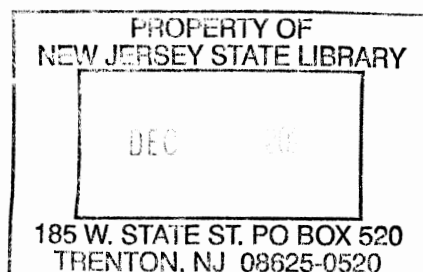


AN ASSEMBLY COMMITTEE REPORT

Recommendations of the
Assembly Corrections, Health and Human Services Committee
on
Boarding Home Reform

January, 1984



THE ASSEMBLY COMMITTEE RECOMMENDATIONS IN BRIEF

1. Reclassify existing residential health care facilities (RHCfs) and Class C boarding houses that meet a new upgraded standard of care as residential service facilities (RSFs), which will be licensed and inspected by the Department of Health and will provide regular on-site nursing services and personal care to residents.
2. Reclassify existing Class B boarding houses and the RHCfs and Class C boarding houses that do not meet the new standards for RSFs as boarding homes, which will be licensed and inspected by the Department of Community Affairs and will rely primarily on community agencies to provide services to residents.
3. Provide the current rates of Supplemental Security Income (SSI) payment to residents of Class C boarding houses and RHCfs which are reclassified as boarding homes and RSFs, respectively, while providing the current SSI rate to residents of RHCfs which are reclassified as boarding homes until the SSI rate for boarding homes reaches the current level for RHCfs.
4. Establish a 12-member Boarding Home Advisory Council in the Department of Human Services to advise the interdepartmental coordinating committee and provide for consumer and operator involvement in policymaking and regulatory development.
5. Provide the New Jersey Housing and Mortgage Finance Agency with the authority to make loans for the construction of new boarding homes and RSFs.
6. Establish a county-based system of service provision and resident placement with regard to boarding homes and RSFs, including both screening and case management to assure an appropriate level of care.
7. Require consultation between the licensing agency and the boarding home operator as well as a written plan of correction to assist the operator in remedying violations that are discovered.
8. Establish a revolving Statewide Boarding Home Emergency Fund to facilitate the correction of life and fire safety hazards and to finance the receivership of a home in which the operator abuses, neglects, or exploits the residents.
9. Replace the current judicial receivership program with an administrative process to expedite the appointment of a receiver in cases where a boarding home operator fails to promptly correct hazardous violations or has abused, neglected, or exploited the residents.

INTRODUCTION

The Legislature of this State has often relied upon its standing reference committees to oversee the effective implementation of policy by executive departments. In this capacity, the Assembly Corrections, Health and Human Services Committee has accepted the role of a legislative overseer for New Jersey's boarding homes (the term "boarding home" is often used generically to refer to rooming houses, boarding houses, and residential health care facilities).

During the 1982-83 session of the Legislature, the committee examined the operation of the boarding home system in New Jersey and the efforts of the Departments of Human Services, Community Affairs, and Health to implement the Rooming and Boarding House Act of 1979 (P.L. 1979, c. 496). The committee held a public hearing on October 13, 1982 to review problems encountered by the three departments in regulating and providing services to boarding homes. The departments subsequently submitted a boarding home reform plan in the Report to the Legislature on Recommendations for Boarding Home Reform of November 19, 1982 and the follow-up progress report of May 31, 1983. In the summer of 1983, a task force was appointed by the chairman of the Assembly committee to consider proposals to rectify a number of identified weaknesses with respect to the licensing, inspection and provision of services regarding boarding homes. At a special meeting on boarding home issues on September 7, 1983, the committee received recommendations for legislative initiatives from the three departments and various parties. Finally, the committee has been apprised of the recommendations proposed by the

Committee on Residential Alternatives to Institutional Long-Term Care in the Report of the Nursing Home Task Force which was presented to the Governor in the fall of 1983.

This report is the result of these committee activities and represents an attempt to synthesize some of the many recommendations presented to the committee into a set of proposals in order to formulate a legislative agenda for boarding home reform in the 1984-85 session of the Legislature. The recommendations in this report are offered for discussion and consideration in a spirit of flexibility and accommodation. These proposals are intended to strengthen the State's capacity to fulfill the mandate of the Rooming and Boarding House Act of 1979 to provide a more comprehensive and unified approach to regulating boarding homes and to promote the health, safety and welfare of their vulnerable inhabitants.

RECOMMENDATIONS

A. Regulatory Structure

One of the major objectives of P.L. 1979, c. 496 was to organize the many agencies, both public and private, that provide both generic and specialized services into a structured network by mandating that these agencies coordinate their activities at all levels.

The committee believes that many of the difficulties encountered in the implementation of the law relate to coordination between the various agencies. Because of its mandated coordination with respect to the different agencies that perform licensing, regulatory, and service functions, P.L. 1979, c. 496 has intensified the interaction between agency

staffs and has created a need to clearly identify roles and responsibilities, to reformulate overlapping responsibilities or jurisdiction among the different agencies, and to assure that the quality and nature of services provided to boarding homes correspond to the needs of the residents.

With these needs in mind, the Corrections, Health and Human Services Committee endorses the proposals of the Committee on Residential Alternatives to Institutional Long-Term Care of the Nursing Home Task Force with respect to the classification of boarding homes and the distinctions between them in terms of services provided, while making an additional recommendation with respect to jurisdictional responsibilities.

Classification

The committee recommends a new classification scheme for boarding homes to clearly differentiate each type of facility in terms of the services offered and the level of care provided.

The new classification scheme would consist of:

1) Residential Service Facilities (RSFs) - the current residential health care facilities (RHCs) and Class C boarding houses that meet the new upgraded standards for RSFs.

The committee believes that RSFs should be licensed and inspected by the Department of Health.

2) Boarding Homes - the current Class B boarding houses and those RHCs and Class C boarding houses that do not meet the new standards for RSFs.

The committee believes that boarding homes should be licensed and inspected by the Department of Community Affairs.

Class A boarding houses, which are rooming houses and are not considered a real alternative to institutional long-term care, would remain unchanged.

Services

The major difference between the RSFs and the boarding homes would be in the amount and nature of health and personal care the residents require and are provided:

1) RSFs would have a regular on-site professional nursing presence for health maintenance and monitoring and personal care staff, available as either direct employees or as contracted providers.

2) Boarding Homes would not have a regular professional nursing staff and the level of personal care would not have to be as high; they would rely on services primarily through community providers, including necessary nursing care provided by local organizations that supply home health and nursing services.

RSFs would provide a type and level of care less medically intensive than that offered by nursing homes but more health-oriented and supportive than that currently offered in existing Class C boarding houses or RHCs. The difference between the current Class B and Class C boarding houses and the new boarding homes would be in the construction of new physical plants and an increased service and health component.

B. SSI Payment Levels

Approximately one-half of the residents of boarding houses and residential health care facilities (RHCs) are recipients of Supplemental Security Income (SSI). The current SSI payment

schedule is \$461.97 for residents of RHCs and \$343.17 for residents of boarding houses.

The committee supports the recommendation of the Committee on Residential Alternatives to Institutional Long-Term Care of the Nursing Home Task Force with respect to SSI payment levels under the proposed new regulatory structure:

Current residents of Class C boarding houses which become reclassified as boarding homes should continue to receive their present SSI rate. Current residents of RHCs that are reclassified as boarding homes should continue to receive their present SSI rate until the SSI rate for boarding homes reaches the payment level that now exists for RHCs. All residents of RSFs should receive the present SSI rate for RHCs.

To raise the SSI rates for the current residents of Class C boarding houses to the higher RSF rate might cost approximately \$7 million annually, of which 75 percent would be borne by the State and 25 percent by the counties. However, significant savings may be achieved if the State is able to divert from nursing home care a substantial number of the less impaired intermediate care B (ICF-B) level patients who can function well in a less expensive alternative setting such as an RSF. A study completed in late 1977 for the State Medicaid program concluded that 35 percent of the Medicaid ICF-B level patients in New Jersey could be discharged if appropriate alternative levels of care were available, and the alternative most frequently cited was residential health care that provided a high level of services.

Figures supplied by the Department of Health in 1983 indicated that providing residential health care to 35 percent of both the total of current nursing home ICF-B level patients (approximately 5,280) and the monthly list of Medicaid-eligible persons waiting for nursing home beds (2,740), at the then existing SSI rate of \$450.20 per month, would cost less than \$15.2 million annually, compared with a cost of over \$39.2 million annually at the nursing home ICF-B level - a savings of 62 percent.

In addition, significant capital cost savings will result if fewer expensive nursing home beds have to be built because patients who would have been served in ICF-B settings are cared for in the proposed RSFs instead. The current statewide average cost of constructing a long-term care bed is \$28,000, while the cost of a RHCF bed is only \$11,000.

C. Policy Development and Coordination

There is currently a State-level interdepartmental coordinating committee, established pursuant to P.L. 1979, c. 496, which meets on a quarterly basis under the direction of the Commissioner of Human Services and includes the Commissioners of Community Affairs and Health and the Ombudsman for the Institutionalized Elderly.

The Corrections, Health and Human Services Committee believes there is a need to create a more broadly-based mechanism for policymaking and regulatory development that includes representation from operators, residents, service providers and local governing officials and provides an opportunity for their input into the deliberations of the interdepartmental coordinating committee.

The Assembly committee, therefore, recommends the establishment of a Boarding Home Advisory Council as an adjunct to the interdepartmental coordinating committee. The council would, for administrative purposes, be located within the Department of Human Services and would consist of 12 members, including representatives of local health and building code departments, county welfare agencies, health professions, boarding home operators and residents, and other concerned individuals. The general intent of this proposal is to create a mechanism that would allow the full spectrum of boarding home interests to have institutionalized access to the policymaking process at the State level. The council would advise the interdepartmental coordinating committee with regard to the development and coordination of State policy on boarding home regulation and services delivery and would provide input into the adoption of regulations and the identification of unlicensed homes.

D. New Construction

The committee believes there will be a growing demand for safe and adequate homes as the State seeks to expand and upgrade its system of residential alternatives to institutional long-term care. To alleviate the problem of residents living in deteriorating and unsafe structures or buildings in marginal physical condition that are not suited for high-density residential use, the committee recommends a new construction program for RSFs and boarding homes. To finance this program, the committee will support legislation to give the New Jersey Housing and Mortgage Finance Agency (NJHMFA) the authority to make loans

for new construction activity in the same way that it provides loans to operators of already existing boarding houses and residential health care facilities to make life safety improvements under the "New Jersey Housing and Mortgage Finance Agency Law of 1983" (P.L. 1983, c. 530).

This initiative, which was proposed by the Residential Alternatives Committee of the Nursing Home Task Force, would extend to new construction activity the kind of financial structure that was established under the former Boarding Home Life Safety Program (P.L. 1981, c. 515, since repealed). The NJHMFA sells low interest tax-exempt general revenue bonds and uses the proceeds of these bonds to make long-term loans to boarding home operators to finance mandated life-safety improvements. The debt service on the loans is paid by the State from the Casino Revenue Fund and general State revenues, supplementing the rents of low and moderate income boarding home residents, while a State Rental Assistance Fund guarantees NJHMFA's bondholders repayment of interest and principal on its bonds.

E. Placements and Service Coordination

The committee believes that legislative action must be taken to deal with two critical and interrelated deficiencies in the boarding home system: (a) inappropriate and haphazard placements made by a variety of public and private agencies, and (b) duplicative and uncoordinated service provision by many of these agencies.

Many of the problems experienced in implementing P.L. 1979, c. 496 involve a lack of coordination between agencies attempting

to place or provide services to boarding home residents: county welfare agencies, community mental health centers, the Bureau of Transitional Services in the Department of Human Services, the Mental Health Law Project, the Division of Mental Retardation, contract programs, county offices on aging, and other providers. There is a clear need for a mechanism to coordinate appropriate services and to appropriately place individuals in boarding homes according to the level of care that they require.

The committee recommends the establishment of a county-based system of service delivery and resident placement that would enable counties to coordinate all State, county and local activity with regard to boarding homes and their residents. This system would include two essential features:

1. A case management system would be provided through county welfare agency (CWA) staff to ensure greater accountability for the needs of vulnerable boarding home residents. CWA staff would, where appropriate, assess the service needs of residents in conjunction with other personnel, such as community mental health agency staff. CWA workers or other service providers would arrange for the delivery of services from community agencies and would be responsible for on-site programming, such as teaching of daily living skills and day programming for rehabilitative purposes.
2. A screening capacity would be developed, utilizing the county Medicaid offices to determine the need for health services for prospective residents of RSFs or boarding homes so that those who need more intensive nursing and health care could be

referred to an RSF or a nursing home. Public and private agencies as well as boarding home and RSF operators would be required to place through this screening system.

F. Enforcement

Compliance Provisions

The committee recommends adoption of two key compliance provisions of "The Model Act for Regulating Board and Care Homes," prepared by the Board and Care Project of the American Bar Association, which are derived in part from successful experiences in the housing code enforcement area as well as experiences described by agencies in a number of states for achieving compliance with board and care home standards.

1) The model act contains specific provisions requiring consultation between the licensing agency and the boarding home operator, which reflects a practical recognition that many violations may result from an operator's lack of knowledge of licensing requirements, methods of compliance and financing mechanisms. In the model statute, consultation is required after violations are discovered to assist a particular operator in remedying violations. The conference must be held at a specific time when the inspector must provide certain information to the operator to assist him or her in preparing the written plan of correction. Additional consultation also must be provided during the compliance period if progress is not being made or at any time it is requested by the licensee.

2) The model act also provides for a written plan of correction which requires an operator to determine how to deal with each deficiency. This serves as a written document which the

inspector and operator may share in assessing progress toward compliance and the need for any modifications or corrections. The plan must include what will be done to remedy each violation, financing information and contractors, and the time needed to comply. The plan also is made subject to the licensing agency's approval. If the plan is rejected, the agency may either request or order a modified plan. If the operator does not submit a plan, the agency is required to issue an order to correct the violations within a certain time period.

Revolving Fund

Currently, the State licensing agencies are often forced to close a boarding house or residential health care facility which requires a major correction or addition to its physical structure in order to comply with licensing requirements, because of a lack of available funds to make immediate improvements at the facility.

Pursuant to testimony submitted by the Departments of Human Services, Community Affairs, and Health, the committee recommends establishment of a revolving Boarding Home Emergency Improvement Fund with the intent of making monies available to correct life and fire safety hazards and to finance the receivership of a home in which there are chronic conditions of neglect and exploitation of the residents.

Under this proposal, civil penalties collected pursuant to P.L. 1979, c. 496 would be redirected from the General Fund to this newly created fund in order to allow the State to directly

arrange for immediate corrections and improvements in those cases in which an owner fails to promptly correct a life safety hazard, even when fined. This new fund would differ from the existing Life Safety Loan Fund in that it would enable the State to arrange for the emergency rehabilitation of a home without being forced to close the facility and relocate the residents, as is now often the case. Under this proposal, the boarding home owner would be required to repay to the fund with interest the total amount of money provided to make the emergency improvements. An appropriation would be provided to facilitate initial operations by this new fund.

Before legislation is introduced to establish an emergency improvement fund, however, the departments should prepare an estimate of the costs entailed in this proposal based on an analysis of the number of facilities that do not comply with licensing requirements and a projection of the expenditures needed to bring these facilities up to licensure standards.

Receivership

The final committee recommendation is also made pursuant to the testimony of the three departments concerned with regulating and servicing boarding homes: Replace the existing judicial receivership program, which is time-consuming and costly, with an administrative receivership process.

Existing receivership proceedings are too slow for those emergency situations in which the life, safety, or welfare of boarding home residents are at stake. Legislation is

needed to establish a new receivership process which would be operated through the Office of Administrative Law and would enable the licensing agencies to consider appointment of a receiver on a timely basis when a boarding home owner fails to promptly correct life or safety violations, or when an operator or staff member of a home is guilty of severe or chronic abuse, neglect, or exploitation of the residents.

SUMMARY

The Assembly Corrections, Health and Human Services Committee hopes that the recommendations presented in this report will provide the basis for an agenda for legislative action on boarding home reform in the coming months. The committee also wishes to convey to the concerned State agencies, service providers, boarding home operators and residents, local officials, and the public in general its continued interest in the issues discussed here and its commitment to forge a viable solution to the problems encountered by boarding homes and their residents in cooperation with the efforts of other concerned parties.

The Rooming and Boarding House Act of 1979 laid an effective regulatory foundation for reforming New Jersey's system of boarding home care and improving the lives of some 40,000 elderly and disabled people who are dependent on that system of care; however, both the legislative and executive branches of State government have acknowledged the need for further action to improve upon the legal, regulatory, and bureaucratic structure created by P.L. 1979, c. 496. The policy issues which have been examined by this committee and are addressed

in this report will undoubtedly be the subject of continuing discussion and debate as the Legislature takes action to implement the next stage of boarding home reform in New Jersey.

