

systems. Automatic sprinklers are not required for homes occupied by similarly sized households of persons without disabilities. This requirement effectively prohibits individuals with intellectual disabilities or autism who require “care” to live in the community from living in broad categories of housing, including older multifamily housing.

2. “Community homes” are the Commonwealth’s primary community residential program for persons with intellectual disabilities and autism who would otherwise be institutionalized. Community homes provide in-home staffing and supports that enable persons with intellectual disabilities or autism to live in the community as independently as possible and avoid institutionalization.

Community homes are regulated and closely monitored by the Commonwealth and must comply with numerous safety requirements, including fire safety requirements.

3. Under the FHA, building code requirements that apply only to persons with disabilities, and which do not apply to the general population, may be justified only if they are warranted by the unique and specific needs and abilities of residents with disabilities in the housing at issue. However, the Uniform Construction Code, Pennsylvania’s statewide building code, requires every community home to install an automatic sprinkler system, regardless of the home’s age, the number of residents, or the residents’ individual abilities, including their

ability to evacuate the home in case of fire. Other single-family homes, including newly constructed homes, are not required to install automatic sprinklers if they are not occupied by individuals with disabilities who require “care” to live in the community. Nor are in-home day care centers with up to twelve children or older “commercial” congregate living facilities, such as nursing homes, required to install automatic sprinklers.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3614(a).

5. Venue is proper in this district under 28 U.S.C. § 1391(b) because the Commonwealth is located there and because the laws, policies, and practices giving rise to this lawsuit were developed there.

III. PARTIES

6. Plaintiff is the United States of America.

7. Defendant Commonwealth of Pennsylvania is the state government of Pennsylvania.

8. Defendant Department of Labor and Industry (“DLI”) is an agency of the Commonwealth of Pennsylvania that enacted, interprets, and enforces the Pennsylvania Uniform Construction Code, 34 Pa. Code. §§ 401.1 *et seq.* (2024), which is Pennsylvania’s mandatory statewide building code.

9. Defendant Department of Human Services (“DHS”) is an agency of the Commonwealth that approves, funds, and regulates community homes for persons with intellectual disabilities or autism. *See* 55 Pa. Code §§ 6400.1 *et seq.* (2024).

IV. FACTUAL ALLEGATIONS

A. Community Homes for Persons with Intellectual Disabilities or Autism

10. Through Medicaid, the Commonwealth provides community residential services for persons with intellectual disabilities or autism in “community homes.” A “community home” is a “building or separate dwelling unit in which residential care is provided to one or more individuals with an intellectual disability or autism ...” 55 Pa. Code § 6400.4.

11. The Commonwealth funds community homes through its federally approved Medicaid Consolidated Home and Community-Based Services (“HCBS”) Waiver. *See* Application for 1915(c) HCBS Waiver 19, 110-11 (Jan. 1, 2023), [Application for 1915\(c\) HCBS Waiver: PA.0147.R07.00 - Jan 01, 2023](#) (“HCBS Waiver”). HCBS “waivers” allow States to use Medicaid funds to serve individuals with intellectual disabilities in the community and allow them to avoid institutionalization. *See* 42 U.S.C. § 1396n(c)(2)(C); HCBS Waiver at 3, *supra*.

12. Community homes are operated by private provider agencies that are licensed by DHS to deliver HCBS Waiver services to eligible individuals. *See* 55 Pa. Code §§ 6100.81—6100.85.

13. Since February 1, 2020, each community home that opens under the Consolidated HCBS Waiver may have no more than four residents. 55 Pa. Code § 6100.444(b). Homes that opened before this date may have up to eight residents. *Id.* § 6100.444(a).

14. As of 2023, there were approximately 5,600 community homes across Pennsylvania with over 12,000 residents with intellectual disabilities or autism. The average community home has 2.3 residents, although some have only one resident.

15. Like all services funded under the HCBS Waiver, community homes must be “integrated in the community,” and residents “shall have the same degree of community access and choice as an individual who is similarly situated in the community who does not have a disability and who does not receive an HCBS.” *Id.* § 6100.443. Federal Medicaid regulations similarly require community residential settings to be “integrated in and support[] full access of individuals receiving Medicaid HCBS to the greater community ... to the same degree of access as individuals not receiving Medicaid HCBS.” 42 C.F.R. § 441.301(c)(4)(i).

16. To comply with the requirement that they be “integrated in the community,” community homes operate in existing single-family homes, townhomes, or apartments in residential neighborhoods to allow residents the opportunity to interact with nondisabled neighbors. Community homes are intended to look the same as surrounding homes or apartments occupied by non-disabled households.

17. Community homes operate much like any other household. Residents typically cook and eat meals together, shop for groceries together, do laundry together, and engage in activities together (such as playing games, watching TV, or going on community outings). Residents do not lock their bedroom doors and are not limited to specific parts of the home. As in other households, residents pool their resources (including Supplemental Security Income and Supplemental Nutrition Assistance Program benefits) to pay for room and board.

18. Community homes are required to have at least one direct support staff in the home whenever residents are present unless a resident’s individual plan specifies that he or she may be left unsupervised for specific time periods. 55 Pa. Code § 6400.45.

19. Community homes are extensively regulated and reviewed by DHS through its Office of Developmental Programs (“ODP”). *See id.* §§ 6400.61—6400.217. DHS regulations include fire safety requirements for community

homes. *Id.* §§ 6400.101—6400.114. Among other things, community homes must have smoke detectors, interconnected smoke detectors if the home has more than one story, and fire extinguishers. Community homes must also conduct unannounced monthly fire drills, including at night. *Id.* §§ 6400.110—6400.112. Residents must be able to evacuate the home within two and one-half minutes or another period established by a fire safety expert. *Id.* § 6400.112(d).

20. Many individuals with intellectual disabilities or autism are able and can be trained to respond to emergencies and evacuate their homes to a designated meeting place or point of safety within two and one-half minutes.

21. DHS regulations do not require community homes to install automatic sprinkler systems. ODP does not check to see if community homes have automatic sprinkler systems as part of its monitoring and review of community homes.

22. In addition to its own regulatory requirements, DHS requires community homes to obtain from the local jurisdiction either a certificate of occupancy indicating compliance with applicable building codes or a letter stating that a certificate of occupancy is not required.

B. The Pennsylvania Uniform Construction Code

23. In 1999, Pennsylvania enacted the Construction Code Act. 35 Pa. Cons. Stat. ch. 40A, §§ 7210.101—7210.1103 (2024). The Act required DLI to adopt a Uniform Construction Code (“UCC”) “to insure uniform, modern

construction standards and regulations throughout this Commonwealth.” *Id.* § 7210.102(a)(3).

24. DLI enacted regulations establishing the UCC on April 9, 2004. Thereafter, all municipalities and local governments in Pennsylvania were required to adopt the UCC as their building code.

25. The UCC incorporates model building codes developed by the International Code Council, including the International Building Code (“IBC”) and the International Residential Code (“IRC”). In or about July 2018, the Commonwealth adopted and incorporated parts of the 2015 version of the IBC into the UCC. In or about December 2021, the Commonwealth adopted and incorporated into the UCC the 2018 version of the IBC, which remains in effect. 34 Pa. Code § 403.21(a)(1).¹

26. The Construction Code Act provides that local governments may either enforce the UCC themselves or enter into an agreement to have DLI do so. *See* 35 Pa. Cons. Stat. § 7210.501(b)(5). Most local governments have chosen to enforce the UCC themselves. However, regardless of whether they enforce the UCC themselves or choose to have DLI do so, local governments must follow the

¹ Although DLI enforces the UCC, the UCC’s Review and Advisory Council selects which International Code Council model codes will be incorporated into the UCC. *See* 35 Pa. Cons. Stat. §§ 7210.107-108.

UCC's requirements and may not exceed or deviate from them without DLI's authorization. *See id.* § 7210.503(j)(2).

C. The UCC's Application to Community Homes and Automatic Sprinkler Requirements

27. Although single-family homes and townhomes are typically governed by the IRC, *see* 2018 IRC § R101.2, DLI classifies a dwelling that is used as a community home for persons with disabilities as a "building" subject to the IBC. *See* 2018 IBC § 101.2. According to DLI, when a community home opens in a structure that was constructed and previously used as a private home, its "use" or "occupancy" has changed from a residential "dwelling" subject to the IRC to an IBC "Group R-3" occupancy, specifically a "[c]are facilit[y] that provide[s] accommodations for five or fewer persons receiving care." *See* 2018 IBC § 310.4. A community home with more than five residents is classified as a Group R-4 "[c]ongregate care facilit[y]." *See id.* § 310.5. The owner or operator of a community home must therefore bring the existing dwelling into compliance with all IBC code requirements for R-3 or R-4 occupancies, just as if the home were being newly constructed for that purpose.

28. The IBC requirements for R-3 and R-4 occupancies differ from, and often significantly exceed, those for single-family homes and multifamily dwellings. For example, R-3 and R-4 facilities must have fire walls with a fire resistance rating of two hours in several locations. *See* 2018 IBC § 706.4. By

contrast, under the IRC, a single-family home must be constructed with exterior walls with a fire resistance rating of only one hour. *See* 2018 IRC tbl. 302.1(1). Furthermore, if a community home’s bedrooms are considered “sleeping units” under the IBC, the interior walls separating these bedrooms from other areas of the house would have to be reconstructed as “[f]ire partitions” with one-hour fire resistance ratings. *See* 2018 IBC §§ 420.1, 708.3 (emphasis omitted). Because it is not typically feasible to bring an existing dwelling into compliance with these requirements, they effectively preclude community homes from operating in many existing homes in residential neighborhoods. This, in turn, would directly undermine the goal of deinstitutionalization by preventing the integration of persons with intellectual disabilities or autism into the community.

29. The IBC has attempted to mitigate these housing barriers in part by creating a sub-category within the R-3 occupancy group that allows a “care facilit[y] for five or fewer persons receiving care” to operate in a “single-family dwelling” that complies with the IRC, but only if an automatic sprinkler system is installed. 2018 IBC § 310.4.1; *see also* 2015 IBC 310.5.1. Accordingly, unless an automatic sprinkler system is installed, a community home that serves five or fewer persons with intellectual disabilities may not operate in a single-family home or townhome.

30. The automatic sprinkler requirement applies only to single-family homes occupied by persons with disabilities who require “care” to live in the community. Single family homes occupied by households of five or fewer persons without disabilities, whether related or unrelated, are not required to install automatic sprinkler systems. Although the IRC requires all newly constructed single-family dwellings and townhomes to have automatic sprinklers, *see* 2018 IRC § R313.2, the Commonwealth declined to adopt this requirement. *See* 35 Pa. Cons. Stat. § 7210.901(g)(2).

31. The Commonwealth’s automatic sprinkler requirement applies across the board to every community home, regardless of whether automatic sprinklers are warranted by the unique and specific safety needs and abilities of the residents in a particular community home.

32. In addition, the IBC’s provision permitting R-3 “care facilities” to operate in “single-family dwellings” if they have automatic sprinklers does not apply to community homes located in multifamily housing. As a result, agencies that operate community homes in apartments must not only install automatic sprinklers but must also ensure that the apartment complies with all other applicable R-3 fire code requirements.

33. Where an apartment building does not already have automatic sprinklers, it is typically not feasible to install an automatic sprinkler system in a

single multifamily dwelling unit. Other R-3 code requirements may also be infeasible to comply with in older, existing multifamily dwellings.

34. A residential-grade “NFPA 13D” automatic sprinkler system, *i.e.*, one that can connect to the home’s domestic water line and does not require a dedicated water source, costs approximately \$9,500 to install, depending on the size of the home. However, at least one water utility in the Commonwealth prohibits the installation of automatic sprinklers in residential dwellings that lack a dedicated water line or other water source, such as an on-site water tank. These requirements raise the price of installing automatic sprinklers to approximately \$30,000 or more, which is comparable to the cost of a commercial-grade automatic sprinkler system.

35. In at least one case involving three proposed community homes, Aqua Pennsylvania, a water utility that serves portions of 32 Pennsylvania counties, required the homes to install a dedicated water line or other water source for the homes’ NFPA 13D automatic sprinkler systems. Aqua did so under a “tariff,” approved by the Commonwealth, that requires the water utility “customer” to install, at their own expense, a separate water service line for any residential automatic sprinkler system.

36. For this dedicated water service line, Aqua Pennsylvania required, among other things, the installation of an underground valve and provided a specific design for this valve. This valve was not available for retail purchase and

would have had to be custom-built, which would have taken up to a year. To avoid this delay, the homes' owner obtained permission from Aqua to install water tanks in the homes to service the sprinkler system. However, in two of the homes, the tanks were too large to be delivered through the house and into the basement. Therefore, for one home, the owner constructed a new exterior entrance and staircase to the basement to allow for the delivery and installation of the water tank there. In the other home, the owner installed the water tank in the garage. This, however, required the installation of central heating in the garage to ensure that the tank and pipes did not freeze in the winter.

37. DHS provides no additional funding to community home provider agencies to cover the costs of installing automatic sprinkler systems. These costs are not incorporated or factored into the reimbursement rates for community homes or residents.

38. Most automatic sprinkler systems installed in existing dwellings have exposed pipes lining the walls of hallways, living areas, and bedrooms. These pipes are often considered unsightly and/or reminiscent of the institutional facilities these homes were intended to replace. Although in new construction, automatic sprinklers can be largely concealed from view by being placed behind walls or above the ceiling, doing so in existing homes is often cost-prohibitive.

39. An across-the-board requirement that homes serving persons with intellectual disabilities install automatic sprinkler systems operates to make unavailable or restrict housing for this population, as follows:

- a. *First*, this requirement effectively prohibits individuals with intellectual disabilities who require “care” from living in older multifamily housing because it is not typically feasible to install automatic sprinklers in a single apartment in a multifamily building.
- b. *Second*, this requirement may significantly restrict the availability of rental housing that may be used as community homes, because landlords may have financial incentives to refuse to allow automatic sprinklers to be installed. In addition to making the homes less marketable to future tenants, automatic sprinkler systems require ongoing maintenance and servicing.
- c. *Third*, the significant cost of installing automatic sprinkler systems, particularly where a dedicated water source is required, may be cost-prohibitive for many provider agencies. Other agencies may be forced to operate homes with greater numbers of residents to defray the cost of automatic sprinklers,

resulting in less-individualized living arrangements for persons with intellectual disabilities.

40. The Commonwealth has exempted other types of buildings from automatic sprinkler requirements through local amendments to the IBC. For example, the Commonwealth exempts all R-3 and R-4 buildings from installing automatic sprinklers if they were constructed before April 9, 2004, and their use has not changed, but not if they are in residential dwellings. *See* 35 Pa. Cons. Stat. §§ 7210.902(b)(2)(ii), 7210.103. Thus, nursing homes, assisted living facilities, and other congregate care facilities with as many as 16 residents that opened before April 2004 need not install automatic sprinklers, while community homes must do so regardless of when the home was constructed.

41. The Commonwealth also exempts in-home day care centers with up to twelve children from having to install automatic sprinklers, *see* 34 Pa. Code § 403.23, even though a day care center, like a community home, constitutes a change in the “use” or “occupancy” of the dwelling that otherwise may trigger an automatic sprinkler requirement.

42. Finally, as stated above, the Commonwealth exempts newly constructed homes from having to install automatic sprinklers. These exemptions appear to reflect a judgment that the costs and ramifications of requiring automatic sprinklers in these circumstances outweigh their benefits.

43. Although the UCC provides for a variance process, *see* 34 Pa. Code § 403.122, only an “owner or owner’s agent” may seek a variance. *Id.* § 403.122(a). Thus, under the Commonwealth’s regulation, a provider agency that operates a community home may not seek a variance unless it also owns the home or is authorized by the owner to seek a variance on the owner’s behalf. Furthermore, many of the factors for whether to grant a variance, *see id.* § 403.122(g), weigh against waiving or granting a reasonable accommodation to the automatic sprinkler requirement. One such factor, namely, “[t]he extent to which the granting of a variance ... will pose a violation of the” UCC, *see id.* § 403.122(g)(2), directly conflicts with the duty to provide reasonable accommodations, which by their nature involve exemptions to generally applicable rules. *See US Airways v. Barnett*, 535 U.S. 391, 398 (2002).

D. Community Homes That Were Required to Install Automatic Sprinkler Systems

44. In spring 2023, Whole Life Services, Inc., a nonprofit corporation licensed by DHS to serve individuals with intellectual disabilities in the community under the HCBS waiver, sought to open a community home in an existing one-story, single-family home in Hermitage, Pennsylvania. The home was intended to serve a man with intellectual disabilities whose family was no longer able to care for him. Whole Life purchased this home and brought it into compliance with ODP’s regulations governing community homes.

45. At the time it sought approval for the home described above, Whole Life operated approximately seventeen community homes in Hermitage and other municipalities in Mercer County. For these homes, Hermitage and other local governments issued letters stating that the home did not require a certificate of occupancy because it was a permitted use in the zoning district where it was located. Whole Life submitted these letters to DHS under a provision in the DHS *ODP Regulatory Compliance Guide* stating that a certificate of occupancy was not required if “otherwise noted by the municipality or township ... that a certificate of occupancy is not required.” DHS *ODP Regulatory Compliance Guide* 8 (Feb. 3, 2020 ed.). Based in part on these letters, ODP approved these homes.

46. In 2022, following the adoption of the 2018 IBC into the UCC, Hermitage officials determined that the UCC required community homes to install automatic sprinklers. DLI confirmed to Hermitage that this was the case. Thereafter, Hermitage, along with other municipalities in Mercer County, concluded that, under the UCC, community homes required certificates of occupancy, which could not be issued unless the home had an automatic sprinkler system. Without a certificate of occupancy, or a letter stating that one was not required, DHS would not allow the community home to begin operating.

47. Whole Life requested, in writing, a reasonable accommodation under the FHA from the automatic sprinkler requirement for the home it sought to open

in Hermitage. Hermitage, through its city solicitor, denied this request on grounds that it “lacks any authority whatsoever under the UCC to grant an exception to one of its provisions” and “lacks any ability to provide you with the relief that your letter is requesting.”

48. The process for installing an automatic sprinkler system—including locating and retaining a contractor, obtaining permits and a certificate of occupancy, and obtaining final DHS approval for the home—took approximately six months. During this time, the prospective resident could not move into the home and in the interim had to live in an unlicensed setting with a family, where his behavioral issues worsened. DHS officials also expressed concern about the prospective resident living in an unlicensed setting.

49. According to Whole Life, the single resident at the home it recently opened is able to respond to a fire drill by evacuating to a point of safety outside the home in two and one-half minutes, as required by DHS regulations.

50. Another provider agency, Extraordinary Youth Program (EYP), applied to Hermitage’s Board of Appeals for a variance under the UCC to the automatic sprinkler requirement for a community home it sought to open in an existing one-story, single-family home. In its application, EYP stated that “we are getting referrals from individuals, their families and agencies that desperately need a place to live” but that EYP could not serve them “due to us not being granted an

Occupancy Permit.” As an alternative to installing automatic sprinklers, EYP offered to limit the home to two residents, add additional staff, and install hard-wired smoke alarms. The Board of Appeals denied the variance request, citing state law.

51. Nevertheless, in an apparent attempt to allow EYP to begin serving individuals with intellectual disabilities in the home without delay, the Board of Appeals voted to grant EYP a “conditional” certificate of occupancy under which EYP was required to install an automatic sprinkler system within the next six months. Similarly, the City of Farrell, which is adjacent to Hermitage, issued “conditional” occupancy certificates for two community homes operated by another provider agency, Stock LLC, based on its agreement to install automatic sprinklers in the homes within six months.

52. DHS approved the EYP home in Hermitage and one of the Stock LLC homes in Farrell based on the “conditional” certificates of occupancy. However, about a month later, DHS refused to approve the second home in Farrell operated by Stock LLC, on grounds that DHS needed a “permanent” certificate of occupancy. As a result, Stock LLC was not able to open this second home until an automatic sprinkler system and a water tank were installed, and the home remained empty for several months.

V. CLAIM FOR RELIEF: FAIR HOUSING ACT

53. The allegations listed above are incorporated herein by reference.

54. Community homes are “dwellings” within the meaning of 42 U.S.C. § 3602(b).

55. The residents of community homes are persons with disabilities within the meaning of 42 U.S.C. § 3602(h).²

56. Defendants’ actions described above constitute:

a. discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling because of disability, in violation of the FHA, 42 U.S.C. § 3604(f)(1); and

b. discrimination in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with a dwelling because of disability, in violation of the FHA, 42 U.S.C. § 3604(f)(2); and

² Although the FHA uses the term “handicap,” the United States uses the preferred term “disability.” The two terms have the same legal meaning and may be used interchangeably. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998); *accord Helen L. v. DiDario*, 46 F.3d 325, 330 n.8 (3d Cir. 1995) (“The change in nomenclature from ‘handicap’ to ‘disability’ reflects Congress’ awareness that individuals with disabilities find the term ‘handicapped’ objectionable.”) (citation omitted).

c. a refusal to allow for the provision of reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person an equal opportunity to use and enjoy a dwelling, in violation of the FHA, 42 U.S.C. § 3604(f)(3)(B).

57. The actions described above constitute a pattern or practice of resistance to the full enjoyment of rights granted by the FHA, or a denial of rights protected by the FHA to a group of persons, which denial raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

58. Current and prospective community home residents and community home provider agencies who have suffered harm and damages as a result of the actions described above may be “aggrieved persons” within the meaning of 42 U.S.C. § 3602(i).

WHEREFORE, the United States prays that the Court enter an ORDER:

a. Declaring that the UCC’s requirement that all community homes must install automatic sprinkler systems, as well as other heightened code requirements that operate to deny equal housing opportunity for persons with disabilities, violate the FHA;

b. Enjoining Defendants, their agencies, officers, employees, agents, successors and all other persons in active concert or participation

with it, from enforcing the UCC's automatic sprinkler requirement and other heightened code requirements for community homes, except where it has been demonstrated that installation of automatic sprinklers and/or any other heightened code requirement under the UCC is warranted by the unique and specific needs and abilities of the residents of a particular community home;

c. Ordering Defendants to take all affirmative steps to comply with the FHA, including steps necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate to the extent practicable the effects of the unlawful housing practices described above; and

d. Awarding monetary damages pursuant to 42 U.S.C. § 3614(d)(1)(B) to all aggrieved persons.

The United States further prays for such additional relief as the interests of justice may require.

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