



# MENTAL RETARDATION BULLETIN

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DEPARTMENT OF PUBLIC WELFARE

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SUBJECT:

Clarifying the "30 Hour Rule"

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## SCOPE:

County MH/MR Administrators  
Base Service Unit Directors  
Community Residential MR Facility Directors

## PURPOSE:

The purpose of this Bulletin is to clarify the "30 Hour Rule," see 55 Pa Code § 6400.3(f)(7).

## BACKGROUND:

The "30 Hour Rule" states that "residential homes for three or fewer people with mental retardation who are 18 years of age or older and who need a yearly average of 30 hours or less direct staff contact per week per home" do not have to be licensed. According to the "Licensing Inspection Instrument for Community Homes for Individuals with Mental Retardation," the 30 hours of direct staff contact can include a combination of paid supports and voluntary supports.

Many provider agencies and families asked several questions about this rule, e.g., what if the person owned their own home or what if the person owned the home and had someone living there who needed more than 30 hours of supports weekly; or what if the home is owned by a relative?

## DISCUSSION:

In order to address these questions, the information below defines mental health and mental retardation establishment, private home, and relative:

"Mental health establishment" means any premises or part thereof, private or public, for the care of individuals who require care because of mental illness, mental retardation or inebriety but shall not be deemed to include the private home of a person who is rendering such care to a relative.

62 P.S. § 1001 (emphasis added)

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO THE APPROPRIATE REGIONAL PROGRAM MANAGER

Neither the Public Welfare Code nor Pennsylvania case law defines “private home,” but a recent federal case does (albeit in a slightly different context). See Madison v. Resources for Human Development, Inc., 233 F.3d 175 (3d Cir. 2000). In the course of determining whether the “companionship exemption” of federal wage and hour law applied to particular residential settings for persons with mental disability, the court had to determine whether the settings were “private homes.” The court held that the particular settings in question were not “private homes,” and explained why:

The determination of what constitutes a “private home” in the context of the Fair Labor Standards Act (FLSA) companionship exemption must be made on a case-by-case basis, taking into account all aspects of the living arrangement.

Several aspects of the Mandela and Visions living arrangements support the District Court’s conclusion that the companionship exemption does not apply. For example, Resources for Human Development (RHD) clients do not have a possessory interest in their RHD homes. The right of RHD clients to remain in their housing depends completely on their continued relationship with RHD. If clients terminate that relationship, they cannot remain in RHD housing. This is not the kind of possessory interest individuals enjoy in a private home.

RHD clients do not have full control over the others’ access to their RHD homes. RHD retains keys to the homes of all clients in the Mandela and Visions program. Indeed, RHD keeps the only set of keys with respect to nearly half of the clients in the Mandela program. Less than half of the clients in that program (five of eleven) have keys to their houses.

RHD clients do not have unfettered freedom in their day-to-day conduct. They must comply with rules that do not typically apply to adults in private homes. One such rule requires RHD clients to be dressed when outside their rooms between the hours of 8:30 a.m. and 10:00 p.m. This rule is incongruous with the notion of a “private home.”

Given the contours of the living arrangements at issue here, and the rule that the FLSA exemptions should be narrowly construed against the employer, we conclude as a matter of law the RHD residences are not “private homes” for purposes of § 213(a)(15). We will affirm the District Court’s holding that the FLSA applies to the plaintiff’s employment relationship with RHD.

Id. at 183-184.

Madison appears to be the best authority we have for a definition of “private home,” and it emphasizes the need to take “into account all aspects of the living arrangements.” It, therefore, is not possible to respond definitively to partial descriptions of hypothetical residences. The features of the residences in Madison that the court discusses, however, do provide useful guidance in identifying “private homes.”

“Relative” is expressly defined in the Public Welfare Code:

“Relative” means parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece, nephew.

62 P.S. § 1001.

Although it's not possible to answer an endless array of hypothetical situations, there are several clarifications that are currently known:

- If the person owns the home or leases the home, then the home does not have to be licensed even if the person needs more than 30 hours of supports per week.
- If the person owns the home or leases the home and has a roommate who requires more than 30 hours of supports per week, the home does not have to be licensed.
- If the person owns the home or leases the home and the agency is the representative-payee, then the home does not have to be licensed.
- If the home is owned or leased by the agency and one or more persons are living there who need more than 30 hours of supports weekly, then the home must be licensed.
- If the agency owns or leases several homes or apartments and sub-leases to a person or persons, then the homes must be licensed.

The County MH/MR Program, through its contract with the agency or person(s) providing services and supports, maintains a responsibility to ensure health and safety even though a home is not licensed. This is an integral part of the county's performance monitoring process.