

State of California
Office of the State Fire Marshall
1131 "S" Street
Sacramento, CA 95811
May 19, 2009

Drug and Alcohol Recovery Treatment (DART) Work Group

The State Fire Marshall convened the Drug and Alcohol Recovery Treatment (DART) Work Group to investigate fire clearance certification for drug and alcohol providers. The following information was the result of the DART work group.

Background:

Evidence suggests that many local authorities use the fire clearance process as a political instrument to deny fire clearance certificates to qualified drug and alcohol providers. Although the Alcohol and Drug Programs Licensing Law (Health & Safety Code §11834, et seq.) is quite specific in its treatment of licensed facilities as the equivalent of single family occupancies, other parts of the code are ambiguous. This, in turn, resulted in ambiguities within the State Fire Code that have resulted in non-uniform enforcement. Further investigation concluded that there were insufficient provisions within the Health and Safety Code to properly guide a clear direction, and that one reference within the code to "protective social care," caused particular difficulty. It was decided that an Interpretation could provide guidance on that part of the problem.

Meeting Schedule:

There were four meetings held on the following dates.

October 14, 2009
December 18, 2009
January 13, 2009
March 5, 2009

Each meeting was held at the Office of the State Fire Marshall.

Work Group Participants:

The following list details the core group of individuals.

Steve Bunting – Fire Marshall, City of Newport
Ed Dilkes – CRC Health Group
Joan Robbins - California Department of Alcohol and Drugs Program (ADP)
Steve Hart – NASIP Consultant
John Peloquin – CRC Health Group
Greg Lake, Sacramento Metropolitan Fire Department
Susan Blacksher, California Association of Addiction Recovery Resources

David Peters, California Association of Addiction Recovery Resources

While there was participation from other stakeholders on this issue, the above list represents the “core” group of participants.

Scope of investigation:

The scope of discussion included several questions that the work group used to determine the direction of its inquiry.

1. What local authority exists over R3.1?
2. What is Protective Social Care? Where does it originate?
3. Care and Supervision, where does it originate?
4. What is the distinction between “building” and “facility” within the Health and Safety & Building Codes?
5. Does the State have the authority to promulgate regulations for six or fewer beds?

Limitations to the Work Group:

The DART Working Group was only able to resolve some of these questions, and substantial disagreement remains on several issues. The most important of the issues unresolved are whether or not the State Fire Marshal has the legal authority to develop any fire code regulations of licensed alcoholism and drug abuse treatment or recovery facilities and sober living homes. Several members of the group remain convinced that, at a minimum, all such uses must be treated as R-1 Occupancies, and that the application of R3.1 standards to such occupancies is not permissible. This issue will, to some extent, remain unresolved.

The second issue that remains unresolved is whether or not the concept of “protective social care,” and the regulations that apply to this standard, are applicable alcoholism and drug abuse treatment or recovery facilities and sober living homes that have more than 6 occupants in recovery. The Working Group was able to fashion an Interpretation that lifts the applicability of those standards from facilities that exceed 6 residents in recovery, but never was able to reach consensus on whether or not it was possible (or required) to lift those standards from larger facilities.

Recommendations:

In the end, there were three action items that the work group felt are appropriate to provide increased guidance on this issue. Although there were differing opinions on the answers to several of the starting questions, and consensus on those could not be reached, there was general consensus that:

(1) A definition for “protective social care” could be fashioned that eliminated the regulation of all but the larger alcoholism and drug abuse treatment or recovery facilities and sober living homes.

(2) Many of the inconsistencies in enforcement, among different jurisdictions, could be resolved with a formal Interpretation, and

(3) Many other problems could be prevented by amending and updating the guidance provided in writing and at the website by the Department of Alcohol and Drug Programs (ADP) with respect to the fire clearance process.

Action Items 1 and 2 were combined into proposed Fire Code Interpretation (See Attachment 1). Action Item 3 will be implemented by the Department of Alcohol and Drug Programs in the course of normally updating their website.

Action #1: Fire Code Interpretation Request

- 1) According to section 310 of the 2007 CBC, what is the correct occupancy classification of a building, other than a townhouse, consisting of two dwelling units, which are not separated by a fire wall in accordance with CBC Section 705, when each dwelling unit contains an Alcoholism or Drug Abuse Recovery or Treatment Facility, licensed by the Department of Alcohol and Drug Programs, and is occupied by six or fewer clients and the aggregate occupancy load of the entire building is more than 6.

- 2) According to section 310 of the 2007 CBC, what is the correct occupancy classification of a building, other than a townhouse, consisting of more than two dwelling units, which are not separated by fire walls in accordance with CBC Section 705, when each dwelling unit contains an Alcoholism or Drug Abuse Recovery or Treatment Facility, licensed by the Department of Alcohol and Drug Programs, and is occupied by six or fewer clients per unit and the aggregate occupancy load of the entire building is more than six clients.

Action #2 Change the Definition of “protective Social Care” within the State of California Building Code

Chapter 2; DEFINITIONS

PROTECTIVE SOCIAL CARE is the housing and care of any person of any age when such person is referred to or placed within such home or facility for care and supervision services by any governmental agency.

(Ref: H&S 13143.6)

Proposed Change:

PROTECTIVE SOCIAL CARE FACILITY: A facility housing persons, who are referred, placed or caused to be placed in the facility, by any governmental agency and for whom the services, or a portion thereof, are paid for by any governmental agency. These occupancies shall include, but are not limited to, those commonly referred to as “assisted living facilities”, “social rehabilitation facilities”, "certified family care homes," "out-of-home placement facilities," and "halfway houses."

INITIAL STATEMENT OF REASONS:

The 2007 California Building Code contains a number of regulations and exceptions to regulations that apply to facilities which provide Protective Social Care. For example, Section 509.9 establishes specific setback and opening requirements. Section 907.2.8.4 contains exceptions to manual and automatic fire alarm systems for R4 occupancies if the facility provides Protective Social Care.

The portion of the current definition that is problematic for local enforcement authorities is the term “referred”. Despite the regulations neither the California Building Code nor the Health and Safety Code define what a referral is. Section 1500, et.seq. of the Health and Safety Code, the California Community Care Facilities Act, contains the description of several types of community care facilities from which referrals and placements are made by specific governmental agencies. These agencies include the Department of Social Services, Department of Corrections, probation departments, adult and juvenile courts, child welfare agencies, etc. These agencies not only refer and place clients within community care facilities but they also pay the community care facilities for some, if not all of the cost of the care. The referral / placement and compensation nexus makes it easy to identify facilities providing care to clients of these agencies as Protective Social Care facilities.

Drug and Alcohol Recovery or Treatment (DART) facilities do not fall under Section 1500 of Health and Safety Code, however, they are subject to referrals

by governmental agencies as well. Referrals may be in the form of sentencing alternatives, sentence reductions or conditions of probation.

Unlike clients who receive services under the California Community Care Facilities Act, clients receiving services in a DART facility due to a Penal Code Section 1000 or "Drinking Driver" diversion programs may not be having those services paid for by a governmental agency. While they may have indeed been referred to recovery services by a governmental agency, they may be free to select any facility that is on their County's list of approved programs. In these circumstances where a client is free to select a facility and must pay for services out of pocket, there is no practical difference between DART referred clients and those who walk in to a facility of their own accord.

The proposed change in the definition is intended to assist code officials in determining when a care facility should be treated in accordance with the Protective Social Care provisions and when it should not.

509.9

No change

[F] 903.2.7

No change

[F] 907.2.8.4

No change

[F] 907.9.1.5

No change

1231.6

No change

1231.6.3

No change

1231.6.6

No change

1231.6.7

No change

3413.1

No change

3413.4

No change

3413.6

No change

3413.7

No change

3413.8

No change