



Report on Group Home Regulation

**As Required by
S.B. 500, 87th Legislature, Regular
Session, 2021**

**Texas Health and Human Services
December 2022**



TEXAS
Health and Human
Services

Table of Contents

1. Introduction	3
2. Background	5
Boarding Home Regulation	5
Community Homes	6
Comparison of Boarding Homes and Community Homes.....	7
Complaint Process	8
3. Recommendations	11
Reporting of Ordinances and Complaint Information	11
Enhanced Standards and Penalties	12
Boarding Home Licensure.....	12
Supervised Living Group Homes through Home and Community Based Services- Adult Mental Health.....	13
Identifying Boarding Homes	14
Grant Program to Improve Quality.....	14
4. Conclusion.....	16
List of Acronyms	17

1. Introduction

As required by Senate Bill 500, 87th Legislature, Regular Session, 2021 (SB 500), the Texas Health and Human Services Commission (HHSC) assessed current oversight of group homes in Texas. While the term “group home” is not a provider type defined in statute, it is often used to describe providers that can be unregulated, regulated locally, or provide services that require state regulation. In the latter category, for example, the state regulates Home and Community-based Services (HCS) program group homes, which are three- and four-person group homes serving individuals with intellectual and developmental disabilities in the Medicaid HCS program. Any facility that meets the definition of an assisted living facility would also require state regulation by HHSC. HHSC does not regulate other group homes.

For purposes of this report, SB 500 defines “group homes” as:

- a boarding home facility, as defined by [Section 260.001, Health and Safety Code](#); and
- a community home, as described by [Chapter 123, Human Resources Code](#).

The legislation also directed HHSC to make recommendations regarding regulatory processes for group homes, including licensure and the fielding of complaints, and on how to better identify these homes, which currently are not licensed or regulated by the state.

It should be noted that in the past, many stakeholders have said that regulation of group homes, whether at the local or state level, needs to be carefully considered and implemented to ensure it does not significantly increase costs or decrease the overall availability for people needing these homes, many of whom have disabilities, are elderly, and/or have behavioral health challenges. For example, stakeholders have said if local regulators revoke a permit for a boarding home, it could result in those residents experiencing homelessness and impacting other entities such as state hospitals, shelters, and the criminal justice system.

Residents of boarding homes in Texas, and across the nation, typically have very low incomes and often pay for room and board using Social Security Income and

Social Security Disability Insurance¹. Due to their poverty, age, and disability, residents are vulnerable to financial exploitation and can live in unsafe or unsanitary living

¹ 2008 HHSC/HMA study: <http://boardinghome.org/wp-content/uploads/2013/12/BH-Boarding-Houses-Report-01-09.pdf>

conditions. Their medical and social needs can also go unmet. Many residents likely need personal care, medical, mental health, or social services, and some residents pose dangers to themselves and others without adequate safety precautions such as supervision. News stories have reported on harm to residents in these types of unregulated facilities—including deaths. This has called attention to the need for protection for these individuals.

This report will provide important background on these complex issues, including previous relevant legislation; the current landscape of group home regulation, including HHSC boarding home standards adopted at the local level; and recommendations for policymakers on how to potentially improve health and safety standards in these and other unregulated settings.

2. Background

Boarding Home Regulation

Due to ongoing concerns about health and safety in boarding homes, in 2009, House Bill 216, 81st Legislature, Regular Session, amended the Texas Health and Safety Code by adding Chapter 260 governing boarding home facilities, effective September 1, 2011. Section 260.003 requires HHSC to develop and publish model standards for the operation of a boarding home and specified that these standards must address elements such as construction, fire safety, sanitary conditions, reporting and investigation of injuries and incidents, staff education, and assessment of residents.

If a county or municipality chooses to adopt the full standards developed by HHSC, then, as provided by Health and Safety Code Section 260.010(a), not later than September 30 of each year after the standards are adopted, the county or municipality must submit a report to HHSC including:

- the total number of boarding home facilities permitted during the preceding state fiscal year;
- the number of active local permits;
- the total number of residents in each boarding home facility; and
- the total number of inspections conducted of boarding home facilities.

As required by this statute, HHSC also continues to conduct the following activities:

- Inform counties and municipalities about these model standards;
- Make these standards readily available;
- Alert counties and municipalities that choose to adopt the model standards of the obligation to submit annual reports;
- Maintain a mechanism for submitting these reports;
- Compile all reports submitted by counties or municipalities; and
- Submit the compiled report biennially to the Legislature.

HHSC published its most recent boarding homes report in January 2021; the next will be issued in January 2023. However, at this time, only four municipalities in Texas have adopted the full array of HHSC boarding home standards – Dallas, El Paso, San Antonio, and Brenham. An undetermined number of cities, including Houston, Austin, and Fort

Worth, have adopted their own boarding home standards, and they vary in how comprehensive they are.

Boarding homes are generally regulated by local zoning codes, fair housing codes, food establishment regulations, and public accommodation standards. Some cities, including Austin and Houston, require a boarding home to pay an annual fee, submit to an inspection by a local code authority, and obtain a certificate of operation before being granted a permit, certification, or license. Local inspectors perform subsequent inspections of boarding homes to assess their condition and ensure they are not operating illegally. They also are subject to ordinances that typically restrict their location to neighborhoods zoned multi-family residential, and they allow for a boarding home's license, certification, or permit to be revoked for violations of code or criminal behavior on the part of the home's operator.

However, because these municipalities have not adopted the complete array of HHSC standards, they are not required by current law to report any information to HHSC. As a result, the state has not been advised of the total number of boarding homes across the state, the type and number of complaints filed against them, the scope of their regulations, and the total number of individuals served. More information on how to address these issues is in the "Recommendations" section of this report.

In November 2017, HHSC participated in a Behavioral Health Advisory Committee Housing Subcommittee forum on boarding homes serving people with behavioral health conditions, which included tours of homes and presentations from experts. The goal was to improve legislative reporting on local boarding home ordinances to better understand their impact on housing options for individuals who have behavioral health disabilities, as well as to inform future policy decisions. In addition to agency representatives, members included advocates, providers, and individuals with experience living in boarding homes. Some of the proposals in the "Recommendations" section of this report reflect the results of this important discussion.

Community Homes

Community homes, as defined by Chapter 123 of the Human Resources Code, are not a distinctive provider type regulated by the state, but rather are a category of community-based providers of services to individuals with cognitive or physical disabilities. More specifically, Chapter 123 established a protection for community homes from housing discrimination, including local zoning and restrictions.

To qualify as a community home in Texas, an entity must comply with sections 123.005 through 123.008 of the Human Resources Code and be a community-based residential home operated by:

- A community center organized under Subchapter A, Chapter [534](#), Health and Safety Code, that provides services to persons with disabilities;
- An entity subject to the Texas Nonprofit Corporation Law as described by Section [1.008](#)(d), Business Organizations Code; or
- An entity certified by HHSC as a provider under the federal Intermediate Care Facilities for Individuals with an Intellectual or Developmental Disability (ICF-IDD) medical assistance program; or
- An assisted living facility (ALF) licensed under Chapter [247](#), Health and Safety Code, provided that the exterior structure retains compatibility with the surrounding residential dwellings.

While HHSC does regulate ALFs and ICF-IDD providers, as listed above, in accordance with their respective chapters of the Texas Health and Safety Code – specifically, Chapter 247 for ALFs and chapter 252 for ICFs, HHSC does not enforce the provisions of Chapter 123, which falls to local entities.

Comparison of Boarding Homes and Community Homes

As required by SB 500, here are the key differences between a boarding home and a community home, which are defined in the Texas Health and Safety Code and in the Human Resources Code, respectively.

Per Section 260.001 of the Health and Safety Code, a boarding home:

- Furnishes lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and
- Provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide assisted living facility (ALF) personal care services as defined by Section [247.002](#) to those persons.

Per Section 260.00, boarding homes serve elderly persons, as defined in the Human Resources Code as a person of age 65 or older; and persons with disabilities, which are defined in Section 48.002 of that code as a person with a mental, physical, or intellectual, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is: 18 years of age or older; or under 18 years of age and who has had the disabilities of minority removed.

As noted earlier in this report, per Section 260.004, local regulation, a county or municipality can require a person to obtain a permit to operate a boarding home facility within its jurisdiction. A county or municipality also can adopt the standards developed by the HHSC executive commissioner under Section 260.003 and require a boarding home facility that holds a permit to comply with the adopted standards.

Per Section 123.005, community homes provide services to persons with disabilities, as defined in Section 123.002: “a person whose ability to care for himself or herself, perform manual tasks, learn, work, walk, see, hear, speak, or breathe is substantially limited because the person has a certain cognitive or physical disability.” These disabilities can include Alzheimer’s or other types of dementia; autism; mental illness; muscular dystrophy; and multiple sclerosis, among others.

Community homes also provide a wider array of services than boarding homes. Per statute, community homes can provide these services to the individuals with disabilities who reside there: food and shelter; personal guidance; care; habilitation services; and supervision.

Complaint Process

SB 500 also directed HHSC to analyze processes for reporting complaints against group homes, as well as to analyze the complaints filed against group homes over the previous 10 years.

The process for reporting complaints in boarding homes can vary by local entity, which governs these processes through local ordinances. Generally, however, constituents are asked to call 311 or another local number if they believe they have identified a boarding home that is not operating in compliance with local ordinances, or if they have health or safety concerns about a boarding home. If those concerns pose a serious risk to resident health and safety, they are advised to immediately call 911.

For example, the City of Houston, which recently revised its boarding home ordinances to make them more robust, has a Boarding Homes Investigation Unit within its Mental Health Division that residents can reach via telephone or email. Staff within this unit then investigate a home to assess whether it is complying with local permitting requirements.

The City of Austin informs residents to call 311 if they suspect a home is operating without a license in violation of local ordinances, or if they suspect mistreatment of residents. Other local entities follow similar protocols, including allowing complainants to remain anonymous. Municipalities and counties note to the public that they investigate any complaint they receive, and they will refer concerns about abuse or neglect of boarding home residents to Adult Protective Services (APS) at the Department of Family and Protective Services (DFPS). Local complaint investigators also notify their counterparts in law enforcement, health, mental health, zoning, and other officials as needed.

HHSC's process for reporting complaints about state-licensed facilities follows a similar structure. Complaints about nursing facilities, assisted living facilities, and other long-term care settings are received and triaged by the HHSC Complaint and Incident Intake (CII) Unit, which can be reached via email and a toll-free hotline (1- 800-458-9858). Staff in this unit are trained to obtain all relevant information from a complainant, who can remain anonymous. CII staff then prioritize and assign the complaint based on the seriousness of the concern, with a Priority 1 complaint requiring HHSC regulatory investigators to be on-site at a facility within 24 hours. Any suspected abuse, neglect, or exploitation of residents in a state regulated facility is assigned and investigated as a Priority 1 complaint.

CII also receives and processes complaints about facilities operating illegally as an assisted living facility (ALF), which is defined in Chapter 247 of the Health and Safety Code, that HHSC has statutory authority to investigate. An ALF is defined as an establishment providing support for daily living activities (including assistance with grooming, bathing, feeding, ambulating) to four or more individuals who are not related to the owner. This is the only regulatory authority the state now possesses to potentially enter boarding homes. If HHSC determines through investigation that a boarding home meets these criteria, the home must comply by obtaining a state license to continue providing ALF services, modifying its operations (e.g. reducing its census to three or fewer individuals) or ceasing operations altogether.

SB 500 requires HHSC to do an assessment of complaints against Texas group homes received over the past ten years. However, HHSC does not have the information necessary to conduct this assessment because as described above, there is no single intake point at the state level to receive, evaluate, and collect data on these complaints. However, the January 2021 Report on Texas Boarding Houses indicates that the most common complaints continue to be for unsafe or unsanitary conditions, including the following:

- Unclean living situations;
- Need for critical repairs;

- Improper heating or cooling;
- Food of insufficient quality or being offered too sporadically; and
- Fire safety concerns, including lack of smoke detectors².

A recommendation to require local entities to report more information to HHSC about complaints in boarding homes can be found in the “Recommendations” section of this report.

² <http://boardinghome.org/wp-content/uploads/2013/12/BH-Boarding-Houses-Report-01-09.pdf>

3. Recommendations

SB 500 requires HHSC to make recommendations on several topics, including whether “additional state and local governmental enforcement authority over group homes is needed.” Based on research and previous stakeholder engagement on these issues, HHSC has developed the following recommendations for state policymakers to consider.

Reporting of Ordinances and Complaint Information

As previously noted, the reporting requirements for boarding homes defined in Section 260.010 do not provide enough information to assess the impact of boarding home ordinances statewide. As a result, some counties and municipalities are not required to report data to HHSC because they developed their own set of standards, rather than adopt the full array of HHSC model standards.

The small number of counties and municipalities reporting to HHSC is likely due to an interpretation of Section 260.010 that only “[a] city that has adopted the standards must submit a report”.

A new statutory requirement for all counties and municipalities that implement any regulation of boarding homes report annually to HHSC would help inform the development of any subsequent boarding home regulation by providing a more accurate picture of its cost, scope, and potential challenges.

As noted above, the Behavioral Health Advisory Committee Housing Subcommittee in 2017 conducted an in-depth assessment of the reporting of boarding home standards at the local level. Based on that assessment, HHSC developed the following recommendations to improve data collection and provide a more accurate picture of the impact of boarding home ordinances across the state:

- Requiring all counties and municipalities that regulate boarding homes for three or more unrelated individuals who are elderly or have disabilities to report data to HHSC.
- Submit current standards or ordinances and updates when applicable.
- Submit written policy and procedures for considering reasonable accommodation requests.
- Report on:
 - ▶ The total number of reasonable accommodations submitted, granted, rejections, and reasons why requests were rejected.

- ▶ The total number of fair housing challenges, complaints, lawsuits, or injunctions.
- ▶ The total number of homes that closed, the reasons why they were closed, and report the disposition of displaced residents.
- ▶ Information on any activities the county or municipality engages in to support operators in maintaining compliance with local regulations.

Local entities are not required to report to HHSC the complaints they receive about boarding homes, including the four cities that have adopted the full HHSC boarding standards and therefore these entities report some information, such as the number of permits etc. to the HHSC annually. In addition to recommendations mentioned above, HHSC recommends requiring local entities with any boarding home standards to report a summary of complaints to HHSC annually. This reporting would provide the state with a more complete picture of these problems and inform future policy development at local and state levels.

Enhanced Standards and Penalties

State policymakers may consider working with local jurisdictions on legislation requiring cities or counties to adopt boarding home standards to protect the health and safety of the residents of those homes. The legislation could define the minimum level of standards a jurisdiction must adopt, including penalties for failure to comply with these requirements. These standards could be scalable based on the size of the jurisdiction.

It should be noted that SB 500 created criminal penalties for people who operate unlicensed boarding homes outside of a city’s jurisdiction, as well as penalties for failure to report abuse, neglect, or exploitation of residents in a boarding home to APS, which, has jurisdiction to investigate such allegations in these facilities. State policymakers may also consider changes to Chapter 22 of the Penal Code to impose criminal penalties for operators who knowingly oversee dangerous boarding homes and regularly put residents at risk. Changes could ensure these operators are permanently barred from operating this type of business. The enforcement of such penalties would be the responsibility of local law enforcement and prosecutors.

Boarding Home Licensure

Another potential option for consideration would be to enact legislation requiring boarding homes to be licensed and regulated by the state. Related legislation has been filed in previous legislative sessions but ultimately did not pass due to the significant cost of state regulation. To provide full oversight of boarding homes, HHSC would need staff to:

- Process licensing applications and conduct background checks on controlling parties;

- Receive and triage regulatory complaints about boarding homes;
- Conduct initial license surveys and on-site investigations of complaints about boarding homes and cite violations for noncompliance with regulatory requirements;
- Develop policies and rules governing the regulation of these homes and train and update providers on these regulations as needed; and
- Take enforcement actions against boarding home providers for noncompliance at a more serious level, including monetary penalties or actions against a provider's license.

[Note: This legislation presumes that APS at DFPS would continue to investigate allegations of abuse, neglect, and exploitation in boarding homes. Shifting that authority to HHSC as well would require transferring FTEs and funding from DFPS to HHSC.]

To gauge how much this new regulatory program would cost, including the number of required state FTEs, HHSC would need to gain a clearer understanding of how many boarding home providers would be subject to state regulation. HHSC would then develop a cost estimate for the Legislature's consideration. Please refer to the above recommendation on accurate reporting of ordinances for how HHSC can gain a better understanding of the number of boarding homes statewide.

Majority of states do not directly regulate boarding homes, with most having regulatory structures similar to those here in Texas – required only when a facility is providing assisted living facility services including personal care. When boarding homes are regulated at the state level, they often need to meet fairly minimal requirements for licensure or are not regulated at all if they are small establishments, e.g. serving three to six residents.

Supervised Living Group Homes through Home and Community Based Services-Adult Mental Health

HHSC currently contracts with operations that provide supportive housing in the community to people with serious mental illness who are enrolled in the agency's Home and Community Based Services-Adult Mental Health (HCBS-AMH) program. Currently, oversight of these HCBS-AMH providers is governed through a contract, which means that the only mechanism HHSC has for monitoring the quality of their services is through enforcement of its contract.

In monitoring these HCBS-AMH providers, HHSC Behavioral Health Services staff have encountered serious concerns, including insufficient and poorly trained staff; life safety

code violations; unsafe and dilapidated residential structures; and ANE of participants in the program. The program has also grown, with its enrollment increasing from FY 2017 to FY 2022. In the HCBS-AMH program, approximately 149 allegations of ANE were reported against program providers, and the program saw an increase from 16 critical incident reports in FY 17 to 1,128 in FY 22. This increase is due to program growth and increased enrollment over this time period.

Despite these serious incidents, HHSC has been limited in its ability to ensure basic health and safety protections for program participants served in these settings and take appropriate actions against these providers because there is no formal regulatory oversight infrastructure.

The Legislature could consider statutorily requiring these HCBS-AMH group home settings to obtain a state license, which would allow HHSC to cite providers for failure to comply with all applicable regulations; and take stronger enforcement actions against group home providers for failure to do so. More specifically, these HCBS-AMH settings could be licensed by creating a customized category under Chapter 142 of the Health and Safety Code, which currently governs Home and Community Support Services Agencies, or HCSSAs. HCSSAs are licensed by the state to provide home health, hospice, and personal attendant services. While this recommendation would not create a new license type or program, the staffing resources needed to ensure the health and safety of people in the HCBS-AMH program would be dependent on how many HCBS-AMH settings pursue this license.

Identifying Boarding Homes

SB 500 also directs HHSC to discuss methods to better identify unlicensed boarding homes. HHSC recommends encouraging or assisting municipalities and counties to implement targeted awareness initiatives. Such campaigns would aim to inform providers that refer their clients to boarding homes. These campaigns would help providers be better equipped to identify unregulated homes, understand all local requirements, and know how to report concerns. Potential tools to achieve this goal would include emails and video messages sent directly to providers, public service announcements and sharing information on social media platforms.

Grant Program to Improve Quality

Given the serious health and safety concerns for residents in boarding homes, another recommendation for policymakers to consider is to establish a grant program to fund local initiatives that promote and support the safe operation of boarding homes.

Some larger cities, including Dallas, have been able to hire social workers and nurses to accompany local code staff on inspections of boarding homes to assess residents' mental health, physical, and social needs. They are also on call to handle referrals from local police, building inspectors, or code compliance staff, most of whom are not trained to assess these needs. Grant funding could support efforts in other communities.

Grant funding could also be used to support quality and outreach initiatives modeled after one operated by Mental Health America of Dallas, which operates a website promoting "education, advocacy, and resources to improve boarding homes," as well as information on licensed homes in the Dallas area.

4. Conclusion

Improving the quality and safety of group homes in Texas is a highly complex issue. Texas is not alone in grappling with how best to protect the health and safety of vulnerable citizens residing in boarding homes and other unregulated settings, many of whom reside in these homes for years. As noted, their needs often extend beyond just safe housing and can include extensive mental health, physical, and social support needs.

To address these complexities and better protect resident health and safety, the Texas Legislature has continued to pass legislation to address health and safety concerns in these settings, including SB 500 and other bills noted throughout this report.

HHSC will continue engaging with lawmakers, advocates, local governments, and other stakeholders in discussions on the proper oversight of group homes, as well as other policies or initiatives to better protect the thousands of vulnerable individuals in Texas who depend upon their services.

List of Acronyms

Acronym	Full Name
ALF	Assisted Living of Facility
APS	Adult Protective Services
CII	Complaint and Incident Intake
DFPS	Department of Family and Protective Services
FTE	Full-Time Equivalent
HHSC	Health and Human Services Commission
HCBS-AMH	Home and Community Based Services-Adult Mental Health
HCS	Home and Community-based Services program
HCSSA	Home and Community Support Services Agency
ICF-IDD	Intermediate Care Facilities for Individuals with an Intellectual or Developmental Disability