



House
Legislative
Analysis
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ADULT FOSTER CARE

House Bills 4716 & 4717
Sponsor: Rep. Ilona Varga
Committee: Judiciary

Complete to 5-21-93

A SUMMARY OF HOUSE BILLS 4716 AND 4717 AS INTRODUCED 5-6-93

House Bill 4716 would amend the Michigan Penal Code (MCL 740.145m et al.) to create a new chapter dealing with crimes against "vulnerable adults" (that is, adults who because of age, developmental disability, mental illness, or physical handicap require supervision or assistance with one or more of the activities of daily life). The bill could not take effect unless House Bill 4717 was enacted.

Harm to vulnerable adult. It would be a felony punishable by imprisonment for up to 15 years to knowingly or intentionally cause serious physical or serious mental harm to a vulnerable adult. Serious harm caused by a reckless omission or act would be a felony punishable by up to four years in prison. Knowingly causing physical harm (as opposed to serious physical harm) would be a two-year misdemeanor; physical harm caused by a reckless omission or act would be a one-year misdemeanor.

Facility-caused deaths. It would be a felony if an adult foster care home or nursing home, or someone acting on behalf of the facility, violated the Adult Foster Care Facility Licensing Act or the Public Health Code and the violation was a proximate cause of death or serious physical or mental harm to a resident. The crime would be punishable by up to five years in prison and/or a fine of between \$50,000 and \$75,000.

Other proscribed actions. Certain offenses would be misdemeanors punishable by imprisonment for up to two years, and/or a fine of between \$10,000 and \$25,000. A repeat offense would be a five-year felony punishable by a fine of between \$25,000 or \$75,000. (To be subject to these stiffer penalties, a person would not necessarily have to repeat the same offense he or she had committed earlier; the second offense could be any of the listed offenses.) The offenses would be:

** commingling, borrowing, or pledging funds of a resident that are required to be held in a separate trust account;

** interfering with an investigation under the Adult Foster Care Facility Licensing Act or the Public Health Code;

** retaliating against a resident or an employee for giving information to an enforcement official, making a complaint against a facility, or aiding an administrative, civil, or criminal action against a facility;

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**** falsifying information required by the Adult Foster Care Facility Licensing Act or the Public Health Code;**

**** failing to report information required by the Adult Foster Care Facility Licensing Act or the Public Health Code; or,**

**** placing someone in or referring someone to an unlicensed facility.**

House Bill 4717 would amend the Adult Foster Care Facility Licensing Act (MCL 400.713 et al.) to bar licenses for those convicted under House Bill 4716; increase penalties for operating without a license, falsifying documents, and other violations of the act; provide for the issuance of emergency licenses; and prohibit certain offenders from being involved with an adult foster care facility for at least five years following conviction. The bill could not take effect unless House Bill 4716 was enacted.

Ban on involvement with facility. The act at present allows the Department of Social Services (DSS) to refuse a license for two years to someone who has had an adult foster care license denied or revoked; such refusals are governed by rules issued under the act. The bill would delete this language and replace it with several restrictions on issuing licenses. The DSS would be prohibited from licensing someone who had been convicted of a felony offense under the act or House Bill 4716; that person also would be forbidden from being associated directly or indirectly with the ownership or operation of an adult foster care facility. Someone who had been convicted of a misdemeanor offense under the act or House Bill 4716 would be barred from licensure or other involvement for five years after the conviction. The DSS could, but would not have to, refuse to license for five years someone who had had a license revoked or suspended for falsification of documents, or violation of the act or the terms of a license; the DSS could similarly refuse a license to someone who was associated with someone who had had a license so revoked or suspended.

Penalties. Falsification of documents would continue to be a misdemeanor, but the attached penalties would be increased to imprisonment for up to two years and/or a fine of between \$10,000 and \$50,000. A second or subsequent violation would be a felony subject to five years in prison and a fine of between \$25,000 and \$75,000.

At present, it is a misdemeanor punishable by a \$1,000 fine to continue to operate an adult foster care facility after the DSS revokes, suspends, or denies a license. The bill would instead make the offense a felony punishable by up to five years in prison, a fine of between \$25,000 and \$75,000, or both.

Other violations of the act would continue to be misdemeanors, but the maximum jail term would be increased to one year, and the maximum fine to \$1,000.

Operating without a license. If the DSS determined that an unlicensed facility was an adult foster care facility, it would notify the owner or operator of the requirement to be licensed. If the person did not apply for a license within 30 days, he or she would be subject to the same penalties that apply to falsification of documents (see Penalties, above).

Emergency licenses. In the case of facilities that are operated under lease with the Department of Mental Health or a county community mental health board, the DSS could issue an emergency license for a 90-day period to avoid relocation of residents following the revocation, suspension, or nonrenewal of a license, if all of the following requirements were met: the leased facility was in full compliance with all licensing requirements; the applicant for the emergency license was licensed for another facility and contracted with the mental health agency to temporarily operate the leased facility; and, the former licensee's access to the facility had been lawfully terminated by the owner or lessee of the facility.