

# Best Practices for Investigating Illegal Operations

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# ▶ What is an Illegal Operation ?

An illegal operation is an unlicensed care facilities that provides room, board, and some level of services for unrelated individuals and meets the legal requirements for a license. Number of beds is one determinative factor in the requirement for state licensure.

Pennsylvania law requires that residential settings have a license from the Department of Human Services **whenever four or more adults with personal care needs who are unrelated to the operator live in the home.** It does not matter if the home is providing personal care services; if four of the people who live in the home need personal care, then home must be licensed.

Pennsylvania does not license facilities with three or less beds. (legally unlicensed – no regulatory protections)

# Personal Care Services

Eating

Drinking

Ambulating

Transferring in and out of a bed or chair

Toileting

Personal hygiene

Securing health care

Managing health care

Self-administering medication

Proper turning and positioning in a bed or chair

Doing laundry

Shopping

Securing and using transportation

Managing finances

Using a telephone

Making and keeping appointments

Caring for personal possessions, writing correspondence

Engaging in social and leisure activities

Using a prosthetic device

Obtaining and keeping clean, seasonal clothing

# ▶ Determination – Require Personal Care Services

If a person needs help or supervision with one or more of the activities listed on the previous slide, then that person requires personal care services.

## Statute

### **62 P.S. § 1002. Operation and maintenance without license prohibited**

No person shall maintain, operate or conduct any facility, as defined herein, without having a license therefore issued by the department.

# Demand for Unlicensed Care Homes

According to U.S. Department of Health and Human Services factors that drive the demand for unlicensed care homes:

- The admission and discharge policies of licensed care homes
- SSI or supplemental payments alone are often inadequate to cover expenses in a licensed facility
- Closure of large mental health institutions
- More positive alternative to chronic homelessness or unnecessarily institutionalization
- Financial pressure felt by hospital to free up hospital beds quickly, sometimes results in discharges to unlicensed care homes

Source: U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Office of Disability, Aging and Long-term Care Policy, ***Understanding Unlicensed Care Homes: Final Report, September 2015***

# Demand for Unlicensed Care Homes

- Lack of affordable housing
- Person who lacks acceptable social decorum
- Perception safer than shelter
- Perceived sense of independence by individual

# What Do Unlicensed Care Homes Look Like?

- Urban, suburban, or rural
- Single, row home, or apartment
- The home may be clean or dirty with mattresses on the floor and insect and vermin infested
- Medical appointment schedules posted and medications administration available
- Lots or little food
- Referrals made by hospitals, protective services, or behavioral health case managers
- Home like appearance and can be well managed
- Occupants may work
- Occupants may attend Day programs and have ICM's
- The home may have staff
- Residents may be happy or unhappy.
- Residents may be kept or unkempt
- Fire safety equipment may or may not be present



# Department Action if Suspected Illegal Operation

- If the Department receives a complaint of unlicensed operation, Bureau of Human Services Licensing inspectors have the legal right to conduct an unannounced, onsite inspection at the home.
- Each formal complaint communicated to the Department is investigated. Need details to support search warrant. Lack authority to inspect without evidence of suspected illegal operation.
- Complaints trigger inspections. No monitoring for potential illegal operations, besides responding to specific complaints, due to limited resources.

## Statute

### **62 P.S. § 1016. Right to enter and inspect**

For the purpose of determining the suitability of the applicants and of the premises or whether or not any premises in fact qualifies as a facility as defined in section 1001 of this act or the continuing conformity of the licensees to this act and to the applicable regulations of the department, any authorized agent of the department shall have the right to enter, visit, and inspect any facility licensed or requiring a license under this act and shall have full and free access to the records of the facility and to the individuals therein and full opportunity to interview, inspect or examine such individuals.

# ▶ Department Action if Suspected Illegal Operation

If the complaint or suspicion of illegal operation poses an immediate life safety risk to the residents if the allegation is founded, the Supervisor or Regional Director (RD) will classify the complaint as Level 1 and require investigation within 24 hours.

If the complaint or suspicion of illegal operation does not pose an immediate life safety risk to the residents if the allegation is founded, the supervisor/RD will classify the complaint as Level 3 and require investigation within 21 days.

# Department Action if Suspected Illegal Operation

- Determine if police escort or search warrant needed.
- Contact and coordinate the investigation with appropriate local agencies, including health department, AAA, County MH/ID, local or state police, local code enforcement or fire officials. Meeting place away from home.
- BHSL often utilizes code enforcement to close illegally unlicensed care homes.

# Department Action if Suspected Illegal Operation

- Drive around the block to observe location before parking.
- Know your surroundings. Always know where your coworker(s) is/are in the home.
- Illegal operators and residents maybe fearful of “THE STATE”
- Sometimes the residents and staff are happy to see you
- Document your observations, interviews, and inspection activities
- Take pictures, if needed to illustrate a situation, ask permission of residents.

# Determine Best Entrance Strategy

- The inspectors announce themselves as agents of the Department, and describes the purpose of the investigation as to determine if an illegal operation exists.
- The inspectors announce themselves as agents of the Department, but describes the purpose of the investigation as something other than investigation of illegal operation (i.e., to check on the safety of the residents).
- The inspectors do not announce themselves as agents of the Department, nor do they describe the purpose of the investigation as to determine if illegal operation exists.

# Department Action if Suspected Illegal Operation

- Determine if four or more residents require assistance with ADLs (have personal care needs)
  - BHSL staff and resident interviews make up the bulk of the evidence to resolve this question. However, direct observations of needs and collateral contacts support interviews and mitigate hearsay argument.
- Determine what services the residents receive and who provides those services (e.g. family member, home care agency, provider/operator, or service need not met.)
  - Who maintains the residents medications? Where are medications stored? Who administers medications?
  - Where does the resident get their meals? Who prepares and serves the meals? Do they have a kitchenette in their apartment? Is there a meal plan?

# Department Action if Suspected Illegal Operation

- Determine if residents are cohabitating (common areas, common dining)
  - Does this facility function strictly like an apartment building where everyone comes and goes as they please and residents manage their lives independently as evidenced by medication self-administration, preparation of their meals in their apartment units?
  - Do they share common spaces for activities, common medication management by facility staff, and a common dining space?



# ▶ Department Action if Suspected Illegal Operation

Personal Care Home/ Assisted Living Residence Assessment Form is completed for each occupant of a suspected illegal operation.

- The form is completed using information obtained from private interviews with relevant subjects (such as occupants, families, staff, etc.), from reviewing relevant records, and reviewing observations made during onsite inspection.
- Each resident is assessed based on the services he/she NEEDS, not on what services are provided.
- Additional collateral contacts, interviews, and inspections will be made as needed to prove or disprove illegal operation.

# Department Action if Suspected Illegal Operation

- Include key information on the resident assessment form including name, date of birth and social security number
- Offer relocation assistance; be prepared for relocation

# Investigative Personal Care Home Assessment - Excerpt

ACTIVITIES OF DAILY LIVING:	CODE*
Eating	
Drinking	
Transferring in/out of bed/chair	
Toileting (bowel)	
Toileting (bladder)	
Personal hygiene-bathing	
Personal hygiene-grooming	
Personal hygiene-dressing/undressing	
Securing healthcare	
Managing healthcare	
Turning and positioning in bed/chair	

**\*CODES:**

- A Independent with or without assistive devices
- B Requires prompting or cueing to complete
- C Requires physical assistance to complete
- D Requires full physical assistance
- E N/A

# Personal Care Needs Determination Form

Name / Address of Home:		Activities of Daily Living										Instrumental Activities of Daily Living															
		Eating	Drinking	Transferring in/out of bed/chair	Toileting (bowel)	Toileting (bladder)	Personal hygiene-bathing	Personal hygiene-grooming	Personal hygiene-dressing/undressing	Securing healthcare	Managing healthcare	Turning and positioning in bed/chair	Personal laundry	Shopping	Securing and using transportation	Managing finances	Using the telephone	Making and keeping appointments	Caring for personal possessions	Writing correspondence	Engaging in social and leisure activities	Using a prosthetic device	Obtaining clean, seasonal clothing	Medication Management	Supervision	Cognitive Functioning Difficulties	ANY NEEDS
ARL Region:																											
Date Determination Form Completed:																											
ARL Staff Person Completing Form:																											
#	Occupant Name																										
1																											
2																											
3																											
4																											
5																											
6																											
7																											
8																											
9																											
10																											
		TOTAL NUMBER OF OCCUPANTS WITH PERSONAL CARE NEEDS:																									

# Department Action if Suspected Illegal Operation

- Licensing staff ensure that immediate threats are removed before leaving the residential setting.
- In cases where the residents of an unlicensed home/residence are at risk of death or serious injury, the Department will remove the residents immediately.
- If a resident of an unlicensed home suffers injury or death from neglect or mistreatment, the Department will refer the case to local, state, and federal law enforcement agencies for investigation.

# ▶ Department Action if Suspected Illegal Operation

- If the home is found to be operating without a license, the operator will be fined and ordered to cease operation. Decision made by the Director. Fines rarely paid.
- If the home is ordered to cease operation, the region will conduct a relocation in coordination with local agencies.

## Statute

### **62 P.S. § 1086. Penalties**

(e) A personal care home found to be operating without a license shall be assessed a penalty of five hundred dollars (\$500). If, after fourteen days, a provider of a personal care home cited for operating without a license fails to file an application for a license, the department shall assess an additional twenty dollars (\$20) for each resident for each day in which the home fails to make such application.

# Public Awareness

- BHSL post a notice on its website on how to report illegal operations. Notice includes instructions on how to recognize and understand a Personal Care Home License and frequently asked questions.



# Contact Information

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