

STATEMENTS OF POLICY

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 2600]

Personal Care Homes

The subject of this statement of policy is how the Department of Public Welfare (Department) will apply the Public Welfare Code (code) (62 P. S. §§ 101—1416) to personal care homes (homes) serving persons with mobility needs.

Scope

This statement of policy applies to homes under Chapter 2600 (relating to personal care homes).

Purpose

The purpose of the Department's regulations governing homes is to protect the health, safety and well-being of the residents. See § 2600.1(a) (relating to purpose). The purpose of this statement of policy is to establish guidelines that the Department will utilize regarding the applicable use and occupancy classifications specified on Certificates of Occupancy, known as fire safety approvals under § 2600.14 (relating to fire safety approval), for an applicant applying for a new license that intends to serve residents with mobility needs and for a licensed home that serves residents with mobility needs and that currently does not possess a valid Certificate of Occupancy as required by law. This statement of policy reconciles two provisions of the code: sections 1007 and 1057.3(b) (62 P. S. §§ 1007 and 1057.3(b)).

Background

Section 1007 of the code provides: "When, after investigation, the department is satisfied that the applicant or applicants for a license are responsible persons, that the place to be used as a facility is suitable for the purpose, is appropriately equipped and that the applicant or applicants and the place to be used as a facility meet all the requirements of this act and of the applicable statutes, ordinances and regulations, it shall issue a license and shall keep a record thereof and of the application."

The Department interpreted the terms "meet all the requirements of this act and of the applicable statutes, ordinances and regulations" to require that, to obtain a license, a home shall have a Certificate of Occupancy for its premises issued by the Department of Labor and Industry, the Department of Health or the appropriate local building authority that is consistent with the actual use of those premises. See § 2600.14.

Section 1057.3(b) of the code, however, specifically provides: "[T]he department shall not prohibit immobile persons who do not require the services of a licensed long-term care facility from residing in a personal care home, provided that appropriate personal care services and health care services are available to the resident and the design, construction, staffing or operation of the personal care home allows for safe emergency evacuation."

In construing and applying these two sections of the code together, to be licensed, a home shall possess a Certificate of Occupancy that is consistent with the actual use of its premises. In recognition of the specific statutory language in section 1057.3(b) of the code, a home that

serves one or more persons with mobility needs and is unsuccessful in its attempts to obtain the appropriate Certificate of Occupancy consistent with the use of the premises to serve residents with mobility needs may meet the requirements of section 1057.3(b) of the code by demonstrating to the Department that the staffing or operation of the home allows for safe emergency evacuation of immobile residents.

Under Departmental regulations, the term "immobile person" is defined as a "resident with mobility needs" in accordance with the Department's policy to focus on the individual rather than his disability. Thus, a resident with mobility needs is defined consistently with the definition of an "immobile person" in section 1001 of the code (62 P. S. § 1001). A "resident with mobility needs" is defined as "an individual who is unable to move from one location to another, has difficulty in understanding and carrying out instructions without the continued full assistance of other individuals or is incapable of independently operating an ambulation device, such as a wheelchair, prosthesis, walker or cane to exit the building." See § 2600.4 (relating to definitions).

A secured dementia care unit (SDCU) is a home or portion of a home that provides specialized care and services for residents with Alzheimer's disease or other dementia. See § 2600.231(a) (relating to admission). A resident with Alzheimer's disease or a dementia-related disease who lives in an SDCU is considered to have mobility needs, as each resident shall be assessed by a physician or geriatric assessment team as needing to be served in an SDCU. See § 2600.231(b) and (c).

Discussion

In 1999, the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103) was enacted to establish uniform construction code requirements for all buildings in this Commonwealth. The Department of Labor and Industry promulgated regulations to adopt the International Building Code (IBC) and other related codes such as the Uniform Construction Code (UCC), effective April 9, 2004. See 34 Pa. Code Chapter 403 (relating to administration). The regulations specify that the UCC applies to new buildings and renovations to existing buildings for which an application for a building permit was submitted and to changes in use after April 9, 2004. Buildings constructed or renovated for which an application for a building permit was submitted prior to April 9, 2004, that have not had a change in use remain subject to the applicable building code requirements in effect at the time the Certificate of Occupancy was issued. Under the 2009 edition of the IBC, effective December 31, 2009, homes must possess a Certificate of Occupancy with an I-2 use and occupancy classification to serve one or more residents with mobility needs.

The IBC uses the terms "incapable of self-preservation" rather than "mobility needs." Under the IBC "incapable of self-preservation" means incapable of responding to an emergency situation without physical assistance from staff persons. See section 308.2 of the 2009 IBC. Therefore, if a home can provide evidence through the most recent six fire drill records that a resident requires only oral assistance with only limited physical assistance from staff persons to reach safety in an emergency situation, the resident is considered "capable of self-preservation" for purpose of this statement of policy.

The Department is authorized by statute and regulation to verify that the Certificate of Occupancy for each home is valid and is consistent with the actual use of the premises, prior to the issuance of a home license. See section 1007 of the code, § 2600.14 and § 2600.18 (relating to applicable health and safety laws). This verification applies to new and renewal license applications and to increases in the maximum licensed capacity of a home.

This statement of policy describes how the process will be implemented over a gradual, phased-in approach to achieve regulatory and statutory compliance in the event that a home does not have a valid Certificate of Occupancy.

Guideline

New applicants

If a new applicant intends to serve one or more residents with mobility needs, the applicant shall submit a copy of a valid Certificate of Occupancy with the correct use and occupancy classification with its application for a license. If a valid Certificate of Occupancy with the correct use and occupancy classification is not provided by the applicant, the Department will either deny the license until the Certificate of Occupancy is provided and all of the requirements under Chapter 2600 and other applicable laws and regulations are met or issue a license stating that the home may not serve one or more persons with mobility needs, provided that requirements under Chapter 2600 and applicable laws and regulations are met.

Licensed homes

At the time a licensed home completes a renewal license application, upon request by the Department and during each license renewal inspection, the home shall submit a copy of a valid Certificate of Occupancy. If the Department determines that a home does not have a Certificate of Occupancy with the correct use and occupancy classification (consistent with the actual use of the premises) the home is to provide a plan to the Department under which the home is to do one of the following: Option (1) revise its description of services and suspend new admissions to persons with mobility needs within 12 months of the date of the Department's determination; or Option (2) obtain a new Certificate of Occupancy with a use and occupancy classification that permits persons with mobility needs to be served within 18 months of the date of the Department's determination.

The Department will examine each home's plan and will accept or reject the plan. If the Department rejects the home's plan, the Department will work with the home to develop an acceptable plan. The Department may extend the time periods in Options (1) and (2) on a case-by-case basis based on progress made by the home toward implementing the plan.

If Option (1) is chosen, the home is to submit documentation that demonstrates that the staffing or operation of the home allows for safe emergency evacuation.

If Option (2) is chosen, a step-by-step building renovation, code inspection and approval plan is to be submitted. The Department will conduct follow-up inspections to determine the progress being made by the home to obtain a Certificate of Occupancy with the correct use and occupancy classification. If, at the expiration of the time period for Option (2), the home has not obtained a correct use and occupancy classification, the Department will interpret section 1057.3(b) of the code to mean that the design and construction of the home are not sufficient to

enable safe emergency evacuation of residents with mobility needs. To provide the home an opportunity to demonstrate that the staffing or operation of the home allows for safe emergency evacuation, a home that has not obtained the correct use and occupancy classification is to submit documentation that demonstrates this statutory requirement. The Department will examine each home's documentation on a case-by-case basis and consider whether the home can achieve the statutory safe emergency evacuation standard through staffing, operation of the home, or a combination of both.

This statement of policy does not preclude the Department of Labor and Industry or local building code officials from enforcing applicable law and regulations.

Fiscal Impact

This statement of policy has no effect on the State budget.

Effective Date

For licensed homes, this statement of policy is effective November 1, 2010. For new applicants, changes in legal entity, changes in licensed capacity and new SCDUs, this statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

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HARRIET DICHTER,
Secretary

(Editor's Note: The regulations of the Department are amended by adding a statement of policy in § 2600.14a to read as set forth in Annex A.)

Fiscal Note: 14-BUL-93. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART IV. ADULT SERVICES MANUAL

Subpart E. RESIDENTIAL AGENCIES/FACILITIES/SERVICES

CHAPTER 2600. PERSONAL CARE HOMES

GENERAL REQUIREMENTS

§ 2600.14a. Fire safety approval—statement of policy.

(a) A new applicant applying for a license that intends to serve one or more residents with mobility needs and a licensed home that serves one or more residents with mobility needs is to possess a valid Certificate of Occupancy specifying the use and occupancy classification required by either of the following:

(1) The Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103) and regulations (34 Pa. Code Chapter 403 (relating to administration)).

(2) A previously promulgated Commonwealth fire and panic law and regulation if the home's building use has not changed since issuance of the Certificate of Occupancy and if no building renovations or alterations have

been made since issuance of the Certificate of Occupancy. (See the act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235).)

(b) The numbers and needs of the residents served in the home are to comply with the use and occupancy classification of the Certificate of Occupancy specified in subsection (a).

(c) If a licensed home does not have a Certificate of Occupancy with the correct use and occupancy classification consistent with the actual use of the premises, the home is to provide a plan to the Department under which the home is to do one of the following:

(1) Revise its description of services and suspend new admissions of persons with mobility needs, within 12 months of the date of the Department's determination.

(2) Obtain a new Certificate of Occupancy with a use and occupancy classification that permits persons with mobility needs to be served, within 18 months of the date of the Department's determination.

(d) The Department will examine each home's plan under subsection (c) and will accept or reject the plan. If the Department rejects the home's plan, the Department will work with the home to develop an acceptable plan.

(e) The Department may extend the time periods under subsection (c)(1) and (2) on a case-by-case basis, based on progress made by the home toward implementing the plan.

(f) If a home chooses the option under subsection (c)(2), a step-by-step building renovation, code inspection and approval plan is to be submitted.

(g) A home that chooses the option under subsection (c)(1) and a home that cannot obtain the use and occupancy classification specified in subsections (a) and (b) within 18 months of the Department's determination under subsection (c)(2), is to submit documentation that demonstrates that the staffing or operation of the home allows for safe emergency evacuation of residents with mobility needs.

(h) The Department will review the documentation submitted under subsection (g) on a case-by-case basis to determine if the documentation demonstrates that the home provides for the safe evacuation of residents with mobility needs.

[Pa.B. Doc. No. 10-1755. Filed for public inspection September 17, 2010, 9:00 a.m.]