

October 27, 2022

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VIA E-MAIL: Stoyan.bumbalov@des.wa.gov

State Building Code Council
c/o Stoyan Bumbalov, Managing Director
Washington State Department of Enterprise Services
1500 Jefferson St. SE
Olympia, WA 98501

Re: Support for Emergency Rule Adopting R-4 Occupancy Group

Dear Council Chair Doan and Councilmembers:

This office represents AMFM Healthcare, a provider of mental health services in a residential treatment setting. On behalf of AMFM Healthcare, we strongly endorse the Department of Health's request for the State Building Code Council ("SBCC") to enact the R-4 occupancy classification and all written comments submitted in support of R-4 enactment.

1. An Emergency Rule enacting R-4 is necessary to correct existing errors and omissions within the State Building Code, according to WAC 51-04-025(1)(d).

The SBCC is authorized to adopt amendments to the Building Code (the "Code") on an emergency basis for purposes of correcting errors and omissions within the Code. WAC 51-04-025(1)(d). Currently, the Code makes no provision for residential custodial care uses, including licensed residential treatment facilities which house greater than 5, but no greater than 16 occupants. Those residential custodial care uses with 16 occupants or greater are regulated under the Institutional Group I-1 classification (*see*, WAC 51-50-0308, IBC 308.2). Those residential custodial care uses with 5 or less occupants are regulated under Residential Group R-3 (*see*, IBC 308.2.4). IBC 308.2.3 provides that custodial care facilities with more than 5 but no more than 16 occupants shall be classified as Group R-4. Yet, the R-4 classification has not yet been adopted in the State of Washington, unlike all other 49 states. Immediately enacting the R-4 classification will correct this ambiguity and omission in the Code, for group home occupancies more than five but less than 16.

In Code Interpretation No. 13-07, the SBCC indicated the Residential Group R-4 classification was not being adopted in the 2012 IBC and IFC "under the assumption that any of the occupancies listed in [the R-4 classification] must be licensed and would be classified as either Group R-2 or Group I-2." *See*, Tab A. The R-4 classification included such uses as assisted living facilities, custodial care facilities and

group homes. The 2012 Code defined the Group R-2 classification as “Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature” *and specifically included licensed Assisted Living Facilities and Residential Treatment Facilities*. The 2012 I-2 classification covered uses for custodial care of more than 5 persons who were incapable of self-preservation. Thus, behavioral health residential facilities were generally regulated under R-2 classification in 2012, with a recognition that facilities housing persons incapable of self-preservation were more appropriately regulated under the Institutional I-2 classification.

Under the 2018 Code, the R-2 classification no longer includes licensed Assisted Living Facilities and Residential Treatment Facilities. Now, the Code categorizes all residential treatment facilities under the more restrictive Institutional I-1 classification, without regard to number of residents. Prior SBCC reasoning for omitting R-4 from the Code no longer applies, as the R-2 classification is no longer available for smaller group homes licensed as residential treatment facilities. We believe it was an oversight and error not to adopt the R-4 occupancy as part of the regular Code update cycles to fill the functional gap left when R-2 was modified to eliminate residential treatment facilities. The SBCC’s inclusion in the Code of IBC 308.2.3 – which directs that custodial care uses with more than 5 but no more than 16 occupants shall be classified as Group R-4 – suggests the omission of R-4 was merely an oversight. This error created a hole in the Code which is rightfully remedied through the Emergency Rulemaking process.

2. Emergency adoption of the R-4 classification is necessary to preserve the public health.

Immediate adoption of the Group R-4 classification is necessary to address the mental health crisis in Washington State. As noted in the letters of support from the King County Department of Community and Human Services, Washington State Department of Commerce, Ryther and Ron Wright & Associates, the costs associated with meeting the I-1 occupancy for facilities of no more than 16 residents are often insurmountable obstacles preventing much-needed behavioral health facilities from opening. A recent Seattle Times article¹ noted that Washington’s percentage of adults with an unmet treatment need is above the national average, and treatment availability in rural communities is

¹ See, <https://www.seattletimes.com/seattle-news/mental-health/here-are-the-basic-facts-about-mental-health-and-treatment-in-washington-state/>

particularly low. Adopting the R-4 classification will decrease costs and increase the number facilities being opened to serve those with mental health needs.

It is imperative to implement the R-4 classification as soon as possible. Delaying adoption of the Group R-4 classification as a non-emergency rule means the earliest it could go into effect is the summer of 2023, after the likely end of the 2023 legislative session. Such a lengthy delay is contrary to the public's interest in addressing the mental health crisis. Behavioral health facilities should be encouraged to open as soon as possible by removing unnecessary impediments associated with the I-1 classification as applied to facilities with less than 16 occupants and allowing the R-4 classification to fill the gap in the Code.

3. Adopting R-4 implements State policy expressed in the Growth Management Act and the Washington Housing Policy Act.

Washington's Growth Management Act ("GMA"), RCW 36.70A.200 specifies that both mental health facilities and group homes are "essential public facilities" to be given permitting priority. Adopting the R-4 classification will importantly assist siting of these essential public facilities in furtherance of GMA policies.

The Washington Housing Policy Act ("WHPA"), RCW 43.185B *et seq.* requires regulating residential treatment group homes in same manner as single family residential uses. (See, RCW 35.63.220; RCW 35A.63,240; RCW 36.70.990; RCW 36.70A.410. See also, *Sunderland Family Treatment Services v. City of Pasco*, 107 Wash.App. 109, 26 P.3d 955 (2001), interpreting the WHPA as prohibiting regulations which impose on a facility for disabled individuals occupying a residential structure greater burdens than are imposed on a "family" occupying a residential structure.) The Group R-4 classification is needed to address the disparate imposition of Institutional building code restrictions on smaller licensed residential treatment facilities occupying residential structures.

4. The current Institutional occupancy deters group home uses.

Applying the I-1 classification to existing single-family homes is uneconomic and often infeasible. A change of use from R-residential to an I-institutional residential treatment facility invokes the entire scope of the current Building Code to a residence built under a prior code. (See, IBC 1002.1.) Seismic, energy and fire safety codes are especially problematic for homes not built to the 2018 State Building Code. Jurisdictions hostile to residential behavioral health group homes may use the change of Code classification to impose a host of Code requirements on a group home, thereby creating severe economic obstacles to this essential public facility.

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The regulations associated with the Institutional classification anticipate a non-ambulatory group of residents, and thus more stringent safety provisions are needed. The Institutional classification is intended for uses such as hospitals and prisons where residents are incapable of self-preservation in a life threatening event or are physically detained and restrained. (*See, IBC 308.1.*) These concerns are not present for group homes where residents are fully ambulatory and capable of physically removing themselves in an emergency. The more stringent safety provisions of the Institutional classification are not necessary to providing a safe residential building for a smaller group home residential treatment use.

In closing, the R-4 occupancy is needed to provide a reasonable, economical path for providing vital cognitive therapy mental health services in a safe group home setting for residents and staff. We urge the long overdue enactment of R-4 in the State Building Code as an important matter of public policy helping answer the critical shortage of mental health treatment facilities in our state.

Regards,



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Tab A



Washington State Building Code Council

Improving the built environment by promoting health, safety and welfare

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STATE BUILDING CODE INTERPRETATION NO. 13-07

- CODE:** 2009 International Building Code
2009 International Fire Code
- SECTION:** IBC 308.2 / IFC 202
- QUESTION:** The 2009 IBC sections 308.2 and 310.1 lists examples of facilities that are to be classified as I-1 Occupancies and Residential Group R-2 Occupancies. The 2009 IFC definitions are direct copies of this language. The state building code council's amendments to these sections direct enforcers to classify "Boarding homes as licensed by Washington State under Chapter 388-78A WAC" as a Group R-2. Subsequent to the creation of this amendment, the Washington state legislature passed House Bill 2056 during the 2012 regular session. In effect, this bill replaced the term "boarding home" with "assisted living facility" throughout the Revised Code of Washington. This name change was identified and addressed in the state amendments to the 2012 IBC and IFC
- QUESTION 1:** Is Group R-2 the occupancy classification of an assisted living facility, licensed by the Washington State as an assisted living facility under Chapter 388-78A WAC?
- QUESTION 2:** What is the occupancy classification of an assisted living facility that is NOT licensed by the Washington State under Chapter 388-78A WAC?
- QUESTION 3:** Is Group R-2 the occupancy classification of an assisted living facility, licensed by the Washington State as an assisted living facility under Chapter 388-78A WAC, which houses dementia/memory care residents?

ANSWER 1: Yes. The state amendment to IBC 310.4 Residential Group R-2 lists “Assisted living facilities as licensed by Washington state under chapter 388-78A WAC”.

ANSWER 2: The local building official designates occupancy classification based on use and number of occupants, among other factors. The state does not adopt Section IBC 310.6 Group R-4 under the assumption that any of the occupancies listed in Section 310.6 must be licensed and would be classified as either Group R-2 or Group I-2. An unlicensed facility in the categories listed under R-4/I-1 would be either R-3 up to 16 occupants, and I-1 over 16 occupants.

ANSWER 3: Yes. See answer #1. The threshold for requiring Group I-2 nursing home care for a resident is determined by the licensing and inspection agencies and the caregivers.

SUPERSEDES: None

REQUESTED BY: Washington State Department of Health