



March 24, 2020

SUBMITTED VIA EMAIL

Chris Burmeister
Division Director, Health Improvement
New Mexico Department of Health
2040 S. Pacheco,
Santa Fe, NM 87505
Christopher.Burmeis@state.nm.us

RE: Public Comment on Boarding Home Regulations

Dear Mr. Burmeister,

The Long-Term Care Ombudsman Program is grateful for the opportunity to comment on the Boarding Home Regulations. In this letter we list our concerns and provide recommendations for specific sections of the regulations. The recommendations are based on prior experience that Ombudsman have had working with the population the boarding homes serve. We are especially interested in making sure that the staff of boarding homes have proper training, residents' basic needs are provided for, and there are due process protections for residents in the event of an eviction.

- **Staff Training (Section 7.8.4.31):**
 - Subsection (B): Considering the population that boarding homes serve, we recommend adding a training for mental health first aid and substance use disorders.
- **Resident Acceptance, Admissions, and Discharges (Section 7.8.4.35):**
 - Subsection (A): "The facility shall develop admission and discharge criteria and agreements."
 - This language does not provide sufficient protections for residents from inappropriate or unlawful evictions. Residents of boarding homes have very few other housing options, and will likely experience homelessness if they are evicted.
 - If Landlord-Tenant Law does not apply to licensed boarding homes, then consider requiring:
 - **30-day Discharge Notice which states:** reason(s) that the



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resident is at risk of discharge, including specific circumstances or events that resulted in the pending discharge; changes that would need to occur in order for the resident to remain; Provide active, ongoing support and flexible interventions to support the resident in making progress towards complying.

- **If discharge is contemplated due to not being able to meet the resident's needs:** update the resident's Needs and Services Plan to include a 30-day plan to meet the needs of the resident and stabilize the resident. The licensee shall make a good faith reasonable effort to collaborate with the resident and any other supports identified by the resident. If at the end of the 30 days resident's needs still can't be met, then a 30-day discharge notice can be issued.
- **Exceptions to 30-day discharge notice:** when the resident's welfare is at risk and his/her needs can't be met in the facility, or the health or safety of others in the facility is endangered. In these situations, a discharge notice must be provided as soon as practicable to the resident and to the Office of the State Long-Term Care Ombudsman.
- For discharges initiated by the boarding home, the boarding home must notify the resident and the resident's representative(s) of the discharge and the reasons for the move in writing and in a language and manner they understand. Additionally, the boarding home must send a copy of the notice of the discharge to the representative of the Office of the State Long-Term Care Ombudsman.
 - Discharge Appeals: Currently the regulations do not provide an appeal process for discharges / evictions. Without the due process protections included in landlord-tenant law, residents do not have a recourse if they are unjustly removed from the boarding home. An appeal process is essential to protect residents' access to a basic need like housing.
- **Needs and Services Plan (Section 7.8.4.38):**
 - Subsection (A): "If the resident is to be admitted, then prior to admission, the licensee shall complete a written needs and services plan."
 - *Add as (7) – any individual the resident believes would be beneficial to inform the Needs and Services Plan.*
- **Resident Rights (Section 7.8.4.40):** Do residents have keys to the property, or curfews?
 - Subsection (D): Some homes have restricted when residents can be onsite. We recommend adding to section a right to free access to the premises. This language will also help to discourage curfews.
 - Subsection (D)(8): *"protect the resident's right to receive visitors during designated visiting hours except when restricted for good cause."*
 - Having designated visiting hours is too restrictive. Neither Nursing Home nor Assisted Living regulations refer to designated visiting hours.
 - Subsection (D)(9): add "Long-Term Care Ombudsman" to the list

- **Nutrition (Section 7.8.4.41):** Historically many homes had three meals a day prepared but residents were told to leave and eat at the senior center, or they were told meal times are very restricted (e.g. breakfast from 6am – 6:15 am). We recommend residents be permitted to eat meals when they are able to, not just when the meal is served.
- **Toilets, Lavatories, and Bathing Facilities (Section 7.8.4.61):** Our Ombudsman who have visited boarding homes have found residents who do not have regular access to hot water. We recommend adding that lavatories should have hot water for hand washing and bathing.

Thank you for your consideration of these recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linnea Forsythe', with a stylized flourish at the end.

Linnea Forsythe
New Mexico State Long-Term Care Ombudsman