

FOSTER CARE ENFORCEMENT

House Bill 5245 as enrolled
Second Analysis (1-7-91)

Sponsor: Rep. Teola Hunter
House Committee: Social Services & Youth
Senate Committee: Human Resources & Senior
Citizens

THE APPARENT PROBLEM:

The Department of Social Services reports that there have been instances of adult foster care facilities losing their licenses but remaining open as unlicensed "room and board" homes with the same clientele. In some cases the department has revoked licenses of facilities because conditions were unsanitary or unsafe, and yet the inhabitants have continued to live in the buildings afterward without receiving appropriate care. One facility, say DSS officials, lost its license due to fire safety violations and later suffered a fire that took the lives of several people who had lived in the building when it had been a licensed foster care facility. The DSS is seeking legislation that would prevent this, by prohibiting facilities that have lost their foster care licenses from housing people in need of foster care and by requiring that residents be relocated when a foster care facility loses its license.

THE CONTENT OF THE BILL:

The bill would amend the Adult Foster Care Facility Licensing Act to specify that if the Department of Social services has revoked, suspended, or refused to renew the license of an adult foster care facility, the former licensee cannot receive or maintain adults in need of foster care. A violation would be a misdemeanor, punishable by a fine of not more than \$1,000.

The bill would also require that relocation services be provided when needed to adults served by a facility whose license has been revoked, suspended, or not renewed. The services would be provided if the DSS determined that the adult or the adult's representative was unable to relocate to another facility without assistance. The relocation services would be provided by the responsible agency, as defined in administrative rules or by the department (If the adult had no agency designated as responsible).

The bill also contains technical amendments, aimed at clarifying current language.

MCL 400.703 et al.

FISCAL IMPLICATIONS:

The Department of Social Services says the bill is not expected to have a fiscal impact on the department. (11-15-89)

ARGUMENTS:

For:

Social services officials say that Michigan has been a national leader in the regulation of adult foster care facilities and in community placement. This bill, says a DSS analysis, would offer a greater level of protection to people who are developmentally disabled, mentally ill, aged, or physically handicapped and who need a 24-hour supervised residential living situation (such as

adult foster care). It prohibits a facility that loses its foster care license from continuing to house the same people but without providing the care. It would also, the DSS says, "provide the department a legal base for providing relocation services to residents in need of foster care from a formerly licensed adult foster care facility to a facility where that care is available."

Against:

While its goals are admirable, the bill ignores a larger problem. It should be amended to say that a facility cannot provide services to adults in need of foster care unless the facility is licensed. As written, the bill applies to former licensees but does not deal with residential facilities that have never been licensed as adult foster care facilities but make it a practice to house people who ought to be in adult foster care facilities. The DSS cannot act against such facilities under this bill because it requires a facility to be licensed if it "provides" foster care. Facility operators can escape regulatory action simply by claiming that they do not intend to provide such care but just room and board services. The advocates of this amendment say it is a legitimate health, safety, and welfare issue that government should address. The government has a right to say that adults in need of foster care should not be housed in inappropriate settings. Facilities housing adults in need of foster care would have the choice of becoming licensed or relocating the resident to appropriate care. The amendment is not aimed at preventing people from choosing to live in room-and-boards, but to get at certain "problem facilities" housing people in need of a greater level of care and supervision.

Response: Some people oppose the broadening amendment because it could lead unwitting room-and-board operators into violations of the law if they provided services to a person that a social services official considered to be "in need of adult foster care." This could lead to overreaching by overzealous officials, particularly in cases where a facility operator and a regulator have a personality conflict. Some people believe this approach is an unjustifiable effort by the DSS and licensed facilities to restrict the activities of unlicensed facilities.