AMERICAN BAR ASSOCIATION
COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY
AND
COMMISSION ON THE MENTALLY DISABLED
AND
SENIOR LAWYERS DIVISION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED that the American Bar Association supports Federal oversight and enactment of State legislation requiring licensure and regulation of Board and Care facilities for adults who need personal assistance, lodging and meals. A "board and care home" means a publicly or privately operated residence that provides personal assistance, lodging and meals. Board and care homes fall on...
a continuation of community residential services between facilities designed for independent living, such as boarding houses on the one end, and intermediate care facilities and residential treatment facilities on the other. Board and care homes are known by different names throughout the state jurisdictions. They may be called foster care, adult foster care, adult congregate living facilities, residential homes, group homes, aftercare, personal care, shelter homes, or any other generalized care facility.

Any scheme of licensing and regulation should be consistent with the following principles:

1. Provide for state licensing to supersede local regulation unless local regulation is more stringent.

2. Provide contractual protections, residents' rights, and access to treatment and habilitation.

3. Provide a system of regulation that prevents abuse, neglect and exploitation.

4. Provide for a minimum set of standards to ensure safety and protection of the residents of board and care facilities.

5. Provide for a system of enforcement to assure quality which includes unannounced inspections and a system of intermediate sanctions.

6. Provide for sanctions against unlicensed homes.

7. Provide for the development of a plan of care for each resident.
8. Provide for living arrangements that are consistent with the principles of normalization, least restrictive environment, habilitation and treatment.
Report

Many elderly and disabled adults reside in board and care homes, yet little is known nationally about the residents' needs or the care they receive. Newspaper articles and TV stations have carried stories about poor care and lack of state enforcement of standards in recent months. In February 1989 the U.S. General Accounting Office released a report, Board and Care: Insufficient Assurances That Residents' Needs are Identified and Met. The House Select Committee on Aging also completed a study in March, 1989, entitled Board and Care Homes in America: A National Tragedy. The House Report along with a hearing jointly held with the Senate Special Committee on Aging in mid-March again raised the public's awareness about the scandals in the nation's board and care industry.

Residents in board and care homes are generally older and disabled with few economic resources. They receive meals, shelter and some supervision sometimes known as protective oversight. "Board and care" describes a wide variety of nonmedical community-based residential facilities — group homes, foster homes, adult homes, domiciliary homes, personal care homes, and rest homes. These homes are different from boarding homes, which only provide a place to sleep and eat.

The federal government does not regulate or supervise these types of facilities. Most states have developed a rudimentary licensing and inspection system for board and care facilities.

Federal Oversight

In 1976, the Congress enacted the Keys Amendment to the Social Security Act, which required states to certify to the Department of Health and Human Services (DHHS) that all facilities in which a significant number of Supplemental Security Income (SSI) recipients resided or were likely to reside met appropriate standards. SSI provides a national minimum income to needy aged (65 or older), blind, or disabled individuals. The objective of the Keys Amendment was to protect SSI recipients from being in substandard board and care facilities. Strong state regulations and oversight activities are critical to the accomplishment of this objective, but HHS currently commits almost no resources to assure that state board and care programs are in compliance with the Keys Amendment and implementing regulations.

GAO also found that widespread confusion exists on such basic issues as what constitutes a board and care home, how to deal with unlicensed homes and the variety of different licensing requirements among the states, and how to use available sanctions to correct problems without hurting the people the law was intended to protect.
State Oversight

State inspections of licensed homes over the past several years have identified a wide variety of problems. These range from very serious situations, in which residents have been subjected to physical and sexual abuse, to problems involving persistent unsanitary conditions, such as improperly stored food and trash. In some cases board and care residents had been denied heat, were suffering from dehydration, were denied adequate medical care, or had food withheld if they did not work. Situations have also occurred that have contributed to the death of board and care residents. Because none of the six states in the GAO had aggregated inspection data, the magnitude of the problems is unknown. Officials believe that problems are concentrated in homes with low-income residents, specifically those living on SSI.

Given the situations identified in licensed homes, undoubtedly serious problems also exist in unlicensed homes. This was confirmed, for example, in Ohio when a state health department nurse found residents in unlicensed homes who were not receiving enough food or who had large lesions, bedsores, and unattended chronic infections.

All six states in the GAO study had legal authority to immediately close homes or suspend licenses when residents' safety or well-being was threatened. However, three of the six had only one sanction available for dealing with sub-standard homes -- to deny or revoke a home's license -- a time-consuming process that can take up to a year. The other three states had intermediate sanctions, such as fines or receivership. One difficulty in closing homes is the lack of alternative housing for residents, especially those who rely on SSI and other forms of public assistance.

Residents

Surveys of the board and care population have identified many residents who have physical limitations, have previously lived in an institution due to a mental disability, are unlikely to have friends or relatives visit them, and have low incomes. One recent survey of more than 6,000 residents in New Jersey, for example, showed that about 45 percent were on SSI, about 42 percent had a psychiatric care history, about 68 percent had a chronic illness, and about 71 percent were on medication. State officials in GAO's review reported that board and care homes experience difficulty in meeting the needs of mentally ill residents. An additional problem is caused by the low incomes of residents, specifically those on SSI. In 1988 the federal SSI benefit was $354 per month for an individual. Even with state supplements to SSI, studies have shown that the total payment may fall short of covering the actual costs of care.

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In 1982 the DHHS Inspector General did a study of board and care homes. Its findings confirm the Congressional Studies of the last ten years as well as the investigations conducted by the press. The report made eight recommendations which were adopted by the Secretary Richard Schweiker. Amongst the eight was development of a model state licensure act. The American Bar Association Commissions on Legal Problems of the Elderly and the Mentally Disabled were requested by the Department of Health and Human Services to prepare such an act. The final production was entitled Guidelines for States: A Model Act Regulating Board and Care Homes.

The problem found in board and care facilities in 1989 by the GAO and the House Select Committee on Aging are very similar to those found fifteen years ago. The Commissions' work in this area can make quite a contribution. The principles outlined in the recommendations will allow the ABA to add a great deal to assuring better quality to the lives of thousands of elderly and disabled persons in the United States.

The ABA adopted a resolution in February 1983 calling for the use of a variety of enforcement sanctions in the nursing home field. In August it adopted a resolution calling for quality assurance mechanisms in home and community based care in. And, in February 1989 it adopted a resolution setting forth principles to be considered in the delivery of long term care. The Board and Care principles will add to an array of mechanisms to improve the lives of the nation's elderly and disabled.

Respectfully submitted,

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Commission on Legal Problems of the Elderly

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August 1989
GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

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Submitting Entity: Commissions on Legal Problems of the Elderly and the Mentally Disabled and Senior Lawyers Division

Submitted By: John H. Pickering, David Wexler and Don M. Jackson

1. Summary of Recommendation(s).

The recommendation calls for regulation of the nation's board and care facilities. Investigations by the General Accounting Office, The House Select Committee on Aging and the Dept. of Health and Human Svcs. (DHHS) Inspector General have found serious deficiencies in these types of facilities. Under a grant from DHHS the ABA's Commission on Legal Problems of the Elderly and the Mentally Disabled developed a Draft Model Act regulating Board and Care Homes: Guidelines for States. The principles outlined in this recommendation are generated from the Model Act.

2. Approval by Submitting Entity.

Elderly Commission, May 19, 1989
Mentally Disabled, April 19, 1989
Senior Lawyers Division, May 12, 1989

3. Previous submission to the House or relevant Association position.

Comprehensive System of Long-Term Care Resolution approved February 1989
Home Care Standards Approved August 1987
Nursing Home Intermediate Sanction Approved February 1983.

4. Need for Action at This Meeting.

5. Status of Legislation. (If applicable.)

None at this time.

6. Cost to the Association. (Both direct and indirect costs.)

None

7. Disclosure of Interest. (If applicable.)

None
8. **Referrals.**

Section on Urban, State and Local Government
Section on Administrative Law

9. **Contact Person.** (Prior to meeting.)

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10. **Contact Person.** (Who will present the report to the House.)

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