

Finding #17: Many localities do not specifically regulate boarding houses. Where specific regulation exists, the requirements and enforcement tools vary. Available protections for boarding house residents at the local level are highly dependent on a boarding house's location. Boarding house residents in one city may be afforded more protection and oversight than boarding house residents in another city. In fact, many local governments, particularly counties, do not specifically regulate boarding houses. Where cities have specific regulation, consistency across the local ordinances is lacking. Local ordinances range from standard zoning codes, food establishment regulations and building standards to more specific city licensure or certification programs. Localities that provide for city licensure or certification typically engage in increased oversight of boarding houses within their borders.

Finding #18: Although Section 247.031 of the Health and Safety Code allows municipalities to establish, by local ordinance, procedures for emergency closure of assisted living facilities operating without a license that threaten the health and safety of residents, most municipalities have not taken advantage of this power. Section 247.031 authorizes municipalities to adopt ordinances that outlaw the operation of establishments that violate the assisted living facility requirements in Chapter 247. Despite this specific grant of authority, the municipal codes we reviewed indicate that the majority of municipalities do not take advantage of this power. The only municipality HMA found dedicating a chapter of its code of ordinances to establishments operating in violation of the assisted living facility requirements in Chapter 247 was the City of El Paso.²⁰

Finding #19: Some localities have adopted creative solutions to address the unique problems boarding houses can create. For example, in both Austin and Dallas, social workers accompany code compliance teams to help refer residents with special needs to available community resources. These social workers are also available to make sure that, if a facility is shut down due to health or safety concerns, displaced residents are able to find suitable replacement housing. In Dallas, a multi-disciplinary group home inspection team is used to inspect boarding houses. This team is composed of a fire inspector, case worker, building inspector and code compliance officer. By involving staff from different backgrounds and areas of expertise, the

²⁰ The City of Garland also regulates assisted living facilities, as defined in Chapter 247 of the Health and Safety Code, as well as other senior living facilities, but its regulation is limited to setting development and design standards of the facility. Garland's ordinance does not cover licensing or enforcement issues. (Sec. 34.50, et al)

city aims to help improve regulation and oversight of room and board establishments and their residents in Dallas.

Finding #20: City inspectors often voiced concerns about their role in overseeing boarding houses. While they are comfortable ensuring that facility infrastructures are sound and that certain basic health standards are met, they are not equipped to determine whether residents' medical or other needs are being met. In some cities, boarding houses are inspected prior to licensing and/or on an annual basis thereafter. Many cities also investigate any complaints received. Although city inspectors help ensure that facilities obtain the requisite licensure where applicable, and that building infrastructure is sound, they believe they are not equipped to determine whether residents' medical or other needs are being met. Many inspectors believed that building and licensure standards fell under their realm of expertise, but that state or county health department staff must become more involved in addressing the medical and personal needs of boarding house residents.

Housing Options for Residents of Boarding Houses are Limited

Finding #21: For the poor or near poor aging and disabled population in boarding houses, funding for affordable residential care alternatives is very limited, though there are a few more options than for mentally ill residents. Medicaid has limited funding for licensed assisted living through the Community-Based Alternatives (CBA) waiver. This waiver funding is available both through the STAR+PLUS managed care program (29 counties) and through DADS CBA program in the remaining counties in the state. However, the availability of statewide waiver slots is limited and the number of individuals served in assisted living appears to be declining, at least in the DADS fee for service (non-managed care) counties. A very small amount of Title XX funds (the federal Social Services Block Grant) pays for about 600 residents statewide. Additionally, assisted living funding through the CBA waiver is by definition only available for residents who have needs serious enough to meet a nursing home level of care.

Finding #22: There is a lack of appropriate and affordable alternatives to boarding houses, particularly for people with mental illness, who may have behaviors or other issues that prevent them from being able to use other housing alternatives. Nationally, some four million people receive SSI, yet housing that people with SSI can afford remains in short supply compared with the need. The average cost nationwide of renting a one-bedroom apartment would require a person receiving SSI to pay 109.6 percent of his or her monthly income towards rent. Additionally, individuals attempting to exit homelessness have been affected by the reduced availability of housing vouchers, public housing and units in Section 8 projects that would help narrow the gap between incomes and housing costs. The only federal housing program that has produced significant numbers of additional rental housing units, the Low Income Housing Tax Credit, has rents set at a fixed dollar amount rather than as a percentage of a household's income, and those rents usually are not affordable for households with poverty incomes. In addition, choosing to allocate tax credit resources to programs targeted to homeless people often means states must trade off using limited resources for people who are homeless against preserving or expanding housing for people who are low-income but not homeless. As a

result of the absence of affordable housing options, boarding houses fulfill a critical component of the existing housing continuum.²¹ Without the presence of the boarding house industry, many current residents would likely be homeless.

²¹ Gretchen Locke et al, *Housing Models*, Paper Developed for the National Symposium on Homelessness Research, (2207). Available at <http://aspe.hhs.gov/hsp/homelessness/symposium07/locke/index.htm>.

Recommendations

The recommendations which follow are based on the background and findings in this report and the instructions in the contract for this work to put forward “recommendations that result in a systematic approach to protecting the health, safety and well-being of Texans residing in boarding houses.” Ultimately, the issues surrounding boarding houses highlight the need for comprehensive policy solutions, including attention to the housing and health care needs of people who reside in boarding houses.

HMA’s assessment is that, because the problems surrounding boarding houses are complex and often poorly understood and the solutions are potentially costly and multi-faceted, a comprehensive approach to the problem has not been achieved to date. HMA also found that at many levels of government, well-intentioned people believe that some other agency or jurisdiction should be addressing the issue. Referring agencies, law enforcement and regulatory agencies do not want boarding houses to cease operating, but they do want them to house persons who they can serve appropriately and not create health or safety problems in their neighborhoods. Insufficient housing and social service capacity has left these very low-income and often disabled residents with few alternatives between boarding houses and homelessness.

HMA considered the possibility of revising the assisted living facility licensure rules to include regulation of boarding houses and to permit this type of facility to provide personal care services; however, we concluded that, in general, the current Texas regulatory provisions reflect the minimum standards that a state should permit for persons who have care needs.

The thrust of HMA’s recommendations is that the state should:

- Provide additional safe and stable housing and supports for low-income clients, particularly those with mental illness.
- Develop a means to better identify existing boarding houses to allow for outreach and education when necessary.
- Enforce the existing assisted living facility rules in a timely fashion.
- Encourage more boarding establishments to become licensed assisted living facilities to open up better quality housing, particularly for residents with mental illnesses.
- Better educate and communicate with boarding house operators, local community agencies and law enforcement.
- Provide more financial support for poor or near poor aged and disabled individuals, particularly for persons with mental illness.

The recommendations that follow are listed in no particular order.

Recommendation #1: Texas Statutes should be revised to include a definition of “boarding house.”

This definition should include language similar to the following:

“A boarding house is an establishment that has rooms for rent to four or more persons who are unrelated to the owner by blood or consanguinity, and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services but that does not provide personal care services.”

The definition should also make it clear that child care facilities, family violence centers, hotels, retirement communities, dormitories affiliated with higher education and monasteries or convents are not considered boarding houses for purposes of the definition.

Related Findings: This recommendation relates to Findings #5 and #7.

Rationale: A standard definition of “boarding house” is needed in order to implement Recommendation #2, below. In addition, a lack of clarity about the term and what it means from a regulatory standpoint has contributed to confusion about how, and by what entity, room and board establishments are regulated. A standard definition would help address some of these concerns.

Entity Responsible for Implementing the Recommendation: The Texas Legislature would be responsible for revising Texas statute to define a boarding house. The exemption in Section 247.5 of the Health and Safety Code should conform to the new definition.

Requirements for Implementation: The legislation would require drafting, introduction and passage according to established legislative procedures.

Impact: A standard definition will make clear to all interested parties what a boarding house is, and the services it may provide.

Timeframe for Implementation: This recommendation could be implemented as soon as September 1, 2009, assuming the 81st Legislature and the Governor enacted the legislation during the regular session.

Other concerns: None.

Recommendation #2: Boarding house owners should be required to register with the state. The state should impose a modest fee for registering, sufficient to cover the costs of maintaining the registry. The state should also propose a \$200 fine for boarding houses which do not register with the state, once they have been advised that they must register.

Related Findings: This recommendation relates to Findings #6 and #7.

Rationale: The state has had a long-standing problem locating boarding houses. In Section 247.063(b) of the Health and Safety Code, there is an obligation placed upon local mental health and mental retardation agencies to report the names, addresses and telephone numbers of establishments illegally providing personal care without an assisted living facility license.

However, nowhere in the code is there an obligation of boarding house owners to register their establishment. Since the state does not have a complete listing of boarding houses and they go in and out of business and move frequently, it is difficult for HHSC to provide them with information about what they may legally do for their residents, or to give them an opportunity to become licensed as an assisted living facility. A registry requirement would help address these concerns.

Entity Responsible for Implementing Recommendation: An option would be to require DSHS, to maintaining the registry. The Texas Legislature would be responsible for authorizing the registry in statute.

Requirements for Implementation: Once implemented, this recommendation would require the state to inform boarding houses that they need to register, collect the registration fee and maintain a database to keep registrations up to date. DSHS would also need to educate boarding houses of the circumstances under which they would need to obtain licensure as an assisted living facility, for example, if the owner wishes to provide personal care.

Impact: A registry will eventually give the state an idea of how many boarding houses are in operation at all times. DSHS could provide information to the boarding houses and local agencies about the services the houses may and may not provide. DSHS could also provide information about the assisted living licensure program and refer the boarding house to DADS in the event that a boarding house that wishes to provide personal care may become licensed. This recommendation does not change the ability of DADS to investigate an establishment that is illegally providing personal care services (i.e., an unlicensed assisted living facility).

Timeframe for Implementation: The estimated time to implement this recommendation is two years. DSHS would need to design the registry program, propose rules in the administrative code, notify local communities, collect a fee and maintain the registry.

Other concerns: With a registry program, some boarding house operators may choose not to continue operations. Also, consumers may mistakenly see registration as an endorsement of the quality of the boarding house, which it will not be.

Recommendation #3: Require HHSC to provide materials to the boarding houses explaining the services they may provide and information about licensure.

Related Findings: This recommendation relates to Finding #7.

Rationale: Although boarding house operators felt they understood the licensure requirements, 30% said that health and safety codes and staff training requirements were reasons they had not pursued licensure. After a review of these requirements, particularly for Type E facilities, HMA did not find these requirements to pose substantial barriers. HMA also found that there is substantial turnover in this industry, which means that providing information to new boarding house operators would be beneficial. Implementing this recommendation will allow the state to provide accurate information to boarding house operators and will enable the state to contact providers in an emergency. Education to boarding houses may also allow the state to encourage

boarding houses wishing to offer personal care services or medication supervision to become licensed as an assisted living facility.

Entity Responsible for Implementing Recommendation: An option would be to make DSHS responsible for the education and outreach related to this recommendation.

Requirements for Implementation: DSHS could be required to print and distribute information to boarding house operators when they register.

Impact: The impact of this recommendation will be more informed boarding house operators, and potentially additional licensed assisted living facilities. There will be a cost to the state to print materials.

Timeframe for Implementation: Within one year after passage of the registry rules.

Other concerns: None.

Recommendation #4: Revise the Assisted Living Facility Type E licensure category to better reflect the type of small, limited service facilities for residents with mental illness that was the original intent of this category.

HHSC should lead an effort to revise the existing Assisted Living Facility Type E licensure requirements. As part of this effort, HHSC should convene a work group of currently licensed Type E operators, unlicensed boarding house operators (that would like to convert to Type E status), mental health advocates, AAA representatives, regional DADS regulatory staff, local mental health authority staff and DSHS mental health staff to revise the Type E regulations (excepting the Type E Life Safety Code and basic health requirements). The revised regulations should reflect an understanding that these facilities and the population they serve are significantly different from traditional, large assisted living facilities and operate on very low profit margins. The revision effort should reflect a limited focus on key areas: basic supervision, resident well-being, nutritional quality and medication monitoring. Finally, the revised regulations and any related community outreach should be done with the understanding that a key policy goal in revising this licensure category is to make it feasible for more boarding home operators to become licensed under this category.

Related Findings: This recommendation relates to Finding #12.

Rationale: The Type E assisted living facility category was created to address a 1998 recommendation from the Senate Interim Committee on Home Health and Assisted Living Facilities. The intent of the recommendation was to create more small licensed programs for residents with mental illness, who primarily needed assistance with medication management. However, growth in this type of program never really materialized – only 20 Type E programs exist statewide. More growth in the number of Type E-licensed facilities could help to reduce the number of establishments that may be providing personal care illegally and, especially if combined with additional housing support funding (see Recommendation #12), open up more quality housing resources for low-income persons with mental illness and other disabilities.

Entity Responsible for Implementing Recommendation: HHSC should be responsible for overseeing this recommendation, since boarding house residents often have multiple needs, and some are also aged. HHSC should also evaluate whether regulatory oversight of a revised Type E licensure category should continue to be housed at DADS or if there is sufficient reason to move this regulatory function to DSHS. This evaluation should consider the following issues that suggest moving this program to DSHS:

- The Type E program, while not exclusive to residents with mental illness, was created to provide more licensed options for residents with mental illness who mainly needed supervision and medication management.
- DSHS currently manages services for people with serious mental illnesses, and thus has greater awareness of mental health issues which should be a larger component of the training and oversight provided by state regulators of Type E facilities.
- DSHS already has a strong regulatory presence and regulation of facilities serving persons with mental disabilities is consistent with current regulatory efforts.

HHSC should also consider the following issues that support keeping this function at DADS:

- Other assisted living programs are already regulated through DADS, and shifting the regulatory administration from DADS to DSHS would bifurcate the system. This could have the effect of providing disincentives for providers to expand from a Type A or B facility to a Type E facility and vice versa since it would entail switching from one regulatory body to another.
- Since there are only a small number of Type E programs in existence, the cost of creating a new regulatory system at DSHS for 20 facilities is hard to justify. The economies of scale would be lost if the regulation of assisted living facilities were split between two state agencies.

Both DADS and DSHS' regulatory divisions report being over taxed in meeting all the regulatory requirements required by law. Adding an additional regulatory element to the regulatory division could exacerbate the under-staffing situation.

Regardless of whether the oversight of Type E licensure category remains at DADS or is transferred to DSHS, there will need to be continued coordination between both DADS and DSHS, since the residents of this category of assisted living facilities are served frequently by both agencies. HHSC should ensure this coordination occurs in developing the revised licensure standards and continues through implementation and operation.

Requirements for Implementation: HHSC would need to take or delegate to another state agency the following actions to implement this recommendation:

1. Convene the stakeholder work group and solicit input on revisions to the existing Type E regulations.

2. Based on stakeholder input, revise the regulations and submit them for public comment and final adoption through the Texas Register process.
3. Share final regulations with stakeholder work group and other interested parties.
4. Implement the adopted regulations by providing training and information to regional state regulatory staff and local ombudsman staff.
5. Disseminate information on the rule changes to known boarding houses, DADS state and regional staff, DSHS state and regional staff and LMHAs.

Impact: The primary impact of this recommendation would be to encourage growth of Type E facilities and to have a modest impact on the quality and quantity of licensed residential care for residents with mental illness. If more boarding houses (which cannot legally manage medications) converted to licensed programs that can provide medication management, outcomes for residents and other stakeholders, such as neighborhoods, are likely to improve. For boarding house operators, simpler Type E regulations may encourage more operators to become licensed, which would be expected to lead to improved health, safety and quality of care necessary to meet licensure standards. Communities could see a modest decrease in problems related to boarding houses with mentally ill residents if more licensed facilities were available. Implementing this recommendation may result in a modest increase in the number of Type E license applications and related workload, especially if additional housing funding is made available to LMHAs (see Recommendation #12).

Timeframe for Implementation: This recommendation could be implemented immediately and is not dependent on legislative action. The stakeholder process and rule revision would likely take a minimum of twelve to eighteen months.

Other Concerns: This recommendation could be implemented independent of other recommendations in this report, but would be most effective if implemented in combination with Recommendation #12, related to increased housing support for persons with mental illness. Since that funding stream would be tied to licensed housing settings, it may have the effect of increasing the number of Type E assisted living facilities.

Recommendation #5: The state should not rely on, or require, counties or municipalities to specifically regulate boarding houses located within their borders.

Related Findings: This recommendation relates to Findings #17 and #20.

Rationale: Local government in Texas is already free to regulate boarding houses. Granting new or additional authority to municipalities in this area is not necessary. However, our research indicates that few localities have taken on the responsibility of mandating boarding house certification or licensure. Of those that have, applicable definitions and standards vary from city to city. A comprehensive statewide approach is therefore necessary to ensure that boarding house residents in one location are afforded the same protections of boarding house residents in other parts of the state.

One option for ensuring uniformity would be to mandate certain standards at the state level, but to require the local governments to implement and enforce such standards. This solution is not recommended. Our research did not uncover any states with a similar regulatory scheme, although some states do permit local governments to adopt their own ordinances with respect to boarding houses, so long as they substantially comply with the state's standards. In addition, even those municipalities in Texas that specifically regulate boarding houses, such as El Paso, believe that they are ill equipped—in both resources and expertise—to address the medical, social and other needs of boarding house residents. The traditional role of local code enforcement and building inspection teams is to ensure that basic health and safety standards are met. City staff often feel uncomfortable assessing whether a resident's needs would be better served elsewhere. Because the bulk of boarding house residents are aged or suffer from mental illness, and services and regulatory protections for these populations have historically been adopted at the state level, the state is better positioned to make sure the medical and social needs of the vulnerable boarding house population are being addressed. Additionally, DADS is already charged with regulating assisted living facilities and many unlicensed establishments are suspected of providing personal care without the required licensure as an assisted living facility.

In contemplating whether specific oversight of boarding houses should be required at the local level, HMA notes that any kind of standards set at the state level would only be effective if local authorities were willing to shut down boarding houses operating outside of those standards. With the current scarcity of other housing options available for boarding house residents, authorities may be hesitant to close facilities and the goals of the standards would not be met.

Entity Responsible for Implementing the Recommendation: This recommendation does not require implementation efforts.

Requirements for Implementation: Not applicable.

Impact: An implication of this recommendation is that any actions taken to address the problems related to boarding houses, including efforts to meet the medical and social needs of boarding house residents, would largely take place at the state level. Statewide activity is encouraged to help make sure boarding house residents in one location are afforded the same protections of boarding house residents in other parts of the state.

Local governments could continue to regulate or require licensure of boarding houses as necessary to address the unique issues boarding houses in their borders present, but would not be required to do so. If Recommendation #1 is adopted, inconsistent definitions of boarding houses could exist at the state and local level.

Timeframe for Implementation: Not applicable.

Other concerns: Relying on this recommendation in isolation, without adopting some or all of the recommendations outlined above, will result in the status quo. A multi-faceted, statewide approach, including but not limited to registering boarding houses, encouraging establishments to become licensed as Type E assisted living facilities and making more resources available to boarding house residents, is necessary to help address the needs of boarding house residents.

Recommendation #6: DADS should conduct outreach to reinforce the existing authority municipalities have to establish, by ordinance, a procedure for emergency closure of unsafe and unlicensed assisted living facilities.

Related Findings: This recommendation relates to Findings #13 and #18.

Rationale: Municipalities already have the power, in Section 247.031 of the Health and Safety Code, to adopt an ordinance that prohibits unlicensed assisted living facilities from operating within their borders, and/or that provides for the emergency closure of unlicensed assisted living facilities when the life and health of residents are at risk. The municipal codes we reviewed indicate that the majority of municipalities have not taken advantage of this power. Local governments may not be aware of their authority in this regard. Educating municipal officials could lead to increased activity at the municipal level that would help support DADS' efforts in making sure personal care is not provided in unlicensed facilities, and that unsafe, unlicensed assisted living facilities are shut down in a swift manner.

Some municipalities have indicated that when they refer cases of potentially unlicensed assisted living facilities to the state, significant time may pass before an establishment reduces census (i.e., decreases the number of residents to three residents or less so it no longer requires licensure under Chapter 247 of the Health and Safety Code), becomes licensed or is closed. For this reason, education and outreach should emphasize that adopting an emergency closure ordinance would give municipalities the power to act. The outreach efforts could also be used to encourage municipal officials to assist the state in its enforcement activities, and should inform local municipalities of supports that can help in the diversion of residents to other living arrangements, such as LMHAs, AAAs, etc.

Entity Responsible for Implementing the Recommendation: DADS would be responsible for conducting outreach to municipal officials. The outreach and education could take the form of regional meetings with municipal officials, distribution of printed materials, speaking engagements at statewide meetings of municipal officials or all of the above.

Requirements for Implementation: DADS must develop a communications plan for educating municipalities about Section 247.031 of the Health and Safety Code. DADS must also create outreach and training materials and distribute according to the communications plan. If planned outreach includes speaking engagements, DADS staff must schedule regional meetings, reserve meeting space and invite potential attendees.

Impact: The impact of this recommendation will be more informed municipalities, and potentially the adoption of municipal ordinances that provide a mechanism for the emergency closure of unlicensed assisted living facilities that put the life and health of residents at risk.

Timeframe for Implementation: Depending on the scope of the outreach efforts, this recommendation can be implemented in the short-term. Educational materials could be prepared and distributed within a two to three month period. Conducting regional presentations could take longer, up to eight months, to prepare presentation materials, schedule meetings, reserve locations, etc.

Other concerns: None.

Recommendation #7: *DSHS should revise the Texas Administrative Code, Chapter 412, Subchapter D, Section 412.202 and related LMHA contract language to clarify that LMHAs are not prohibited from referring clients to boarding houses that are not subject to licensure (i.e., those that do not provide personal care services).*

Related Findings: This recommendation relates to Findings #7 and #11.

Rationale: This revision is necessary to ensure that LMHAs can take an active and appropriate role in helping consumers with significant mental health needs find and maintain housing. Additionally, many of the consumers in boarding houses require services that LMHAs provide, such as case management, therapy and rehabilitation services. This revision would help ensure that the fact that a consumer lives in a boarding house is not a deterrent to the LMHA's perceived ability to provide services to the individual.

The current contract language creates competing and sometimes conflicting directives and responsibilities for LMHAs. These include:

- Many of the consumers served by LMHAs need assistance locating safe, affordable housing.
- In many communities, the only option that is available and affordable for these consumers are establishments which, depending on whether they offer personal care and have four or more residents, may either be a boarding house not subject to licensure as an assisted living facility or an unlicensed assisted living facility operating illegally.
- The LMHAs, by virtue of their contract, cannot refer clients to an "unlicensed home." However, unless LMHAs were to do detailed inspections of establishments, they have little way of knowing which homes are unlicensed, verses not "subject to licensure" as an assisted living facility.

While the Texas Administrative Code and related contract language was clearly developed to ensure that persons who are mentally ill are not referred to unsafe or inadequate housing, the actual language is often interpreted by SMHFs and LMHAs so narrowly as to preclude referral to any establishment without a license, even those not subject to licensure. As a result, LMHAs often must chose either to strictly adhere to their contract, with the result that they are limited in the assistance they can provide to consumers in locating housing and their ability to work with consumers in unlicensed facilities; or to offer assistance to the consumers, but then risk being out of compliance with their contract requirements.

Entity Responsible for Implementation: DSHS would be responsible for drafting a revised rule and seeing it through the Texas rule-making process.

Requirements for Implementation: The revision to the Texas Administrative Code (Chapter 412, Subchapter D, Section 412.202), should make clear that: LMHAs have a responsibility to work with all clients in the target population to try to secure safe, appropriate housing that can help the client achieve their treatment goals; LMHAs should attempt to direct clients to

establishments licensed as assisted living facilities where available; and that some establishments are not subject to license and thus may be an appropriate referral option.

Impact: The revision to the Texas Administrative Code would have the following benefits:

- Allow LMHAs to be a more constructive resource to consumers seeking assistance finding housing.
- Reduce the reluctance of LMHAs to engage in community dialogue on boarding house issues, out of fear that by acknowledging their awareness of boarding houses in their community they are indicating that they have referred clients to those facilities in violation of their contract.
- Allow for more open communication between boarding houses and LMHAs.

Timeframe for Implementation: This recommendation should be implemented as soon as practical, such as during the next contracting cycle between DSHS and the LMHAs.

Other Concerns: None.

Recommendation #8: The 81st Texas Legislature should consider establishing a criminal penalty for boarding house operators that knowingly operate dangerous facilities.

This penalty should apply to operators of both large (four or more residents) boarding houses not subject to licensure (i.e., those not providing personal care) and to illegally unlicensed assisted living facilities. The intent of this recommendation is not to penalize unlicensed facility operators (whether legally or illegally unlicensed) that are operating safe residences. The intent is to establish criminal consequences for those operators who chronically place vulnerable residents at immediate and serious risk and to help put this type of operator permanently out of business. The addition of a possible criminal penalty will give prosecutors an additional tool, beyond the existing civil process, to help protect residents from dangerous facility operators.

The Legislature should consider adopting a revision to Chapter 22 of the Penal Code to implement this recommendation. Some suggested legislative language follows:

Add a New Section to Chapter 22, Texas Penal Code:

§ 22.042 OPERATION OF AN UNLICENSED ASSISTED LIVING FACILITY OR BOARDING FACILITY THAT POSES AN IMMEDIATE THREAT OF HARM TO ELDERLY OR DISABLED INDIVIDUALS; CRIMINAL PENALTY. (a) In this section, “facility” means an assisted living facility with four or more residents that is unlicensed, but required to be licensed under §247.021 of the Health and Safety Code or; a boarding facility with four or more residents that has rooms for rent and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services but that does not provide personal care services. “Facility” as used in this section does not include an assisted living facility that holds a current license under Chapter 247 of the Health and Safety Code.

(b) A person, including a Controlling Person as defined by § 247.005 of the Health and Safety Code, that knowingly operates an unsafe facility that represents an immediate threat to

the health or safety of a resident, including a situation which has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident, commits an offense.

(c) An offense as described in (b) of this section is a Class B misdemeanor as described in § 12.03 and § 12.22 of the Penal Code and is subject to a fine not to exceed \$2000, confinement in jail for a term not to exceed 180 days, or both a fine and confinement.

Related Findings: This recommendation relates to Finding #13.

Rationale: Other than potential civil penalties, boarding house and illegally unlicensed assisted living facility operators that persist in operating unsafe or dangerous homes are not subject to substantial consequences. Many stakeholders reported to HMA that when confronted with state or local regulatory actions, many individuals that chronically operated dangerously unsafe facilities would simply “go underground” and reopen homes in a different location. This behavior was especially the case for boarding houses or illegally unlicensed assisted living facilities that involved rental property. Local authorities and prosecutors need more legal tools, beyond the civil process, to force chronic “bad actors” to cease operating. The threat or imposition of criminal penalties may help to eliminate irresponsible operators that exploit residents and create dangerous conditions in local neighborhoods.

Entity Responsible for Implementing Recommendation: This recommendation would require a statutory change to the Texas Penal Code. Member(s) of the Texas Legislature would have to introduce and pass legislation to establish the criminal penalty. After the statutory change was effective, the use and imposition of the new criminal penalty would be up to the discretion of local law enforcement and local prosecutors.

Requirements for Implementation: If passed by the Legislature, it would be helpful if the state disseminated information on the new penalty to local district and city attorney’s offices and educated local Ombudsman programs of the new penalty.

Impact: The impact of this recommendation would fall primarily on negligent operators of boarding houses or illegally unlicensed assisted living facilities, if charged with an offense under the new statute. To the degree that the penalty is imposed, either in local or state regulatory actions against operators, it may help eliminate unacceptably dangerous or unsafe facilities. The discretion in applying the penalty would lie with local prosecutors and no impact is anticipated on DADS or other state agencies.

Timeframe for Implementation: This recommendation could be implemented as soon as September 1, 2009, assuming the 81st Legislature and the Governor enacted the legislation during the regular session.

Other Concerns: Some religious groups may want to have their programs clearly exempted from proposed legislation to enact the penalty. The bill author(s) could choose to include additional exemptions as appropriate; the intent of the proposed statutory change is to set the penalty only for operators of boarding houses and illegally unlicensed assisted living facilities.

Recommendation #9: Fund DADS at a level sufficient to allow complaints of establishments operating without a license to be investigated according to DADS' established timeframes. Educate local communities about the statutory responsibilities conferred upon DADS and those which are not under their regulatory purview. DADS should also provide information to stakeholders and local communities about the lengthy steps in the regulatory process when an establishment is determined to be providing personal care services illegally.

Related Findings: This recommendation relates to Finding #8.

Rationale: Local communities and stakeholders expressed frustration that DADS' investigations were taking too long. Although complaints alleging an immediate threat to the resident are investigated in timely manner, DADS exceeds their regulatory standards by five days on average for other types of complaints alleging noncompliance with state, federal or local laws. Timely investigation of complaints combined with better education to local communities about the steps in the regulatory process would improve state/local relationships and help clarify situations in which DADS is responsible to address problems and situations in which local law enforcement is responsible.

Entity Responsible for Implementing Recommendation: The Texas Legislature is responsible for implementing this recommendation.

Requirements for Implementation: A small number of additional surveyor staff will be needed. DADS management staff should schedule meetings with key communities such as Houston, El Paso, Dallas and Galveston to cover the regulatory process and to discuss jurisdictional issues.

Impact: This recommendation has the potential to improve investigations by shortening the response period for initial investigations.

Timeframe for Implementation: The timeframe is dependent on appropriation in the FY 2010-2011 budget.

Other concerns: None.

Recommendation #10: To help expand Medicaid-funded assisted living options for the poor or near poor aged and disabled, the availability of CBA waiver slots should be increased statewide.

CBA assisted living services are limited by the availability of CBA waiver slots statewide and the utilization or availability of assisted living under the waiver appears to be declining. HHSC has an Exceptional Item Request (Item #8) in their Legislative Appropriations Request that would help to increase the number of statewide CBA slots and the availability of funded assisted living settings. Additionally, HHSC and DADS should explore the cause(s) of the apparent erosion in the availability of CBA assisted living services and develop strategies to maintain and increase the availability of Medicaid support. If reimbursement rates are determined to be the key issue, the 81st Legislature should consider provider rate increases outlined in HHSC's consolidated health and human services budget.

Related Findings: This recommendation relates to Finding #21.

Rationale: The CBA waiver program is the only major source of funding for licensed assisted living services for Medicaid eligible aged and disabled individuals. If more CBA slots were available statewide, poor and near poor aged and disabled individuals may not have to depend on marginal boarding houses that cannot fully meet their needs. Many aged and disabled individuals need some level of personal care, which cannot (legally) be provided in boarding houses. The CBA waiver currently serves about 25,000 people, with about 29,000 on the interest list. In the DADS CBA service areas, about 2,100 individuals currently receive CBA services in licensed assisted living settings. The availability or utilization of assisted living under CBA has declined over the last three years, with 527 fewer individuals receiving services now than in 2006.

Entity Responsible for Implementing Recommendation: The 81st Texas Legislature would be responsible for providing additional funding for HHSC's Exceptional budget item to implement this recommendation. If funded, DADS and HHSC would be responsible for distributing the additional waiver slots statewide. To investigate the reasons for drop in assisted living slots/utilization, staff work would be required at both HHSC (STAR+PLUS CBA services) and at DADS.

Requirements for Implementation: As described above, legislative action with the Governor's approval for increased funding and staff work at two agencies would be required.

Impact: The key impact from increased availability of CBA slots would be to make licensed assisted living available for more consumers; a secondary impact would be an increased demand on providers for assisted living rooms or apartments. DADS would experience some administrative increase from managing an increased level of CBA slots.

Timeframe for Implementation: This recommendation could be implemented as soon as September 1, 2009, assuming the 81st Legislature and the Governor enacted the legislation during the regular session.

Other Concerns: None.

Recommendation #11: *The Texas Legislature should create a new, distinct funding item that would offer housing stipends to mental health consumers who, via the state's standard assessment for mental health services, are judged in need of housing assistance.*

Related Findings: This recommendation relates to Findings #4, #10, #21 and #22.

Rationale: Many of the concerns associated with providing for the protection of the health, safety and well being of Texans residing in boarding houses are directly related to the lack of affordable and appropriate housing for mentally ill individuals. Successfully addressing these concerns requires recognizing that solutions to this issue are as dependent upon developing a stronger housing continuum as they are on strengthening regulation and oversight. For people with mental illness, safe and stable housing is an essential element of their ability to achieve and maintain recovery.

Entity Responsible for Implementation: DSHS would be responsible for overseeing the implementation of the stipend. This stipend would be within the budget and would be administered by the LMHAs. The stipend would act as a voucher that the consumer would provide to the facility. Consumers would have full discretion to decide whether and where, among eligible facilities, to use their stipend.

Requirements for Implementation: Facilities eligible to receive the stipend would be limited to those facilities either licensed as assisted living facilities or owned/operated by the LMHA. DSHS contracts with LMHAs would need to be revised to include the LMHAs' responsibilities regarding administration of the stipends and a process for reimbursing LMHAs for their administrative costs.

In order to be effective, stipends would need to be large enough to make a meaningful difference in the ability of an establishment to offer improved housing (e.g., meeting life safety code requirements, hiring staff with appropriate training and background, etc.). A minimum stipend of a least \$75 per person, per month would likely be required to make a meaningful difference in the quality of housing provided.

LMHAs would be responsible for administering the stipend and would have their administrative costs reimbursed based on a per diem fee that would act as an incentive for LMHAs to proactively identify clients in need of housing. Since the stipend is not an entitlement, it would be provided on a first come, first served, basis. Clients eligible for the stipend would be provided the stipend for the full fiscal year. Once DSHS's stipend budget was exhausted for the fiscal year, a waiting list would be established.

The existing standard assessment for mental health services, the Texas Recommended Authorization Guidelines (TRAG) could be the basis for the LMHA's determination of consumer eligibility for this housing stipend. Using the TRAG would build on an existing and proven standard assessment to ensure that eligibility for the stipend was determined uniformly across the state.

Impact: The presence of the stipend would have the following benefits:

- Incentivize boarding houses and illegally unlicensed assisted living facilities to become licensed by virtue of providing an enhanced funding stream only available to licensed facilities;
- Encourage more effective coordination between the LMHAs and facilities;
- Improve quality of housing by inserting competition for consumers; and
- Improve the overall capacity of safe, affordable housing options in a local community.

Additionally, the presence of a stipend would likely encourage more establishments to apply for licensure, most likely in the Type E category. An increase in the number of facilities applying for licensure will require DADS to devote additional resources to licensure, survey and enforcement activities. However, the number of new facilities that apply for licensure will largely be dependent upon the size of the budget allocation for the stipend. Any budget request for this stipend should also take into account the workload effect on DADS.

Timeframe for Implementation: This recommendation would be most effective if it were scheduled to take place following the revision of Type E standards, since revising Type E standards is expected to expand the number of licensed facilities.

Other Concerns: LMHAs have varying levels of knowledge and experience in housing issues and boarding house regulations. Training by DSHS and coordination with DADS would help ensure that this stipend, if made available, is used as effectively as possible.

Recommendation #12: *HHSC should lead an effort to explore whether current Medicaid policy options offer a feasible means of offering personal care to people with serious mental illnesses.*

Related Findings: This recommendation relates to Finding #2.

Rationale: Expanding the Medicaid benefit to provide personal care services to people with serious mental illnesses would create the ability for people with mental illness to live in boarding houses not subject to licensure and still have their personal care needs met. For many of these individuals, their limited incomes and lack of resources make it difficult for them to find a means of securing personal care services unless it is part of their Medicaid benefit. Both new and existing Medicaid options offer possible vehicles for providing personal care services to people with mental illnesses. Other states have successfully used both 1915(i) state plan amendments and 1915(c) waivers to provide personal care services to people with serious mental illnesses.

Entity Responsible for Implementation: HHSC would be responsible for exploring available Medicaid policy options for people with serious mental illness.

Requirements for Implementation: HHSC should evaluate both the 1915(i) state plan amendment option available under the Deficit Reduction Act of 2005 and 1915(c) waiver authority to determine if either vehicle would provide a feasible means for including personal care services for people with mental illness under the Texas Medicaid plan.

HHSC's evaluation will need to consider the key elements of both the 1915(i) and 1915(c) options to determine which, if any, would support the State's overall goals. Since states may not submit multiple 1915(i) state plan amendments, if the Texas Medicaid office is intending to submit a 1915(i) state plan amendment for a different target group than the seriously mental ill population or for a different set of services that does not include personal care, then this option would not be available.

Impact: The ability to offer personal care to people with mental illnesses could have the following benefits:

- Allows for the "delinking" of the provision of services from the housing provider, which is a tenant of the consumer movement, since it allows consumers greater flexibility in choosing both housing and service providers.
- Would expand the opportunity of people with mental illnesses to get the care that they need to be able to live as independently as possible.

Timeframe for Implementation: This exploration of options is not dependent upon the completion of any other recommendations, so the timeframe for implementation is flexible.

Other Concerns: States may not submit multiple 1915(i) state plan amendments. Thus, if the Texas Medicaid office intends to submit a 1915(i) state plan amendment for a different target group than the seriously mental ill population or for a different set of services that does not include personal care, this option would not be available.

Recommendation #13: Establish a competitive grant program that supports and encourages local efforts aimed at addressing the needs of the boarding house population.

HHSC should make grant funding available for local governments, particularly those with large clusters of boarding houses as identified in HMA's boarding house database. The grant funding would be used to support local efforts aimed at helping to address the needs of the boarding house population. County and municipality staff would have to apply for the funding, of which there would be a limited amount. In applying for the funding, the county or municipality would be required to describe the unique boarding house issues in their community, as well as what activities the funding would be used to support. Creativity and innovation should be encouraged, and HHSC would award funds on a competitive basis. For example, the funding could be used to hire a social worker or nurse that would accompany building inspection or code compliance teams on boarding house inspections, or would be on call to respond to referrals from the local police, building inspectors, code compliance staff, etc., when a resident appears to have unmet medical or other needs. Local governments awarded the funds should be required to report outcomes and share best practices with other communities in the state.

Related Findings: This recommendation relates to Findings #19 and #20.

Rationale: Some community officials in the municipalities that specifically regulate boarding houses have voiced concerns that they are not equipped to handle the "people" issues that arise out of boarding house inspections. Other communities do not specifically regulate boarding houses. State funding and support would encourage local government to help fill the void where regulation of boarding houses does not exist or additional efforts are needed to help ensure that the needs of boarding house residents are being met.

Entity Responsible for Implementing Recommendation: The 81st Texas Legislature would be responsible for providing additional funding for the competitive grant program. HHSC would administer the program and award the funding.

Requirements for Implementation: As described above, legislative action with the Governor's approval for increased funding would be required. Minimal outreach to educate local governments about the funding opportunity would also be required.

Impact: Encouraging activity at the local level would bolster efforts to help address the needs of boarding house residents. Success stories and best practices could be used to support additional funding for similar programs across the state.

Timeframe for Implementation: This recommendation could be implemented as soon as September 1, 2009, assuming the 81st Legislature and the Governor enacted the legislation during the regular session.

Other Concerns: The grant program would need to clearly delineate the roles and authority given to the grantees and their staff. Local staff must not be expected to perform duties that should be preformed by APS or DADS Regulatory. In addition, making funds available to support local activity must not be interpreted as an indication that local governments are solely responsible for protecting the health and safety of boarding house residents in their community.

Recommendation #14: *Expand the offering of appropriate and well-operated alternatives that provide housing and necessary supports for low-income clients. For clients with mental health needs, these alternatives may include increased state funding for supportive housing programs or transitional housing.*

The housing operation typically consists of an apartment building, with strong security and house rules. A unit is a studio apartment of about 400 square feet. The mission of the housing operation can be tailored by the local community housing board to address a specific community problem, such as chronic homelessness. These housing options can be initiated through a partnership of the local community and a private non-profit housing corporation which specializes in supported housing and which has an exemplary track record in building and operating such facilities.

Related Findings: This recommendation relates to Findings #21 and #22.

Rationale: HMA found that one of the most promising alternatives for a population of persons with mental disabilities, long-term health disorders, long-term unemployment or chronic substance abuse is supportive housing operations. These projects offer affordable housing with a series of support services such as life-skills training, social services referral, job training, financial management assistance, individualized support services and counseling.

Entity Responsible: Local community housing organizations usually seek an expert private non-profit organization to partner with them in the design, planning and financing of the operation.

Requirements for Implementation: Well-organized community groups with a strong interest in housing for persons who are disabled or aged will be a critical component. Supportive housing projects usually cost about one million dollars, which typically comes from a combination of sources.

Impact: Supportive housing projects in other states have been shown to reduce chronic homelessness. Supportive housing projects have the potential to permit persons to move to safer, better supported housing.

Timeframe for Implementation: Five years to design, plan and finance the supportive housing operation.

Other Concerns: None.

Appendix A – List of Acronyms

AAA – Area Agency on Aging

CBA – Community-Based Alternatives

DADS – Department of Disability and Aging Services

DFPS – Department of Family and Protective Services

DSHS – Department of State Health Services

FHA – Fair Housing Act

HHSC – Health and Human Services Commission

HMA – Health Management Associates

LMHA – Local Mental Health Authority

SMHF – State Mental Health Facility

SMI – Severe Mental Illness

SSI – Supplemental Security Income

SSDI – Social Security Disability Insurance

Appendix B – Stakeholder Interview List

Aaryce Hayes
Mental Health Policy Specialist
Advocacy, Inc. (Texas P&A)

Judy Sinclair,
Policy Analyst
DFPS

Greg Anderson
Legislative Liaison
DFPS

Jean Wallace
Attorney, Adult Protective Services
DFPS

August Williams
Administrative Direction
NAMI Austin

Peggy Perry
Assistant Director State Hospital Section
DSHS

Joshua Martin
Program Specialist VI, State Contact, PATH
Program
DSHS

Cindy Hopkins
Consumer Services
DSHS

Brenda Hull
Manager Housing Resource Center
TDHCA

Gerry McKinney
Crisis Services Director
Austin Travis County MHMR

Mike Maples
Assistance Commissioner
Mental Health and Substance Abuse
Department of State Health Services

Danette Castle
Chief Executive Officer
TX Council of Community MHMR Centers

Joe Lovelace
Associate Director, Behavioral Health
TX Council of Community MHMR Centers

The Honorable Elliot Shapleigh
Texas State Senator
El Paso

Susie Byrd,
El Paso City Council

Fred Worley
Life Safety Architect, Survey Operations
DADS

Gary Larcenaire
Executive Director and Staff
El Paso MHMR

Nick Monreal
Managing Ombudsman
Bexar County Area on Aging

Janice Brister
DADS Regulatory Services
Region 8, San Antonio

Susan Davis
Director of Enforcement
Regulatory Services Division – DADS

Janie Metzinger
Mental Health America of Dallas

Don Jones
Representative Jose Menendez
San Antonio, District 124

Rex Gerstner
Texas Correctional Office on Offenders with
Medical or Mental Impairments
Grand Prairie

Corporal Herb Cotner
Mental Health Liaison
Dallas Police Department

Beth Wick
211 Program
TX Health & Human Services Commission

Appendix C – Boarding House Interview Tool

Boarding House Interview Tool

Introduction Script

Ask to speak with the owner or onsite manager.

I am calling from Health Management Associates, a consulting firm working for the State of Texas. We are conducting interviews with a small sample of boarding house operators/owners to help the state gain a better understanding of the boarding house industry and get a better picture of who lives in boarding houses.

The interview questions will not require you to provide identifying information about any of the residents. These responses will be combined to create a picture for the state that describes the general characteristics of boarding houses and their residents. None of the information in the report will be linked a specific boarding house.

Interview Questions

Questions are intended to be asked in the order provided. Since these will be entered into a database, questions have been structured to be close-ended (with limited exceptions), so that data can be categorized and sorted.

Before beginning the interview, verify that the information on the county (e.g. Travis) is correct. Make corrections as necessary.

1. Interviewee?
 - a. Owner
 - b. Manager
 - c. Other staff
2. Does the owner employ staff for this house?
 - a. Yes
 - b. No
3. Is this boarding house:
 - a. Owned
 - b. Rented
4. How long has this boarding house been in operation?
5. Does the owner of this house also own other similar types of boarding houses?

- a. Yes
 - b. No
6. If yes, how many other boarding houses does the owner operate?
7. What is the average number of residents (e.g. those who pay to live in the house and are not related to the owner of the house) currently living (e.g. paying rent) in this house?
8. How many total residents (e.g. those who pay to live in the house and are not related to the owner of the house) can this house rent to at any one time?
9. How would you describe this boarding house?
 - a. Single family house – one story
 - b. Single family house – two or more stories
 - c. Motel-type arrangements (e.g. bedrooms with private bathrooms)
 - d. Apartment type arrangement (e.g. bedrooms with private bathrooms and kitchen areas)
 - e. Cottages (e.g. multiple buildings on the same parcel of land)
 - f. Other (please describe: _____)
10. How long do residents usually live in this house?
 - a. Less than 3 months
 - b. More than 3 months, but less than 1 year
 - c. 1-3 years
 - d. 4 or more years
11. Are there currently vacancies in this house?
 - a. Yes
 - b. No
12. What is the current monthly rate for room and board at this house?
 - a. Less than \$650 per month
 - b. Between \$651- \$750 per month
 - c. Between \$751- \$850 per month
 - d. More than \$851 per month

13. What payment source do your residents rely upon (check all that apply)?
- a. SSI
 - b. SSDI
 - c. Employment income
 - d. Family support
 - e. Veteran's Benefits
 - f. Don't know
14. Do you ever serve as representative payee for social security benefits on behalf of your residents?
- a. Yes
 - b. No
15. If you were to consider providing personal care services, what would be the barriers to obtaining the necessary licensure?
- a. Not applicable (have not and don't intend to provider personal care)
 - b. Cost of meeting health and safety requirements (e.g. installing sprinkler systems)
 - c. Staff recruitment and training
 - d. Dealing with state oversight
 - e. All of the above
16. Based on your knowledge of the residents' needs, how many of the residents in this boarding house (will convert the following to percentages, based on total number of residents):
- a. Use or need mental health services
 - b. Use or need substance abuse services
 - c. Use or need of services for a cognitive disability (e.g. a brain injury or mental retardation)
 - d. Use or need services or devices to help with a physical disability
 - e. Are over the age of 64
 - f. Are under the age of 19 and use special education services.
 - g. Use publicly-funded services (e.g. community mental health services or transportation assistance).

Appendix D – State and Local Profiles

States That License Boarding Houses

Florida

Florida regulates boarding houses and rooming houses under the authority of the state's lodging and food establishment statute. Florida Statutes, Chapter 509, Part I. Boarding Houses are regulated through the Department of Business and Professional Regulation.

Boarding houses are classified as "non-transient public establishments" which are defined as places regularly rented to guests for periods of at least 30 days or one calendar month, and where it is the intention of the operator that the dwelling unit occupied will be the sole residence of the guest. Establishments undergo a bi-annual inspection which can be conducted at any reasonable time. If an operator obstructs an investigation, he or she may have their license revoked. If the establishment operates without a license it must be closed.

If during an inspection, the inspector identifies vulnerable adults who appear to be victims of neglect, or persons in un-sprinklered establishment who cannot self-evacuate, they are to convene a meeting with the Departments of Health, Aging and Elderly Affairs. If it is necessary, as a result of this conference, alternative living arrangements may be arranged for residents.

As a public lodging establishment, a boarding house must follow all of the rules that a hotel or motel would follow including requirements for sanitation and food service. The owner also has the rights that a public lodging establishment has, such as the right to remove guests who are using controlled substances, are disorderly or have not paid their bill.

Safety and Sanitation – Sanitation and safety rules require that a non-transient lodging establishment keep clean the kitchen and kitchen equipment, furniture and upholstery, the premises, and employee areas. Storage requirements are specified. Toxic and cleaning materials must be stored separately, and linens must be stored in a separate dry space. The owner of a lodging establishment is to keep the establishment free of rodents.

There are requirements for locks, and safety of balconies in three story or more buildings. Establishments are required to meet Life Safety Code 101 provisions.

Physical Requirements – The State of Florida has requirements for lighting, standards for plumbing and toilets, electrical wiring, and heating and ventilation (including the requirement to be able to maintain the establishment at a minimum of 68 degrees) requirements.

It is also important to note that Florida, under its Assisted Living Statutes and Rules has a special, "Limited Mental Health License." When a facility admits three or more mental health residents, the facility must obtain a license before the third resident is admitted. The direct care staff, administrator and manager at the facility must complete mental health training consisting of six hours of training from the Department of Children and Family Services. The resident and his/her case manager must prepare a Community Living Support plan within 30 days of the resident's admission to the facility that identifies the services needed by the resident and

specifies the needs of the resident which must be met to enable him to live in the community in the Assisted Living Facility. The responsibilities of the facility to carry out the requirements of the plan are delineated. These include staffing and care standards, a requirement for face-to-face contact with the mental health case manager, observations of functioning and situational changes affecting the resident, and the requirement that staff complete training.

Illinois

The Board and Care home program in Illinois was originally a registration program with no inspections. In 2006, the program was moved to the Illinois Department of Public Health which moved to incorporate them into their assisted living regulations in 2007. The intent of this new regulation was to make sure that no entities were running unlicensed nursing homes, to ensure oversight of these homes, and to see that they met safety requirements. When the program was moved from the Department of Aging to the Department of Public Health, there were only 21 registered facilities. At present, only one facility has become licensed and five are pending, some of which have physical plant issues.

Montana

Montana licenses boarding homes as “retirement homes.” Authority is provided under the Montana Code, 50-5-101 and Subchapter 25 of the Montana Administrative code.

A retirement home means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

The following is a summary of the Montana rules:

Fire and Building Code Approval – Retirement Homes must meet all local and state building and fire codes and be inspected annually.

Physical Requirements – There must be adequate and convenient janitorial facilities. Floors and walls in toilet rooms, laundries, and janitorial closets must be smooth and of non-absorbent materials. Floor and wall mounted furnishing must be movable for cleaning. Bathing facilities must have anti-slip surfaces and grab bars. Bedrooms must have floor to ceiling walls, a door for privacy, at least one operable window and access to a toilet room without going through another person’s room. Rooms cannot have a lock which prohibits escape to the outside from another room. Rooms can not have as their access, a trap door, ladder or folding stairs.

No more than four residents may occupy a room, and a multi-occupancy room must have 80 sq. ft. per bed.

Environmental Controls – Soap and towels must be available at each sink for hand washing in food preparation areas and commonly shared areas. A waste receptacle must be available at each sink. Lighting by foot- candles is prescribed in various areas of the home.

Water and Sewage Supply – Water supply standards according to the Department of Health and Environmental Sciences Circulars for water works, small supply systems and cisterns are incorporated by reference. The same is true of sewage systems. Homes must have a potable water supply, connected to a public water system. If the home has fewer than 25 users, they

may use a non-public water supply if it is in accordance with the Department of Health and Science Circulars related to non-public water supplies. They must also submit samples quarterly to a licensed lab to check for contaminants. If the samples do not meet requirements, the system must be repaired or replaced.

The water supply to sinks and bathing facilities must be between 100' and 120'.

The production, storage, handling and plumbing of equipment for making ice are enumerated.

Solid Waste Disposal – Retirement Homes must store waste safely in containers which have lids and are corrosion resistant, flytight, watertight, and rodent proof. They must use exterior collection stands which prevent tipping, deterioration, and allow ease of cleaning. They must clean the containers and empty them weekly.

Laundry Facilities – Retirement Homes that supply linen must have washers and dryers which are properly ventilated, with a proper hot water supply. There must be separate areas from the soiled laundry for sorting and storing clean laundry. There are sanitation requirements for laundry workers.

Housekeeping and Maintenance – A retirement home must provide maintenance. If housekeeping is provided, the janitor rooms must be clear and free of odor. Bathing and shower facilities cannot be used for washing and rinsing of brooms, mops or other cleaning devices. Cleaning devices for lavatories, showers and bathtubs are not to be used for cleaning other surfaces. Transportation of clean bedding must be separate from soiled linens. Proper cleaning agents must be used and mop heads laundered frequently. There are also requirements for dry dust mops and cloths so as to prevent spread of soil from one location to another. Linens are to be cleaned weekly. Furnishing, fixtures, ceiling and walls are to be in good repair. Eating utensils and dishes cannot be washed in janitorial sinks and must be kept clean.

Food Service – Food service requirements of the Department of Health and Environment are incorporated by reference.

Resident Register – A retirement home must maintain a register of all residents currently residing at the home, which includes the room number, date of arrival, and date of departure. The register must be held on the premises and available for inspection.

New Jersey

New Jersey licenses rooming and boarding houses through the Department of Community Affairs. Statutes may be found in 55:13B-2 – 115:13B-18 and rules may be found in the New Jersey Administrative Code 5:27. The Department may authorize local communities to perform inspections through its housing, health or social services agency.

New Jersey defines a boarding house as “any building together with any related structure, accessory building, any land appurtenance thereto, and part thereof, which contains two or more units of dwelling space arranged or intended for single room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but

excluding any hotel, motel or established guest house where in a minimum of 85% of the units of dwelling space are offered for limited tenure only...”

Personal services are defined as any services permitted or required to be furnished by an owner or operator to a resident, other than shelter, including, but not limited to, meals or other food services, and assistance in dressing, bathing or attending to other personal needs.

Monitoring of medications means maintaining regular records of the type and amount of medication taken by a resident and the time at which such medication is taken.

Boarding houses must comply with the Uniform Building Code requirements. They must have a certificate of occupancy.

There is a special license for rooming houses and for boarding houses offering no financial services and no personal services other than meals and other food services and laundry. This license applies to facilities housing six or more persons.

The New Jersey rules give broad authority to the department with the following requirement:

“No license shall be issued to any person if the Bureau determines that the issuance of a license to such person would be contrary to the best interest of the resident of any rooming or boarding house or of the public generally.”

Requirements for Owners – The New Jersey rules do not permit issuance of a license to anyone convicted of forgery, embezzlement, obtaining money under false pretenses, crimes against the persons, extortion and criminal conspiracy to defraud. This provision extends to members of a partnership, and an association in which such a person is an officer, director or employee or stockholder, or has a direct or indirect interest.

Owners may also not have been convicted of civil rights offenses or denied a license by the Department of Human Services for personal unfitness.

A rooming or boarding house license is predicated upon approvals from the local enforcing agency of the Uniform Fire Code and has local zoning approval. A boarding house may not receive a license if it offers or advertises or holds itself out as offering personal care services to residents with special needs, including, but not limited to, persons with Alzheimer’s disease and related disorder or other forms of dementia, or hold out a building as available for rooming or boarding house occupancy for such residents. These services may be approved with a higher level license that requires a contract with the State of New Jersey.

Application – New Jersey requires a fairly lengthy application for licensure.

Resident Rights – A resident has the following rights:

1. To manage his personal affairs
2. To wear his own clothing
3. To determine his own dress
4. To retain and use his personal property
5. To receive unopened correspondence

6. To privacy
7. To choose his personal physician
8. To have unrestricted communication and visitors
9. To be involved in the community
10. To present grievances
11. To have a safe, healthful, and decent living environment
12. To refuse to perform services for the licensee
13. To practice the religion of his choice
14. To not be deprived of constitutional, civil, or legal rights

House Rules and Related Issues – Boarding houses are required to post reasonable rules governing the conduct of persons in a boarding house. The rules do not permit the licensee or an employee to engage in any conduct which is unreasonable under the circumstances. They may not exercise a lack of probity, integrity or trustworthiness. They may not evict a resident without cause. The licensee has the right to bring to the attention of the Bureau of Community Affairs situations in which a resident may require a directive in order for a resident to be appropriately placed.

If the licensee is aware of a person needing services, they are required to make a referral.

Appropriate Placement – A licensee cannot accept a resident who is not capable of self-evacuation, who has a communicable disease, who needs nursing services, or other services that the boarding house cannot provide. However, a licensee shall take affirmative action to ensure that the resident has as much autonomy as possible and as high a degree of interaction with the community as may be reasonably possible.

Disclosure of Rates and Service – The licensee must maintain and post a current schedule of rates and services. These rates must be provided to the Bureau of Community Affairs and the county welfare board.

Physical Requirements – New Jersey requires proper water connections to a safe supply of potable water. Kitchens must have a sink of non-absorbent, impervious material. Bathrooms must be accessible without going through a sleeping room and separated from other rooms. Sewage connections must also be proper and approved. All sinks, showers, lavatories and bathtubs must have hot and cold running water.

Electrical – New Jersey requires adequate lighting in rooms, halls and stairways, and safe electrical connection.

Ventilation – New Jersey requires ventilation for each habitable room and bathrooms.

Heating – Rules prescribe a properly installed and maintained heating system in safe working condition that can maintain heat at 68 degrees in the winter months.

Maintenance – New Jersey has fairly extensive requirements for maintenance of foundations, floors, walls, ceiling, porches and stairways. There are also extensive requirements for cleanliness and pest control.

Space requirements – Single occupancy rooms must have 70 sq. ft. per person, and rooms with two or more must have 100 sq. ft. for the first person and 150 sq. ft for every additional occupant.

Security – Exterior doors must have heavy duty locks with deadbolts, and each resident shall be issued a key. The licensee must provide a safe or safe deposit box for valuables. Records must be kept of stored valuables. Licensees must report criminal acts committed or alleged to have been committed on the premises. There are requirements for the handling of disorderly residents, and prohibition against abuse, neglect and exploitation of residents. These acts must be reported.

Housekeeping – The licensee is required to provide clean linens weekly. The linens must be in good condition. Residents must have adequately sized beds, placed in a habitable room without obstructions, and they shall have a dresser and closet space.

Living and Dining Rooms, Outdoor Facilities – Boarding houses must have living and dining rooms sufficient to seat the residents. They must also have a lawn, porch or outdoor area, with seating for the residents.

Maintenance of Records – The boarding house must maintain detailed records on each resident with such information as next of kin, dates of occupancy, complaints, health assessment by a physician or licensed nurse practitioner. Records cannot be released without the resident's permission. The licensee is required to keep detailed financial records of transactions with the resident. Records must be retained for five years.

Food and Laundry – Residents must be served three nutritionally adequate meals of good quality food, adequately prepared at regular intervals. The resident shall have adequate time to eat his meal. Food must be clean, wholesome and free from spoilage. Food must be properly stored and there must be safe refrigeration. Laundry must be labeled with the resident's name, and returned clean and folded after laundering, if laundry services are provided.

Personal Care – If a boarding house wants to provide personal services they must have a higher level license. Under this higher level license, they may provide assistance in dressing, bathing and personal hygiene, transportation to health service, monitoring of medication. If the boarding house chooses to be licensed at the higher level, all of the preceding requirements apply. In addition there are more extensive requirements for financial services, including: check cashing, holding of personal funds, assistance in purchasing, ledger and personal needs allowances. There are also special requirements for referrals, training and staff requirements, assessments, building safety, administration of medications, and storage of medications.

Washington

The underlying premises of the State of Washington's regulatory practices are that a resident's needs and preferences should dictate the standards that a facility should meet. The state defines certain minimums which are described below. Many of the Texas boarding house residents would be come under the requirements of regulation if the minimum Washington requirements were used. The second key aspect of the Washington regulatory schema is that the boarding house must secure an assessment for every resident for whom the facility provides housing and basic services and the assumption of general responsibility. The assessment process is critical because it identifies an individual with care needs before they enter a home and it allows the facility and the regulator to judge whether the facility can meet the needs of the resident. The rules for the program were revised in 2000.

Authorizing Statute; WRC 18.20

Rules: WAC 388-78-A

The Washington rules and law build on a set of minimum standards and common definitions which are outlined below:

Definition: A "boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, ...to seven or more residents after July 1, 2000.

"Domiciliary Care" means:

1. Assistance with activities of daily living provided by the boarding home either directly and indirectly.
2. Health support services, if provided directly or indirectly by the boarding home, or
3. Intermittent nursing services, if provided directly or indirectly by the boarding home.

The resident of the home must be ambulatory, cannot require the frequent presence of a nurse, and the boarding home must provide the services as described in its disclosure statement.

The boarding home must be able to safely and appropriately serve its residents with its available staff.

The basic services which the boarding home must provide are: activities, housekeeping, laundry, meals and nutritious snacks. Assistance with activities of daily living is an optional service. If the boarding home chooses not to provide these services, the home may only admit persons who are independent. If they choose to accept a resident with personal care needs they may only provide minimal assistance with bathing, dressing, eating, personal hygiene, transferring, toileting and mobility.

It is important to note that the state of Washington's boarding home rules are equivalent to the assisted living rules for most states (including Texas); however, the rules permit a minimum which is lower, basically because the requirement to provide personal care, according to the needs of the resident, is not present. Some of the more advanced care requirements are not summarized below because they do not approximate the care provided in a Texas boarding house. A good example of the type of item which is not described is tube feeding or adult day health services.

A brief summary of the State of Washington rules is as follows:

Assessment and Monitoring – A preadmission assessment is required, which includes a medical history and an assessment of special care needs, mental illness diagnosis and medications. The assessment must be done prior to entry to the home, unless there is an emergency, and then within five days of entering. The assessment must be done by a qualified individual (nurse, social worker, BA in social science, or an experience equivalent.) The assessment must be repeated annually. In addition, the resident must be monitored on an on-going basis for changes in health or functioning.

Negotiated Service Agreement – Pursuant to the assessment, the boarding home must develop and document each resident's assessed capabilities, needs and preferences and negotiate a service agreement with each resident.

Medication – A boarding home may administer medication, but must have qualified personnel, and must have systems for safe administration. The resident may self-administer medications, if capable of doing so.

Food and Nutrition – A boarding home must provide three meals a day, with menus published ahead of time, and special meals if needed, approved by a dietician and updated every five years. The boarding home must also meet the state's food service requirements.

Intermittent Nursing – The boarding home may use intermittent nursing services, according to the requirements for nursing of the Washington Administrative Code.

Coordination of Health Care Services – The boarding home must coordinate services with external health care providers, if such services are contained in the resident's negotiated service agreement.

Restricted Egress – Boarding homes must have an egress control device, a smoke detection system, and egress illumination. The egress control systems are required for construction applied for after September 1, 2004.

Resident Records – The boarding home must organize, retain and protect resident records. Rules prescribe the content of the required record keeping. The residents must have access to their records.

Resident Register – The boarding home must keep a current resident registry, and make it available to inspectors.

Staff – Requirements for staff are fairly extensive in the State of Washington. The boarding home must provide sufficient, trained staff to meet the requirements of the negotiated service

agreement. A boarding home must keep the facility free of safety hazards, implement fire and disaster plans, have job descriptions for the administrator and staff, verify references and required credentials, have present someone trained in first aid and CPR and HIV training, have staff trained according to training requirements, orient staff and training, assure that persons suspected or accused of abuse do not have access to residents. The home must appoint an administrator who is at least 21 years old, who is not a resident, who is qualified to perform administrator duties, and who must complete training in the boarding home requirements: criminal history and background checks, abuse of vulnerable adults, resident rights, licensing rules and long term care services training.

Criminal Histories and Background Inquiries – Staff with unsupervised access to residents must have a background check of conviction records, which must be updated every two years. Verification also applies to prospective employees.

TB Tests – All staff persons must have a TB test.

Specialized Training for Developmental Disabilities, Mental Illness and Dementia – If there is one person in the boarding home with a primary special need of mental illness or a developmental disability, the boarding home provide specialized training.

Administrator Responsibilities – Must be responsible to direct and oversee operations of the boarding home 24 hours a day, ensure that residents receive adequate care, and be available by phone or pager in an emergency.

Policies and Procedures – The boarding home must maintain policies on all aspects of the operations including such things as emergency policies, policies on actions to take with a violent resident, management of medications, food services, obtaining health care.

Infection Control – The boarding home must institute infection control practices.

Reporting Abuse and Neglect – The boarding home must report abuse and neglect.

Change in Resident's Condition – The boarding home must report and document changes in the resident's condition, relocation to the hospital, and death to persons designated to represent the resident, and the physician.

Reporting fires and incidents – A boarding home must report fires, incidents that require activation of the disaster plan, or circumstances which would require the relocation of residents.

Resident Rights – Residents have the right not to be restrained, abused or neglected, and accorded the long-term care resident rights provisions of the Revised Code of Washington. The boarding home can not electronically monitor the resident, except in designated areas, nor can they monitor other residents of the home, except in his own sleeping room.

Safety Measures – Boarding homes are required to provide for many safety measures, including a disaster plan, emergency lighting, incident reports and availability of first-aid supplies, evacuation procedures and emergency provisions.

Licensee Requirements – The State of Washington holds the licensee responsible to provide current information to the state such as appointment of the administrator, bonding of anyone

holding resident funds, notification of transfers of ownership, changes in the license, and general operation of the home.

Physical Requirements – Washington requires construction plans for new construction, and modifications, additions, and changes to major systems (physical structure, electrical, fire alarms, carpeting and sprinkler systems). The boarding home must make arrangement for relocation of residents if this is necessary. If the home vacates, they must relinquish the license. Boarding homes must meet all the building code requirements that were in place at the time they were constructed.

Other Physical Requirements – The State of Washington has a number of other physical requirements. Those that are most relevant to Texas boarding houses include: communication systems that allow the resident to summon off-duty assistance, telephones and requirements that the home meet public water supply and sewage standards. There are requirements for garbage and refuse disposal and lighting in common areas. In addition, the home must maintain a reasonable temperature and adequately ventilated rooms. The boarding home must also provide a day room and an eating area sufficient to serve 50% of the residents at a time.

A key requirement in Washington is that residents in a single room have 80 sq. feet of floor space for a single room and 70 square feet per individual for multi-person occupancy.

The rules also prescribe that a boarding home must have one bathroom per eight residents, and they specify the types of materials and fixtures permitted in the bathrooms.

Laundry – A boarding home in Washington must provide laundry and linen services and meet a number of requirements for cleanliness in the laundry, the separation of soiled and clean laundry and the separation from food preparation.

Maintenance and Housekeeping – The boarding home must ensure that resident's quarters are safe and sanitary, and provide the supplies and equipment to maintain a clean facility.

Enforcement – Rules specify the responsibilities of the home to cooperate with inspectors, the ability to file a plan of correction of enforcement findings. The state has a full range of enforcement remedies including denying, suspending, revoking, or not renewing a license, suspending admissions, suspending admissions for a specific category of residents, imposing conditions on the license, and imposing civil monetary penalties of \$100.00 per day. The rules prescribe the circumstances under which these enforcement actions can be invoked, and when the remedies are mandatory such as serious recurring, uncorrected problems, a hazard which is likely to cause death or harm to residents, or retaliation against a resident who files a complaint. Under specific conditions the department is required to suspend, revoke or not renew a license. These circumstances are for such issues as having abused a resident or another vulnerable adult. The rules also prescribe the progression of enforcement remedies. Boarding home owners have informal dispute resolution rights and appeal rights.

Wyoming

Authority for the Wyoming boarding Homes regulations can be found in the Wyoming Health Facilities Act, Wyoming Statutes 35-2-901 et. seq. and the Wyoming Administrative Procedures Act, Wyoming Statues 16-3-101.

Definition – A boarding home, means a dwelling or rooming house operated by any person, firm, or corporation engaged in the business of operating a home for the purpose of letting rooms for rental, and providing meals and personal daily living care, but not habilitative or nursing care, for persons not related to the owner. A boarding home does not include a lodging facility or an apartment in which only room and board is provided.

Personal daily living care is not defined.

Wyoming licenses boarding homes; however, the state’s licensure requirements are minimal. Licenses may be transferred. An annual and periodic renewal inspection is required.

Physical Requirements – Wyoming requires one flush toilet, lavatory and mirror per eight residents, and a tub or shower for every ten residents. The toilet, lavatory, showers and tubs shall have floors and walls of impermeable, cleanable and easily sanitized materials. They must be properly lighted and vented. The shower and bath must have a non-skid surface and grab bars. Residents must be able to reach bathrooms without going through another resident’s room.

Sleeping rooms must have 100 square feet per person, or 70 square feet per person in a multi-occupancy room, with at least three feet between beds. Each sleeping room shall be an outside room with an operable window at least 44 inches above the floor. Sleeping rooms cannot be below grade, in attics, halls or closets. Ceiling must be at least 6 ft. 7 inches high.

The site for a boarding home must have an all-weather road accessible to emergency vehicles within 30 minutes driving time.

Local Communities that License Boarding Houses

Jefferson County, Alabama

Jefferson County regulates boarding houses under state authority (Title 22, Section 3, Subsection 2, Code of Alabama 1975 and Act 89-668). The Jefferson County, Alabama, Department of Health has oversight responsibilities.

The Jefferson County Health Department regulates all communal living facilities, of which boarding houses are included along with rooming houses, Mental Health and Retardation contracted group homes, foster homes, and transitional homes.

The definition of a boarding home is, “a rooming home which provides lodging, meals and/or other services for a valuable consideration.”

A summary of the county’s requirements are as follows:

Assessment and Monitoring – Communal Living Facilities are not permitted to accept, place, refer or recommend placement of an individual who is obviously inappropriate based on the

county's regulations. Persons with personal care needs are considered inappropriate for placement. Residents must be able to ambulate independently (egress within three minutes in an emergency). They can use assistive devices but must be able to do so independently and must be able to transfer from a bed to a chair independently. Facilities can not admit persons who are alcohol and/or drug addicted, or who have severe symptoms of senility, mental illness or dementia.

Medications – Owners or operators may supervise the self-administration of medications. They must also provide for safe and secure storage of medications.

Food and Nutrition – The County has requirements for the nutritional content and frequency of meals. Meal schedules and menus must be posted, and special diets must be provided. Residents can not be transported to soup kitchens or missions for meals. Facilities must keep a three day supply of food on hand. Communal Living Facilities must follow the Rules of Alabama, State Board of Health and Food Establishment Sanitation Rules. The rules of the county distinguish between food establishments with over 12 residents, and those with 12 or fewer for purposes of rules pertaining to washing and sanitizing utensils.

Resident Records – The Owner/Operator is required to keep a register of residents which include their referral source, the residents date of birth, the name of his/her physician, their social security number, the date of entry, medications, an emergency contact, and the date the resident moved and their new address.

Resident Rights – Residents have the right to kind and considerate treatment. They must be informed of their rights when they enter the communal living facility, and the rights must be posted in the facility. These rights include:

1. Freedom to come and go
2. Freedom to receive visitors
3. Reasonable privacy to make phone calls, unless there is a pay phone
4. Freedom to the US Mail and to send and receive uncensored mail
5. Freedom to attend and participate in religious services
6. Freedom to request assistance with relocation
7. Freedom to voice grievances and contact advocates
8. Entitlement to compensation for work performed
9. Right to privacy and self-possession
10. Right to be treated with dignity and respect

Criminal History and Background – The owner/operator must complete a criminal history for both themselves and their staff. New applicants must provide an ABI criminal history report. New criminal convictions must be reported within 30 days.

If an owner or operator has a history of abuse, neglect, or exploitation of a communal living resident, or has habitual non-compliance with communal living facility regulations in any state,

that shall be deemed unsuitable. The Health Department shall also consider as unsuitable persons who have committed a sex-related crime, a crime which involves serious intention reckless or negligent physical injury, danger or death of any person, such as murder, homicide, manslaughter, assault with a weapon, reckless endangerment, kidnapping and unlawful imprisonment, or crimes involving moral turpitude. The Department of Health has the latitude to evaluate other crimes as well.

Training – The Department of Health is required to provide periodic trainings. All new operators must attend an orientation class and five additional classes with the first year of operation.

Administrator/Operator Responsibilities – Owner/Operators must maintain a clear and sanitary condition in the dwelling, including the extermination of pests, they must have house rules which are posted, they may not discriminate and they must hold leases with the residents.

Fires and Incidents – If an accident, altercation or crime occurs in a communal living facility, the facility must make a detailed record and retain this record in the file of the resident. Minimum information for the reports is specified. An underwriters approved smoke detection system must be installed in good working condition in all rooming units, in corridors or hallways on each floor, in the laundry and in the basement area. If the facility has 3 or more residents, there must be a pull alarm system. Fire extinguishers are required for each floor and in the kitchen, and they must be inspected and tagged annually. The communal living facility must have posted a fire and evaluation plan. The owner must conduct quarterly fire drills and keep records of such.

Safety and Sanitation – Boarding houses must be in compliance with the applicable fire codes, building codes, and zoning requirements. The facilities must be able to heat the premises to at least 68 degrees in all sleeping rooms, bathrooms, and toilet rooms, and cannot exceed 90 degrees. The systems must be safely connected. The regulations specify requirements for floors and ceiling, windows, exterior door, stairs porches, sills, joints, peers, and foundations, basically specifying that they be soundly maintained. There are also requirements for adequate lighting and emergency lighting. There must be two safe, unobstructed means of egress from each floor, with headroom of 6'6" to a safe and open space at ground level. Plumbing must be properly maintained and installed. Floors of water closets must be reasonably impervious to water. The condition, number and location of electrical outlets are prescribed, as are the maximum loads. All required systems cannot be shut off, except for required, temporary, repairs.

Jefferson County also has standards for the privacy and size and accessibility of water closets, the number per residents (8), and the fixtures and supplies required. If the water supply to the house is from a well, the well must be inspected and pass standards. The county also has standards for garbage and refuse disposal and storage.

The rules require 72 feet of floor space per resident, whether single or multiple, with ceiling heights related thereto of at least 7 feet. Basement space is not permissible as a habitable room unless it has windows meeting the above mentioned requirements, and is impervious to runoff water and insulated against dampness.

Other Physical Requirements – Jefferson County has requirements for the furnishing of each room, the linens and the cleanliness of the fixtures in the rooms. There must be a common room provided in each facility which is separate from the dining room. The county requires that each habitable room have a window or skylight, with minimum sizes prescribed. Dining rooms must have enough chairs for all residents in facilities with 12 or fewer persons. The facility must have a properly ventilated washer and dryer.

Maintenance and Housekeeping – There is a general requirement for housekeeping and maintenance in the rules, and maintenance requirements can be found throughout each section of rules. Laundry must be done weekly.

Enforcement – The Jefferson County Department of Health has responsibility for enforcement of the rules. If there are violations upon inspection they are responsible for serving notice, giving the facility an opportunity to correct within a specified reasonable time limit. The owner is entitled to a hearing. The Health Officer of the County can suspend a permit, suspend a resident admission or revoke a permit. If an emergency exists which requires immediate action to protect the public health or the safety of an individual, the health officer can issue an order immediately. The facility can petition for a hearing. The county nurse or physician can assist in the inspection of the facilities and can require a resident to be moved in the event of an inappropriate placement.

Milwaukee, Wisconsin

Milwaukee has special provisions with regard to rooming houses which are in section 275-23 of the municipal code. The city licenses boarding houses. The general building and zoning requirements apply but, in addition, the city requires the following:

Lavatory, Basins, Baths or Showers – There must be one lavatory basin and one bath or shower properly connected to the water supply and in good working order for every eight persons. Toilets, lavatory basins and showers must be accessible to the sleeping rooms and cannot be outside the facility. There must be one toilet to every 8 rooms, connected to an approved water supply and in good working order.

Sleeping Rooms – Sleeping rooms must have 70 sq. ft. per person. Not more than four persons may share a room, and in multiple occupancy rooms each persons shall have 50 sq. ft. per person. More than 4 persons occupying a room are dormitories and must have at least 200 sq. ft. and 50 sq. feet per persons. Sleeping rooms must have windows.

Meals – Meals may not be provided in sleeping rooms. Meals for twenty persons or less have to meet food service requirements for kitchens. Meals served to 20 or more residents must meet restaurant requirements. There are specific requirements for communal kitchens for cleanliness, refrigeration, food storage and furnishings.

Communal Dining Rooms – For every facility that has a communal kitchen of less than 100 sq. ft., the facility must have a communal dining room of at least 70 sq. ft that is accessible without going through sleeping rooms.

Other Physical Requirements – Milwaukee rules specify the minimum ceiling heights at 7 ft. Rooms may not be sub-divided. There are also minimum area requirements for bathroom sizes, and showers. Basement rooms are not permitted unless at least 50% of the room is above grade. Ventilation requirements and lighting are specified.

Facilities over one story must have an elevator, and mobile homes cannot serve as boarding homes.

Boarding homes must meet the life safety, construction and electrical safety requirements of the Department of Health.

Other Requirements – A boarding home must meet the communicable disease requirements of the state. They must apply for a license, which cannot be transferred without the state’s approval. If violations are found upon inspection, they have the right to file a plan of correction. If the boarding home closes it must notify the state 5 working days prior to closure. A boarding home must advise the licensing Division of any name changes.

Enforcement Provisions – The state may deny, revoke or suspend a license for noncompliance with any provisions of the licensure rules. The state must provide an inspection report 10 days after the completion of the 10 days after receipt of the plan. If a plan of correction is submitted the state must notify the home if it is not acceptable. Boarding homes are permitted a hearing in accordance with the Wisconsin Administrative Procedures Act.

States that Register Boarding Houses

Kentucky

Kentucky has a boarding home registration program authorized under Kentucky Act, Chapter 99 and Section 507. The law was amended in 2005.

Definitions – A “boarding home” means any home, facility, institution, lodging, or other establishment, however named, which accommodates (3) three or more adults not related by blood or marriage to the owner, operator, or manager, and which offers or holds itself out to offer room and board on a twenty-four (24) hour basis for hire or compensation.

A “boarder” is defined as a person who does not require supervision or assistance related to medication, activities of daily living or a supervised plan of care. A boarding home may provide a minimal level of assistance for residents. Residents shall not require a degree of care exceeding the skill of the operator to provide.

If a resident has been adjudicated wholly mentally disabled in both financial and personal affairs in accordance with Kentucky statutes, the resident’s guardian shall not place the ward in a boarding home.

Local communities may impose requirements that are stricter than those of the state.

Boarding homes must meet all local health, fire, building and safety codes.

Assessment – The boarding home must conduct initial and periodic screening to ensure that a person meets the requirements for a boarder.

Medication – A boarding home shall not handle, store, dispense, or assist with the dispensing of a boarder’s prescription or non-prescription medications. If a resident asks for a safe place to store medication, the boarding home must make a space available but is not responsible for the storage.

Food and Nutrition – The Kentucky regulations have significant protections for food safety and preparations, including storage and temperature requirements, the use and storage of food supplies, and specific requirements for safe food preparation. The regulations also prescribe requirements for cleanliness and procedures for food service workers. The rules also contain requirements for maintenance of food equipment, and separation of laundry and kitchen space. Bottled and packaged potable water must be made available for consumer self-service.

Homes must have therapeutic menus available. They must serve three meals a day with no more than 15 hours between the evening meal and breakfast.

Resident Rights – Resident rights are enumerated in the statute. They include:

1. The right to be advised of the services provided by the home
2. The right to be advised of their rights
3. The right to voice grievances, in the home and to outsiders
4. The right to control their personal funds. (If the operator is asked to control the resident’s funds, they must account for them properly, provide a quarterly statement, and return the funds to him when the resident leaves)
5. The right to be free from mental and physical abuse
6. Residents can not be required to perform services for the home
7. The right to receive unopened mail, and associate with guests during reasonable hours
8. The resident cannot be detained against his will and has the right to come and go
9. Residents have the right to participate in social, religious and community groups
10. Each resident is to be treated with consideration, respect and full recognition of his dignity and individuality.

Resident Records – The owner/operator is required to keep basic records on each resident, such as name, date of birth, next of kin and names of health care providers.

Owner Operator - Criminal History and Background Checks must be conducted on employees. The applicant for registration cannot have been convicted of a crime relating to abuse, neglect or exploitation of an adult or child, been on the nurse aide registry, or had a health care facility license, registration, or certificate denied or revoked.

Safety and Sanitation – A resident may not be admitted with a communicable disease, and a specific list is in the regulations. They also may not admit a non-infectious tuberculosis patient. Effective measures must be taken by the home to minimize the presence of rodents, flies, cockroaches and other insects. They must maintain the premises to prevent infestations. They must eliminate odors at their source. Soiled clothing and laundry must be given immediate

attention, stored separately and laundered before being given to another individual. Toilet facilities must be clean and in good repair.

There are requirements for toilet facilities as well. They must be properly supplied, have hand washing fixtures for employees and bath linens cannot be shared. They must meet plumbing code requirements.

Similar cleanliness requirements are specified for kitchens, including dishwashers and drain boards. All sewage and waste must be disposed of in a public sewerage system or a private system which is approved.

Boarding Homes must maintain their steps, porches and railings in good repair, as well as interior surfaces. They must have a fire and evacuation plan, smoke detectors in each bedroom and on each floor, and fire extinguishers on each floor. One person in the home must be thoroughly familiar with evacuation procedures, and the home must have a fire control and evacuation plan.

Other Physical Requirements – Homes must be safely constructed, provide lighting, have a potable water supply, have hot and cold running water at all times, have adequate ventilation, and have mattresses measuring 33" X 6'. Bedrooms cannot be located in outside structures or mobile homes, and beds cannot be stacked. Minimum room sizes are 60 sq. ft per resident, or 40 sq. ft for each person in multiple occupancy. The facility must have a heating system that can maintain a minimum temperature of 72 degrees and a maximum of 85 degrees in summer. Homes must be able to accept a resident who uses a wheelchair by assuring that the resident is able to enter and exit the home and use the bathroom facilities with assistance.

Enforcement – The state has a range of enforcement options. Kentucky statute permits the state to enter a boarding house at any time or any premises suspected to be operating a boarding house illegally for the purposes of conducting an inspection or investigating a complaint. The state can deliver cease and desist orders and impose civil penalties of from \$1000.00 to \$5000.00 dollars on both registered and unregistered facilities. The state can choose not to issue a registration, to suspend the registration, or to revoke the registration. Homes have the right to correct violations within a reasonable time and the right to request a hearing. If the home is jeopardizing the health and safety of residents, the state may suspend registration without a hearing. If a cease and desist order is issued pursuant to a failure to register and the cabinet is required to seek enforcement of the action, the home can be liable for attorney's fees, costs, and expenses.

Minnesota

Minnesota has an annual registration program for boarding and lodging facilities. There are general requirements in statute for all lodging facilities. Authority for Board and Lodging facilities can be found in Minnesota Statutes 4625.01 through 4625.2355. Rules are in the Minnesota Administrative Code 157.011-157.22.

Requirements that apply to all lodging establishments (including hotels, motels, lodging houses and resorts) are as follows:

Physical Requirements – Facilities must be kept in good repair. Floors shall be kept in good repair, and shall be of such construction as to be easily cleaned, smooth, and in good repair. Ceiling and walls shall also be clean and in good repair, and rafters shall not be exposed, except when suitably finished. When flies, mosquitoes, and other flying insects are present, screens must be provided. Proper lighting and ventilation is required.

Space – Minimum floor space is 70 sq. feet per person, or 70 sq. ft. per persons in a multiple occupancy room, with at least 3 feet between beds.

Bedding and Linen - Lodging facilities must provide two sheets and a pillowcase weekly. All bedding must be kept clean. Two clean towels must be furnished every day.

Furnishings – Furnishings must be clean and in good repair.

Toilet Requirements – Each lodging house shall be equipped with adequate and conveniently located water closets on each floor. Toilet, lavatories and baths shall be in a ratio of 1:10, and showers or baths in a ratio of 1:20. These rooms must be well ventilated, maintained and clean.

Water Supply – A safe, adequate water supply must be provided. Hot water cannot exceed 130'.

Waste Disposal – Liquid waste must be stored in a public sewerage system. There are specific requirements for disposal of garbage and refuse disposal, and receptacles must be clean and in good repair.

Insect and Rodent Control – Every hotel, motel, lodging house, and resort must be constructed and equipped to prevent breeding of flies, roaches, rats, mice, bedbugs, and other insects and vermin. The establishment must fumigate if necessary, and the Commissioner of Health may order fumigation if a professional is needed.

Personal Health and Cleanliness – Employees must have a medical examination to ensure that they are free of communicable disease and must wash their hands after using the toilet.

Premises – Premises of lodging houses must be kept clean.

Plumbing – Lodging facilities must comply with the Minnesota Plumbing Code.

Fire Protection – Lodging establishments must have fire escapes in good repair. Hallways must be marked and exit lights provided. Fire extinguishers shall be operational and available. Sleeping rooms must have unobstructed egress to the outside or to a central hall leading to a fire escape.

Requirements specific to Board and Lodging Facilities in Minnesota are as follows:

Definitions – A lodging establishment means a building, structure, enclosure or any part used as, maintained as, advertised as or held out to be a place where sleeping accommodations are furnished to the public as regular roomers, for periods of one week or more and having five or more beds to let to the public.

A boarding establishment means a food and beverage service establishment where food or beverages, or both, are furnished to five or more regular boarders whether with or without sleeping accommodations for periods of one week or more.

If such an establishment provides supportive services or health supervision, the establishment must be registered.

Supportive services mean the provision of supervision and minimal assistance with independent living skills such as social and recreational opportunities, assistance with transportation, arranging for meetings, appointments, medical and social services. Supportive services also means reminders to take medications that are self-administered or providing storage for medications.

Health supervision means the provision of assistance in the preparation of administration of medications other than injectables, the provision of therapeutic diets, taking vital signs or providing assistance in dressing, grooming, bathing or with walking devices. Health supervision services require the presence of a nurse at least 4 hours a week in the facility. Certain types of health related services cannot be provided in a boarding and lodging establishment, such as bowel incontinence care, catheter care, the use of injectables or parenteral medications, wound care, and dressing changes and irrigation of wounds.

Boarding and lodging facilities must follow all the requirements of the Minnesota Code that pertain to "Food, Beverage, and Lodging Establishments." These include the basic requirements for a food services license, food manager certification, the payment of fees for a food license, and payment of a statewide hospitality fee. There are also requirements which pertain to all lodging establishments for sanitation, building, lighting and ventilation, toilets and water supply, hand washing, waste disposal, personnel health and cleanliness, fire protection, and plumbing.

They must also meet the requirements of the Minnesota Plumbing code, and sewage disposal and water supply requirement of the state. Prior to new construction, they must submit detailed plans to the state and their plans must be reviewed.

Oregon

The State of Oregon has a registration program of room and board facilities.

The authorizing statute is Oregon Revised Statutes 443.48 – 443.50 and the Rules are in Division 68-11-068-0000.

A "Room and Board Facility" means a facility that offers to the general public living accommodations and meals for compensation to two or more adults who are elderly or disabled and not related to the operator by blood or marriage. The rules specifically state that, "... no operator or other employee of a room and board facility shall provide careto any resident of a room and board facility, although operators are expected to make reasonable efforts to refer residents in need of care to appropriate social service agencies."

The Room and Board Facility is required to apply annually to the Department of Human Services, Seniors and People with Disabilities Division, for a certificate of registration. The certificate is only good for the location named on the certificate, and cannot be transferred to another owner/operator. Each location requires a separate certificate. The fee is \$20.00 per year. The application for a certificate must specify the maximum numbers of residents who can reside

at the facility, the names of all the residents at the time of application, the number of floors to be occupied, the number of beds on each floor, and the name, address, telephone number, and social security number of the applicant, persons having a financial interest in the property, and the manager.

Cities or counties that require registration or licensure of room and board facilities may request a waiver from the state from these rules if their requirements are substantially the same or similar. The Division of Seniors and People with Disabilities is required to issue certificates of registration within 60 days and maintain the statewide registry.

The following is a summary of the rules:

Standards for Operators – The applicant or manager cannot have been convicted of certain crimes or be associated with a person whose license for a room and board, foster home or residential facility was denied, suspended, or revoked or not renewed due to abuse of residents or a threat to the health and safety of residents in the three years preceding the application.

Facility Standards – Facilities must meet local zoning and building code, state and local fire, sanitary, and safety recommendations. The bedrooms must be adequately ventilated, heated, and lighted, and have an outside window. They must have adequate space for bed and personal belongings. A telephone must be available for the residents' use. The bath and toilet areas must be accessible at all times, supplied with toilet paper and soap, and be clean.

Fire Safety – Aside from the local safety requirements, residents must be shown how to exit the facility from all exits. There are to be smoke detectors in each room and fire extinguishers.

Food Preparation and Storage – The rules require cleanliness in food preparation areas and the ability to maintain food at 140 degrees. Persons preparing food must observe sanitary methods and cannot have a transmissible disease; poisonous or toxic materials must be labeled and cannot contaminate the food or food preparation equipment. Meals must be nutritionally balanced and provide the minimum daily allowances.

Resident Rights – Operators must maintain a record of compensation received from a resident in return for services. Residents have a right to exercise civil and human rights accorded to other citizens. Residents have the right to be free from abuse and conditions that threaten their health or safety. Residents have the right to file a complaint and not be retaliated against.

Inspections – The Division of Seniors and People with Disabilities has the right to inspect a registered facility upon the receipt of a complaint or if they have cause to believe that there exists a threat to the health, safety or welfare of residents. If denied access, the Division can suspend, revoke, or not renew a registration.

Corrections of Violations – Except in cases of imminent danger, the facility has the right to correct violations, contest violations, and hold a conference to discuss the violations. Correction to the violations must be made within 60 days unless they are life threatening.

Penalties and Sanctions – The Division has a range of sanctions available including civil penalties, denial, suspension or revocation of registration.