

Substance Abuse Treatment Centers, Community Residences, and Related Enforcement Activities

Community Meeting

September 10, 2015



Background

- Prescott is recognized throughout the state of Arizona as having a large number and concentration of substance abuse treatment centers, and community residences (i.e. group homes)
- Shared living arrangements of groups of people can be categorized as a “single family residence” or “congregate living,” both of which may include group homes; the basis for distinguishing between the two types is whether the arrangement emulates a family and is more permanent in nature, or the living arrangement is more temporary and transitional in nature; this distinction is crucial in the context of the federal Fair Housing Act
- To address issues related to community residences—notably the proliferation of them in single-family residential neighborhoods—the City Council has taken a series of actions to:
 - ✓ amend the Land Development Code
 - ✓ adjust resource levels to address community issues and assure all existing licensure and building requirements are met
 - ✓ create and update a registration of group homes
 - ✓ and request State Legislative Assistance for better regulation of community residences

Timeline of Actions

- September 2013 - The City Council adopted Ordinance No. 4866-1404 amending the Land Development Code, which was carefully crafted to avoid federal Fair Housing Act challenges of being discriminatory toward disabled persons. The Ordinance (1) introduced a dispersal requirement of 1,200 feet between non-housekeeping residences in residential zones; and (2) afforded the opportunity for voluntary registration of existing community residences both as a means to document their legal or legal non-conforming status, and to assist the City in evaluating new applications for compliance with the spacing/distance requirement
- November 2013 - A 60-day checkpoint was presented to the City Council summarizing progress of **“Phase I Action”** with the following recommendations
 - ✓ Assist public via contact points staffed by knowledgeable City personnel
 - ✓ Register new community residences and keep current maps
 - ✓ Collect City privilege tax on rentals and enforce through audits
 - ✓ Press ADHS on effective implementation of new state regulations
 - ✓ Identify and seek additional regulatory tools through state legislation
 - ✓ Learn from/apply the experiences of other communities and case law
 - ✓ Implement a City business license (an important tool in identifying and being able to communicate with various business sectors and types; equipping public safety responders with information regarding hazardous materials locations; access to statistical information for economic development, and a level playing field for the collection of City privilege tax including that on sales, rentals, and transient occupancy)

Timeline of Actions

- December 23, 2014, a complaint was received from the U.S. Department of Housing and Urban Development (HUD), objecting to Ordinance No. 4866-1404, alleging that it discriminates against “group homes for the disabled” (the federal government has extended the definition of “disabled” to include persons who suffer from substance abuse); the City’s response was sent to HUD on January 15, 2015
- February 2015 - The City received its commissioned White Paper on Zoning for Community Residences for People with Disabilities
- March 2015 - The City Council adopted Ordinance No. 4925-1463 amending the Land Development Code, which is more consistent with the federal Fair Housing Act
 - ✓ Reduces the number of unrelated persons in meeting the definition of “family” from 6 to 4, and allow them in residential districts without restriction
 - ✓ Allows from 5 to 12 persons in a family community residence (more permanent arrangement) in single-family residential zoning , subject to existing Building Code requirements relating to occupancy); the permit enables the City to perform compliance inspections upon proper notice
 - ✓ Allows from 5 to 12 persons in a transitional community residence (less permanent arrangement) in multifamily residential zoning, subject to existing Building Code requirements relating to occupancy (the number and sizes of bedrooms); the permit enables the City to perform compliance inspections upon proper notice
 - ✓ Reduces the spacing (buffer) between large community residences from 1,200’ to 800’ (to better align this criterion with prevailing practice/case law)
 - ✓ Provide a new formula for calculation of required number of parking spaces
- July 2015 – HUD informed Prescott it had ended its original broad investigation of the City’s Group Home Ordinance, with no further action
- August 2015 – HUD informed Prescott that the second, Hannibal complaint, regarding the City’s closure of three group homes that violate both the original 1,200 foot and new 800 foot buffer rule was closed without further action

Discussion/Direction – Phase II Action Checklist

Timing

Action

Immediate

- ✓ Pursue new legislation to extend state licensure to more treatment facilities and their residential components ^
- ✓ Refine Ordinance No. 4866-1404 (community residences)
- ✓ Create authority for Code Enforcement to issue citations into City Court
- ✓ Refocus (a component of) existing Police Department manpower to elevate illegal drug enforcement; call upon regional partners to augment efforts

Short-term – FY 16 Budget Process – NOT CURRENTLY FINANCIALLY FEASIBLE

- ✓ Assess cost and implementation of “next level” illegal drug enforcement

Short-term – Future Council Direction re Action and Scheduling

- Business license ordinance *
- Other ordinances listed *

* Approximately 60 days (minimum) required for ordinances to be adopted and become effective

^ Although stalled in 2015, action by Legislature and/or State of Arizona/Department of Health Services continues to be pursued

Continuing Phase II Action - Three Fronts

Presented January 2015 - To counter and prevail over the current challenges associated with illegal drugs, substance abuse treatment centers, and community residences proliferating within and threatening to overrun single-family zoned areas, action on three fronts is called for:

- ❑ New City Ordinances/Code Amendments
- ❑ Increased Enforcement – Civil and Criminal
- ❑ New State Legislation and Collaboration with other Arizona Communities

Updated Land Development Code

March 2015 - The City Council adopted Ordinance No. 4925-1463 amending the Land Development Code, which precludes federal Fair Housing Act challenges of being discriminatory toward disabled persons

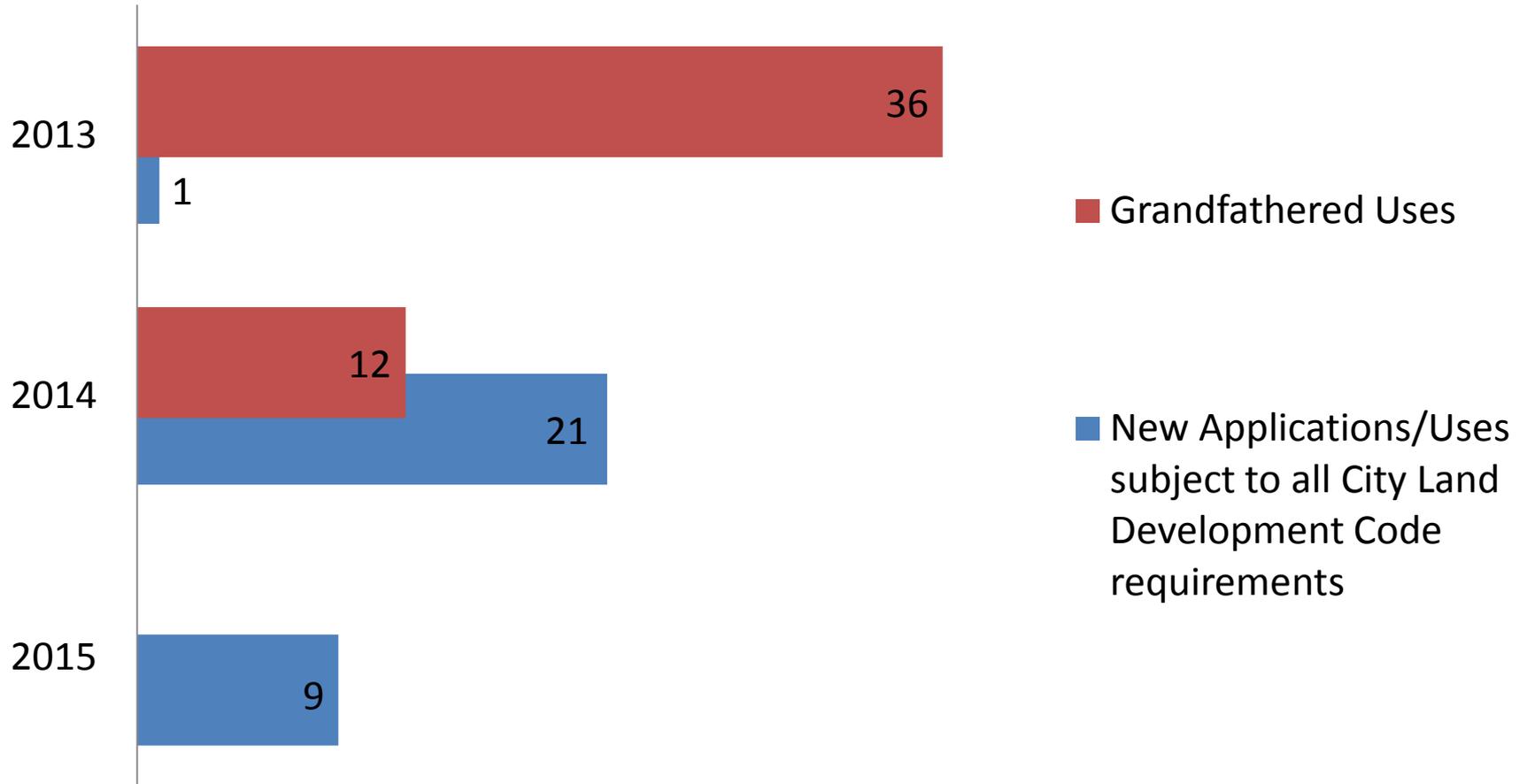
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Approvals/Denials of Community Residences

- When the Land Development Code was originally updated in September 2013, all community residences already operating were grandfathered in as legal. Federal court case history has determined that a municipality cannot retroactively apply zoning changes. In September 2013, there was evidence of approximately 120 in operation. The City requested voluntary registration of the existing locations.
- In 2013, thirty-three (33) of the existing locations registered with the city and 4 applied as new locations. In 2014, an additional thirteen (13) registered as existing and twenty (20) applied as new locations. In 2015, ten (10) applications have been received for new locations to-date.
- Of the 80 applications or registrations submitted to the City, five have been denied due to proximity to other community residences. The owner of one of those operations filed a complaint with HUD, but was rejected after investigation.

	Applications Received	Number Denied
2013	37	0
2014	33	4
2015	10	1

Community Residences – New and Grandfathered Property Uses



Building Safety and Fire Codes

- In March of 2015, the Council also adopted amendments to the Building Safety and Fire Codes to provide specific requirements for determining the safe maximum occupancy in community residences. Those changes allow for inspections of both new and existing community residences, and are now required before approval of any community residence operation.
- In the course of working with community residence operations over the past two years the following situations have been observed:
 - ✓ Overcrowding of homes
 - ✓ Work done without permits
 - ✓ Fires related to cigarette smoking
 - ✓ Blocked emergency exits
 - ✓ Space used for sleeping areas that is not code compliant
 - ✓ Missing or removed smoke detectors
- Because of these issues, inspections will be conducted of all existing community residences (as staff availability allows). Corrective warnings will be issued for code violations. Fines or closure of facilities are possible.

Taxation and Compliance

- All for-profit facilities are subject to the City tax code
 - 2% privilege tax for residential rentals
 - Additional 3% bed tax on any stays less than 30 days
- Of the 162 identified community residences
 - 17 are non-profit and have provided documentation
 - 105 have active privilege tax licenses
 - 40 are out of compliance and being contacted
- Compliance under HB2111 centralized tax administration going forward
 - All audits have to be approved by Arizona Department of Revenue (ADOR)
 - City audits are restricted to businesses only operating locally
 - City can not directly contact any business related to privilege tax
 - ADOR will handle all tax licensing issues
- City currently does not have a business license

Other City Ordinances - Code Enforcement

In addition to Ordinance No. 4925-1463, amending the Land Development Code, to reduce the required buffer from 1200' to 800', require a permit, address transient uses, and provide for a more stringent parking requirement, work continues on other City Ordinance changes.

1. Authority for Code Enforcement to issue Civil Citations into City Court

- Code Enforcement Officers did not have this authority prior to March 2015
- The procedure for abating a code violation was laborious and ineffective (property owner had 30 days to abate the violation or appeal it to a code hearing officer or the Board of Adjustment, followed by the hearing process, in total consuming months)
- Propose that habitual offenders who have already been given 30-day notice be given 10-days as they are known to have already the knowledge of same (repeated) violation

Other City Ordinances being Considered

2. Business License - for All Businesses and Occupations (including non-profits)

- Would enable identification of community residences
- Added benefits include identifying homes with greater than average numbers of occupants (public safety/response), commercial locations with on-site hazardous materials, and generation of useful statistical economic information

3. Abandonment of Nonconforming Uses

- Under the Land Development Code (LDC), abandonment of a legal nonconforming use is presumed if the use ceases for one year
- The one year timeframe could be reduced to six (6) months in all residential zones (but remain one year in non-residential zones)

4. Nuisance Residential Properties

- Action initiated upon multiple complaints being received by the Police Department (disruptive activities such as loud music, boisterous gatherings, altercations, illegal drug use)
- Property declared a public nuisance; property owner required to abate the activities

5. Neighborhood Preservation

- The current Property Maintenance Code focuses on structural safety, imminent hazards, and slum and blighted conditions
- A more comprehensive approach to addressing neighborhood conditions is possible

6. Residential Rental Inspection Program

- A tenant or landlord may request a City inspection of a rental property
- The City may obtain a court order/administrative warrant if the City becomes aware (either by complaint or observation) of a condition materially affecting the health and safety of the occupants of the rental unit/property

Increased Enforcement – Code Infractions

- Code Enforcement investigates complaints regarding community residences
- Code Enforcement was relocated to report to the Prescott Police Department in May 2014
- Code Enforcement started investigating community residence complaints in May of 2014
- Failure to register a community residence with the City of Prescott is a common complaint investigated by Code Enforcement

What Community Residences Look Like







05/22/2014 14:21



06/06/2014 12:54



06/04/2014 15:55



05/13/2014 01:23

Community Residences

- Community Residences can look like the house next door
- Some have vans used for the transportation of their residents
- Some have several trash containers based upon the number of residents living in the home
- Some residences have only male residents, or only female residents, some are co-ed
- Student housing can be considered a community residence if the number of residents meets the definition

Common Complaints

- Noise from voices of residents talking outside
- Noise from vehicles such as honking horns or car stereos
- Smoking, and smoke drifting into neighboring properties
- Litter, trash, and cigarette butts on adjoining property
- Parking of vehicles on the street causing street congestion

Remedies

- Code Enforcement investigates the neighborhood complaints and works to resolve the disputes by employing the following measures:
 - Meeting with the house manager, or business owner to make them aware of the neighborhood complaint
 - Discussion of positive actions taken by the residents that could resolve the dispute
 - Enforcement actions for determined criminal and civil violations of laws and city codes

Types of Code Enforcement Resolution

- Most complaints are resolved by the personal contact and interactions with the responsible parties for the community residence, and Code Enforcement
- Other times, enforcement actions have been taken for violations of fire and building codes, by Fire Department and Building Officials
- Police actions have been taken for parking violations and disruptive noise, and litter complaints

Code Enforcement Complaint Outcomes

- Since July 2014, Code Enforcement has investigated 17 Community Residence and Sober Living Business nuisance-type complaints. These complaints were for noise, trash, and smoking. Of these complaints:
 - 6 were for smoking
 - 6 were for trash overflowing the trash cans
 - 2 were for excessive street parking related complaints
 - 1 was for clients playing football in the street
 - 2 were for building and fire code violations
- In addition to the nuisance complaints, Code Enforcement has investigated nine (9) Sober Living Businesses that had failed to register their community residences with the City of Prescott.

Statistics

- There are approximately **160** known community residences in the City of Prescott. There may be more.
- There are approximately **40** known business entities that provide substance abuse treatment in the City of Prescott. There may be more.
- These businesses generally provide housing to their clients in recovery.
- Most recovery living homes in Prescott are not licensed with the Arizona Department of Health Services (AZDHS). There is no official oversight of these homes.

Substance Abuse and Recovery Rankings

Prescott, Arizona, is among the top ten cities in the U.S. for Sober Living and Recovery. The other cities ranked best for recovery by *The FIX* (described as “the world’s leading website about addiction and recovery”) are:

1. Boston, MA

2. Delray, FL

3. Houston, TX

4. Los Angeles, CA

5. Minneapolis, MN

6. Nashville, TN

7. New York City, NY

8. Portland, OR

9. Prescott, AZ

10. San Francisco, CA

Increased Enforcement – Criminal

Actions to achieve enhanced enforcement include the following (the costs of which were discussed at the February 12, 2015, Council meeting addressing FY 16 and longer-term budget priorities):

- Create a “next level” illegal drug enforcement unit in the Police Department for city-wide drug enforcement (>\$750,000 annually, **not currently financially viable**)
- Refocus more current manpower to enforcement (with concurrent de-emphasis in other public safety programs)
- Call upon regional and state partners for more (and more effective, visible enforcement)

Increased Enforcement – Criminal

UNIFORMED PERSONNEL

- Respond to neighborhood complaints to investigate totality of situations
- Applies appropriate enforcement action if the incident cannot be resolved through communication and warnings
- Works with traffic engineering to install appropriate signage to reduce traffic and parking complaints
- Provides extra patrols by traffic officers to reduce traffic related complaints
- Provides neighborhood meetings through our community services section to educate and answer questions and concerns

Caseload Statistics for Drug Related Offenses

	Jan 1 – July 31, 2014	Jan 1 – July 31, 2015	% Change over 2014
	Cases	Cases	
Prescott PD	170	236	39% Increase
Resulting Charges	151 adults & 22 juveniles	201 adults & 28 juveniles	
PANT	5	16	
Resulting Charges	6 adults & 0 juveniles	18 adults & 0 juveniles	220% Increase

Increased Enforcement – Criminal

INVESTIGATIONS

- Work with local loss prevention professionals to identify and prosecute repeat offenders who may be stealing to support a drug habit
- Working with Partners Against Narcotics Trafficking (PANT) to identify dealers within our community to effectively identify and prosecute them
- Work with code enforcement and crime prevention to identify, investigate and remedy neighborhood or criminal activity

New Legislation and Collaboration with Other Arizona Communities

- Proposed revisions to Title 36, Arizona Revised Statutes, drafted by the City Legal Department, have been provided to our state legislative delegation
- The legislative intent is to expand state licensure of community residences to address quality, safety, and operational standards and determine whether unregulated residences operated by licensed treatment facilities will require more stringent regulation by the State
- The outcome desired is to improve the standard of care offered by these facilities, enhancing the success of their client rehabilitation programs
- A bill was introduced by Rep. Noel Campbell, passed the House, and stalled in the Senate Health Committee
- Rep. Campbell requested an official joint subcommittee to investigate possible solutions to the community residence issue at the Legislative level, it has been created, and the first meeting is scheduled for September 16, 2015, at the Capitol
- The Department of Health Services has been notified that we expect assistance this session to draft reforms that address the safe operation of community residences, but has yet to take any firm stance on the issue
- The League of Arizona Cities and Towns has also been contacted to elevate the issue, and has established this as a Legislative Priority in 2016
- Partner with residents, businesses, and ADHS regarding treatment facilities, to create a simple way for licensing and other code infractions to be reported and monitored for follow-up (e.g., linked to the ADHS on-line complaint form)

Legislative Outline – 2015 Session

1) State Licensure of Nonmedical housing for outpatient treatment centers per the following definitions:

A) Licensure will include annual inspection by the director or any duly designated employee or agent of the director (see section 1.iii)

B) Submittal of a license application including TPT license information if applicable and submittal of an operations and management manual to include Quality, Operations, and Management Standards

2) Registration of Nonmedical Sober Living Homes (not licensure)

A) Facility Name, Address, Property Information:

- i. If owned, owners name, address, phone number,
- ii. If leased, copy of lease stating use as a nonmedical sober living home

3) Inclusion in the AZ Care Check system for newly licensed facilities and registered facilities (registered facilities, similar to Juvenile Group Homes Registry)

This site contains data on Arizona Residential Recovery Residences/Programs licensed by the Arizona Department of Health Services (ADHS) or contracted with Federal, State or County Court and Correction Systems that mandate the completion of re-entry programs. Location, licensing status, and placement contracts are listed for each facility. Contact names/numbers are also provided to assist you in obtaining additional information.

This searchable database contains information about Arizona Juvenile Group Homes. Records may be searched by ***provider/licensee name and location***. Reports can be viewed by ***municipality***.

4) IGA for Joint City/County/State Enforcement of Licensure Requirements

Housing Quality Standards

Each housing location is inspected annually to ensure full compliance with the below Quality Standards which promote Safety and Health:

- i. Smoke alarms installed in every room.
- ii. Fire evacuation maps posted in conspicuous locations throughout the home.
- iii. Currently tagged fire extinguishers in kitchen and dining areas.
- iv. Maintain clean, cosmetically maintained, and debris free yards, living areas, bedrooms, and driveways.
- v. OSHA approved extension cords and GFI plugs in bathrooms, kitchen, and pool areas as required.
- vi. Emergency contact information posted in conspicuous location.
- vii. Five residents maximum per properly operating bathroom, excluding one staff member.
- viii. Attic access clear of debris.
- ix. Motor vehicles stored per City Code, in safe/good repair, have maintenance schedules and proper insurance, and drivers are licensed appropriately.
- x. Properly inspected and operational heating and cooling systems.
- xi. Fully functional and clean kitchen and bathrooms.
- xii. Adequate food storage space for residents.
- xiii. Property address clearly visible on property.
- xiv. Proper disposal areas for cigarettes.
- xv. No open flames, no fire hazards, smoke free environment.
- xvi. Program is required to meet minimum City Code requirements for building safety and to meet all other local zoning requirements.

Housing Operations and Management Standards

All program policy documents shall be stored in a binder that allows residents to easily access program rules and policies and submitted to the State as updated. Policies will include:

- i. Clearly defined written policies, rules, and regulations, copies provided prior to inspection.
- ii. Clearly defined written consequences for infractions of program policies, rules, and regulations, copies provided prior to inspection.
- iii. Written non-discrimination policy, copies provided prior to inspection.
- iv. Clearly defined written grievance procedure policy, copies provided prior to inspection.
- v. Clearly defined written discharge policy, copies provided prior to inspection.
- vi. Program is able to articulate disposal methods for illegal drugs/medications on property.
- vii. House rules and regulations are posted in conspicuous location.
- viii. Program conducts random urine testing and breathalyzer tests.
- ix. Participants are required to attend 12 Step or other comparable recovery program.
- x. Program holds, at minimum, weekly mandatory participant meetings.
- xi. Recovery resource material is available to participants.
- xii. Program maintains personal information for each participant.
- xiii. Program staff conducts regular internal safety and health inspections with a checklist being completed and stored for future reference, example provided prior to inspection.
- xiv. Program provides intake orientation and subsequent reviews.
- xv. Program has a sign in/out board to track participants and registers all guests.
- xvi. Program is able to articulate minimum sober time required for staff and articulate training/support offered to staff to ensure he/she is capable of managing house.
- xvii. Management and house leaders sign and abide by a code of ethics.
- xviii. Program is in compliance with the Federal Fair Housing Act.
- xix. First aid kit is provided and easily accessible

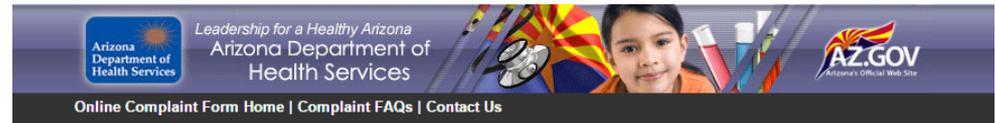
AZDHS – Online Complaint Reporting

The Arizona Department of Health Services provides an online reporting tool for complaints about licensed facilities.

Although many of the community residences in Prescott are not currently licensed, and do not currently meet the licensure qualification, some may meet the qualification, and be operating without a license, and a complaint could reveal this status.

The form can be found at www.azdhs.gov, where the complainant will chose the type of facility in question – typically for a substance abuse related facility this will be either:

- Residential Facility (individuals live on-site); or
- Medical (facility provides medical treatment or operates an affiliated community residence for patients)



Online Complaint Submittal Form - Residential Facilities Licensing

The Division of Licensing Services Bureau Of Residential Licensing provides this Online Complaint Form which allows anyone with knowledge or concerns about a suspected violation to submit a complaint through this web page. A complaint is a suspected violation of Arizona state rules and/or statutes governing the operations of licensed Residential Facilities or providers.

[Complaint Frequently Asked Questions \(FAQs\)](#)

When filling out this form, information that is required is indicated by a red asterisk (*).

Step 1

Complainant Information

[Complainant Name Disclaimer](#)

* First Name * Last Name * Email

Please enter your phone number and/or full address.

Daytime Phone - - Alternate Phone (home/cell) - -

Address (Street and Number) City State Zip

Please send me a report:

Complainant Source

* I am a(n):

- Resident Former Staff Member
 Family Member Other Healthcare Provider
 Friend Other
 Current Staff Member

Step 2

Facility Information

*Facility Name License Number

*Address (Street and Number) Facility Phone Number - -

*City *State Zip

Nearest Cross Streets

AZDHS – Online Complaint Reporting

WHAT CONSTITUTES A COMPLAINT? Complaints are related to quality of life and quality of care, including residents' rights, abuse, neglect, dietary problems, staffing and environmental concerns.

WHO CAN FILE A COMPLAINT? Anyone with knowledge or concerns about an assisted living, behavioral health, long term care or medical facility may file a complaint in writing. Most complaints are filed by residents, family members, concerned friends, a guardian of resident, facility staff members, other health professionals and ombudsman. It is most important that the complainant provide as much specific information as possible including the name and address of the facility, date and time of events indicated in the complaint. It is imperative that complaints be reported timely since it is difficult to effectively gather information surrounding an incident that occurred months before.

WHY REPORT IN WRITING? The complaint form is available 24 hours a day, seven days a week. There is no time spent on the telephone. It ensures that the information you give about your complaint will be more accurate and complete.

HOW ARE COMPLAINTS INVESTIGATED? Complaints are assigned to a surveyor and investigated. The investigation may include a review of records, interviews with staff and residents, and observation of the care of the residents. If names have been provided in the complaint, those persons will be contacted. An investigation of a complaint may result in a complete compliance survey being conducted.

HOW WILL I KNOW THE RESULTS OF MY COMPLAINT? Complainants and the facility are notified of the findings of each investigation. The name of the complainant is not shared with the facility so confidentiality is protected.

Questions and Comments

