

STATEMENTS OF POLICY

Title 55—HUMAN SERVICES

DEPARTMENT OF HUMAN SERVICES

[55 PA. CODE CHS. 2600 AND 2800]

Human Services Licensing: Definition of Personal Care Home and Assisted Living Residence

This statement of policy interprets the definitions of “personal care homes” and “assisted living residence” in section 1001 of the Human Services Code (62 P.S. § 1001) and 55 Pa. Code §§ 2600.4 (relating to definitions) and 2800.4 (relating to definitions).

Purpose

The purpose of this statement of policy is to clarify when a personal care home or assisted living residence is subject to inspection by the Department of Human Services (Department) under section 1016 of the Human Services Code (62 P.S. § 1016) and required to obtain a license from the Department under section 1002 of the Human Services Code (62 P.S. § 1002).

Background

The Human Services Code (code) (62 P.S. §§ 101—1503) provides that “[n]o person shall maintain, operate or conduct any *facility*, as defined herein, without having a license therefor[] issued by the [D]epartment.” 62 P.S. § 1002 (emphasis added). The code defines a “facility” to include, among other things, a “personal care home” and an “assisted living residence.” 62 P.S. § 1001. The Department has the right to “enter, visit and inspect any facility licensed or requiring a license.” 62 P.S. § 1016 (emphasis added).

As defined in the code and Departmental regulations, a “personal care home” means “any premises in which food, shelter and personal assistance or supervision are provided for a period exceeding twenty-four hours for four or more adults who are not relatives of the operator, who do not require the services in or of a licensed long-term care facility but who do require assistance or supervision in such matters as dressing, bathing, diet, financial management, evacuation of a residence in the event of an emergency or medication prescribed for self administration.” 62 P.S. § 1001; see also 55 Pa. Code § 2600.4

As defined in the code, an “assisted living residence” means “any premises in which food, shelter, personal care, assistance or supervision and supplemental health care services are provided for a period exceeding twenty-four hours for four or more adults who are not relatives of the operator and who require assistance or supervision in such matters as dressing, bathing, diet, financial management, evacuation from the residence in the event of an emergency or medication prescribed for self-administration.” 62 P.S. § 1001; see also 55 Pa. Code § 2800.4.

The General Assembly has authorized the Department to license personal care homes and assisted living residences. 62 P.S. §§ 211 and 1002. The General Assembly has also authorized the Department to establish standards and pay for personal care and assisted living services in a home-based or community-based (HCB) setting rather than in those institutional settings (referred to collectively as “HCB services”). 62 P.S. §§ 201(2), 403(b), 403.1 and 3052.

HCB services enable individuals with disabilities and seniors to live productive lives in the community and to

age in place. In addition to the General Assembly’s intent to promote these services, see 62 P.S. § 3052, Federal law requires the Department to administer its programs in the most integrated setting that is appropriate to the needs of individuals with a disability and to avoid unnecessary institutionalization. 28 CFR 35.130(d) (relating to general prohibitions against discrimination); see also *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999). The homes in which providers of HCB services render the services are sometimes multiple-dwelling arrangements, such as apartment complexes or independent living units on the campuses of Continuing Care Retirement Communities (CCRC).

Discussion

Because the personal assistance services provided as HCB services to four or more adults in apartment complexes or in CCRC independent living units are similar to the services provided in personal care homes or assisted living residences, the question has arisen whether those locations constitute a “facility” that must be licensed either as a personal care home or as an assisted living residence. Clarification of the interplay between HCB services and the licensing of personal care homes and assisted living residences will assist providers and other stakeholders in understanding the Department’s role in regulating services in the various settings. The clarification is intended to underscore the Commonwealth’s dual objectives to enable individuals to live in a home-like setting and to rebalance the services between institutional and community-based locations.

In clarifying which facilities must be licensed, the Department seeks to balance two interests: to promote HCB services to enable individuals to live successful lives in the community and to age in place and avoid unnecessary institutionalization; and to prevent contrived arrangements designed to circumvent licensing requirements. The Department will not inspect a location at which HCB services are rendered to determine whether it is a facility that must be licensed, unless the Department receives a complaint or allegation providing evidence that suggests a location is operating as an unlicensed personal care home or an unlicensed assisted living residence.

Effective Date

This statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

Questions about this statement of policy should be directed to Jacqueline Rowe, Director, Bureau of Human Services Licensing, Department of Human Services, 625 Forster Street, Room 631, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-3670.

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(*Editor’s Note:* Title 55 of the *Pennsylvania Code* is amended by adding a statement of policy in § 2600.4a and § 2800.4a to read as set forth in Annex A.)

Fiscal Note: 14-BUL-106. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. HUMAN SERVICES

PART IV. ADULT SERVICES MANUAL

Subpart E. RESIDENTIAL
AGENCIES/FACILITIES/SERVICES

CHAPTER 2600. PERSONAL CARE HOMES

GENERAL PROVISIONS

§ 2600.4a. Statement of Policy—Definition of a Personal Care Home.

In the case of premises where a provider renders home-based and community-based services that are similar to services governed by this chapter, a personal care home is not either of the following:

(1) Premises where the owner of the real property of the premises has no ownership, control, or affiliation with any provider of home-based and community-based personal assistance services at those premises.

(2) An independent living unit on the campus of a Continuing Care Retirement Community governed by the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3201—3225), if the residents of the independent living unit receive, or have the legitimate opportunity to receive, personal care services from a home-based

and community-based service provider that is not owned or controlled by, or affiliated with, the owner of the independent living unit.

CHAPTER 2800. ASSISTED LIVING RESIDENCES
GENERAL PROVISIONS

§ 2800.4a. Statement of Policy—Definition of an Assisted Living Residence.

In the case of premises where a provider renders home-based and community-based services that are similar to services governed by this chapter, an assisted living residence is not either of the following:

(1) Premises where the owner of the real property of the premises has no ownership, control, or affiliation with any provider of home-based and community-based personal assistance services at those premises.

(2) An independent living unit on the campus of a Continuing Care Retirement Community governed by the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3201—3225), if the residents of the independent living unit receive, or have the legitimate opportunity to receive, personal assistance services from a home-based and community-based service provider that is not owned or controlled by, or affiliated with, the owner of the independent living unit.

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