

HOUSE BILL No. 5795

April 21, 2004, Introduced by Reps. Hunter and Richardville and referred to the Committee on Senior Health, Security and Retirement.

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending sections 11 and 13 (MCL 400.711 and 400.713), section
11 as amended by 1992 PA 176 and section 13 as amended by 1994 PA
150.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. (1) The director, the director's agent, or
2 personnel of another department or agency, acting at the request
3 of the director, may enter upon the premises of an applicant or
4 licensee at a reasonable time to make inspections, as permitted
5 by applicable law, to determine whether the applicant or licensee
6 is complying with this act and the rules promulgated under this
7 act. On-site inspections may be conducted without prior notice
8 to the adult foster care facility. A health and sanitation
9 inspection of an adult foster care facility shall be conducted

1 upon the request of the department by 1 of the following:

2 (a) Department staff.

3 (b) The department of ~~public~~ **community** health.

4 (c) A local health department.

5 (2) The department of ~~public~~ **community** health, the fire
6 marshal division of the department of state police, or local
7 authorities, in carrying out this act, may visit an adult foster
8 care facility more often than annually to advise in matters
9 affecting health or fire protection. Inspections shall be made
10 as permitted by law.

11 (3) An adult foster care facility shall be inspected for fire
12 safety by 1 of the following:

13 (a) Department staff, if the facility is licensed or proposed
14 to be licensed for 6 or fewer adults. The department may request
15 that a fire safety inspection be completed or caused to be
16 completed by the state fire marshal, for a facility licensed or
17 proposed to be licensed for 6 or fewer adults, when such an
18 inspection would result in the efficient administration of this
19 act.

20 (b) The state fire marshal or the designated representative
21 of the state fire marshal, if the facility is licensed or
22 proposed to be licensed for more than 6 adults. The state fire
23 marshal shall inspect or cause to be inspected for fire safety an
24 adult foster care facility licensed or proposed to be licensed
25 for 6 or fewer adults upon request by the department. The state
26 fire marshal may contract with the fire marshal of a city having
27 a population of not less than 1,000,000 to inspect adult foster

1 care facilities licensed or proposed to be licensed for more than
2 6 adults if the facility is located within that city. The fire
3 marshal of a city shall conduct an inspection in compliance with
4 procedures established and on forms provided by the state fire
5 marshal.

6 (4) Except as provided in subsection (3)(b) and section
7 10(2), the inspector shall administer and enforce the rules
8 promulgated by the department.

9 (5) Upon receipt of a request from an adult foster care
10 facility for certification of a specialized program for
11 developmentally disabled or mentally ill adults, the department
12 of ~~mental~~ **community** health shall inspect the facility to
13 determine whether the proposed specialized program conforms with
14 the requirements of applicable law and rules. The department of
15 ~~mental~~ **community** health shall provide the department with an
16 inspection report and a certification, denial of certification,
17 or certification with limited terms for the proposed specialized
18 program. The department of ~~mental~~ **community** health shall
19 reinspect a certified specialized program not less than once
20 biennially and notify the department of social services in the
21 same manner as for the initial certification. In carrying out
22 this subsection, the department of ~~mental~~ **community** health may
23 contract with a county community mental health board or any other
24 agency for services.

25 (6) Inspection reports required by this section shall be
26 furnished to the department and shall be used in the evaluation
27 for licensing of an adult foster care facility. The department

1 shall consider the reports carefully and may make special
2 consultations if necessary. The department shall be responsible
3 for the final determination of the issuance, denial, or
4 revocation and the temporary or provisional nature of a license
5 issued to an adult foster care facility. ~~A report of the~~
6 ~~department's findings shall be furnished to the licensee or~~
7 ~~applicant.~~

8 (7) **The department shall transmit a written copy of each**
9 **inspection report completed under this section to the licensee or**
10 **applicant within 30 days after the inspection is conducted. The**
11 **adult foster care facility shall provide each resident or the**
12 **resident's family with a copy of the inspection report required**
13 **by this section.** The inspection reports required by this section
14 shall be available for public inspection during reasonable
15 business hours **and shall be posted in a searchable format on the**
16 **department's website.**

17 Sec. 13. (1) A person, partnership, corporation,
18 association, or a department or agency of the state, county,
19 city, or other political subdivision shall not establish or
20 maintain an adult foster care facility unless licensed by the
21 department.

22 (2) Application for a license shall be made on forms provided
23 and in the manner prescribed by the department. The application
24 shall be accompanied by the fee prescribed in section 13a.

25 (3) Before issuing or renewing a license, the department
26 shall investigate the activities and standards of care of the
27 applicant, ~~and~~ shall make an on-site evaluation of the

1 facility, and shall review the most recent inspection report and
2 any written determinations made under section 23 or 24 concerning
3 a complaint filed within the past 2 years. On-site inspections
4 conducted in response to the application may be conducted without
5 prior notice to the applicant. Subject to subsections (9), (10),
6 and (11), the department shall issue or renew a license if
7 satisfied as to all of the following:

8 (a) The financial stability of the facility.

9 (b) The applicant's compliance with this act and rules
10 promulgated under this act.

11 (c) The good moral character of the applicant, or owners,
12 partners, or directors of the facility, if other than an
13 individual. Each of these persons shall be not less than 18
14 years of age.

15 (d) The physical and emotional ability of the applicant, and
16 the person responsible for the daily operation of the facility to
17 operate an adult foster care facility.

18 (e) The good moral character of the person responsible for
19 the daily operations of the facility and all employees of the
20 facility. The applicant shall be responsible for assessing the
21 good moral character of the employees of the facility. The
22 person responsible for the daily operation of the facility shall
23 be not less than 18 years of age.

24 (4) The department shall require an applicant or a licensee
25 to disclose the names, addresses, and official positions of all
26 persons who have an ownership interest in the adult foster care
27 facility. If the adult foster care facility is located on or in

1 real estate that is leased, the applicant or licensee shall
2 disclose the name of the lessor of the real estate and any direct
3 or indirect interest that the applicant or licensee has in the
4 lease other than as lessee.

5 (5) Each license shall state the maximum number of persons to
6 be received for foster care at 1 time.

7 (6) If applicable, a license shall state the type of
8 specialized program for which certification has been received
9 from the department of mental health.

10 (7) A license shall be issued to a specific person for a
11 facility at a specific location, shall be nontransferable, and
12 shall remain the property of the department. The prohibition
13 against transfer of a license to another location does not apply
14 if a licensee's adult foster care facility or home is closed as a
15 result of eminent domain proceedings, if the facility or home, as
16 relocated, otherwise meets the requirements of this act and the
17 rules promulgated under this act.

18 (8) An applicant or licensee proposing a sale of an adult
19 foster care facility or home to another owner shall provide the
20 department with advance notice of the proposed sale in writing.
21 The applicant or licensee and other parties to the sale shall
22 arrange to meet with specified department representatives and
23 shall obtain before the sale a determination of the items of
24 noncompliance with applicable law and rules that shall be
25 corrected. The department shall notify the respective parties of
26 the items of noncompliance before the change of ownership, shall
27 indicate that the items of noncompliance shall be corrected as a

1 condition of issuance of a license to the new owner, and shall
2 notify the prospective purchaser of all licensure requirements.

3 (9) The department shall not issue a license to or renew the
4 license of a person who has been convicted of a felony under this
5 act or under chapter XXA of the Michigan penal code, ~~Act No. 328~~
6 ~~of the Public Acts of 1931, being sections 750.145m to 750.145r~~
7 ~~of the Michigan Compiled Laws~~ **1931 PA 328, MCL 750.145m to**
8 **750.145r.** The department shall not issue a license to or renew
9 the license of a person who has been convicted of a misdemeanor
10 under this act or under chapter XXA of ~~Act No. 328 of the Public~~
11 ~~Acts of 1931~~ **the Michigan penal code, 1931 PA 328, MCL 750.145m**
12 **to 750.145r,** for a period of 5 years after the conviction.

13 (10) If the department has revoked, suspended, or refused to
14 renew a person's license for an adult foster care facility
15 pursuant to section 22, the department may refuse to issue a
16 license to or renew a license of that person for a period of 5
17 years after the suspension, revocation, or nonrenewal of the
18 license.

19 (11) The department may refuse to issue a license to or renew
20 the license of an applicant if the department determines that the
21 applicant has a relationship with a former licensee whose license
22 under this act has been suspended, revoked, or nonrenewed under
23 subsection (9) or section 22 or a convicted person to whom a
24 license has been denied under subsection (9). This subsection
25 applies for 5 years after the suspension, revocation, or
26 nonrenewal of the former licensee's license or the denial of the
27 convicted person's license. For purposes of this subsection, an

1 applicant has a relationship with a former licensee or convicted
2 person if the former licensee or convicted person is involved
3 with the facility in 1 or more of the following ways:

4 (a) Participates in the administration or operation of the
5 facility.

6 (b) Has a financial interest in the operation of the
7 facility.

8 (c) Provides care to residents of the facility.

9 (d) Has contact with residents or staff on the premises of
10 the facility.

11 (e) Is employed by the facility.

12 (f) Resides in the facility.

13 (12) If the department determines that an unlicensed facility
14 is an adult foster care facility, the department shall notify the
15 owner or operator of the facility that it is required to be
16 licensed under this act. A person receiving the notification
17 required under this section who does not apply for a license
18 within 30 days is subject to the penalties described in
19 subsection (13).

20 (13) Subject to subsection (12), a person who violates
21 subsection (1) is guilty of a misdemeanor, punishable by
22 imprisonment for not more than 2 years or a fine of not more than
23 \$50,000.00, or both. A person who has been convicted of a
24 violation of subsection (1) who commits a second or subsequent
25 violation is guilty of a felony, punishable by imprisonment for
26 not more than 5 years or a fine of not more than \$75,000.00, or
27 both.

1 Enacting section 1. This amendatory act does not take
2 effect unless Senate Bill No. _____ or House Bill No. 5794
3 (request no. 04810'03 *) of the 92nd Legislature is enacted into
4 law.