

HOUSE BILL No. 5049

July 24, 2007, Introduced by Reps. Johnson, Constan, Hammel, Clack, Accavitti, Hood, Scott, Lemmons, Jackson and Hammon and referred to the Committee on Regulatory Reform.

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending sections 13, 16, and 18 (MCL 400.713, 400.716, and
400.718), section 13 as amended by 2004 PA 281.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

8 (3) Before issuing or renewing a license, the department shall
9 investigate the activities and standards of care of the applicant
10 and shall make an on-site evaluation of the facility. On-site

1 inspections conducted in response to the application may be
2 conducted without prior notice to the applicant. Subject to
3 subsections (9), (10), ~~and~~ (11), **AND (19)**, the department shall
4 issue or renew a license if satisfied as to all of the following:

5 (a) The financial stability of the facility.

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

8 (c) The good moral character of the applicant ~~—or~~ **OF THE**
9 owners, partners, or directors of the facility ~~—if other than THE~~
10 **APPLICANT IS** an individual. Each of these persons shall be not less
11 than 18 years of age.

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

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

21 (4) The department shall require an applicant or a licensee to
22 disclose the names, addresses, and official positions of all
23 persons who have an ownership interest in the adult foster care
24 facility. If the adult foster care facility is located on or in
25 real estate that is leased, the applicant or licensee shall
26 disclose the name of the lessor of the real estate and any direct
27 or indirect interest that the applicant or licensee has in the

1 lease other than as lessee.

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

4 (6) If applicable, a license shall state the type of
5 specialized program for which certification has been received from
6 the department.

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

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

27 (9) The department shall not issue a license to or renew the

1 license of a person who has been convicted of a felony under this
2 act or under chapter XXA of the Michigan penal code, 1931 PA 328,
3 MCL 750.145m to 750.145r. The department shall not issue a license
4 to or renew the license of a person who has been convicted of a
5 misdemeanor under this act or under chapter XXA of the Michigan
6 penal code, 1931 PA 328, MCL 750.145m to 750.145r, for a period of
7 10 years after the conviction.

8 (10) If the department has revoked, suspended, or refused to
9 renew a person's license for an adult foster care facility
10 according to section 22, the department may refuse to issue a
11 license to or renew a license of that person for a period of 5
12 years after the suspension, revocation, or nonrenewal of the
13 license.

14 (11) The department may refuse to issue a license to or renew
15 the license of an applicant if the department determines that the
16 applicant has a relationship with a former licensee whose license
17 under this act has been suspended, revoked, or nonrenewed under
18 subsection (9) or section 22 or a convicted person to whom a
19 license has been denied under subsection (9). This subsection
20 applies for 5 years after the suspension, revocation, or nonrenewal
21 of the former licensee's license or the denial of the convicted
22 person's license. For purposes of this subsection, an applicant has
23 a relationship with a former licensee or convicted person if the
24 former licensee or convicted person is involved with the facility
25 in 1 or more of the following ways:

26 (a) Participates in the administration or operation of the
27 facility.

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

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

3 (d) Has contact with residents or staff on the premises of the
4 facility.

5 (e) Is employed by the facility.

6 (f) Resides in the facility.

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

13 (13) Subject to subsection (12), a person who violates
14 subsection (1) is guilty of a misdemeanor ~~—~~punishable by
15 imprisonment for not more than 2 years or a fine of not more than
16 \$50,000.00, or both. A person who has been convicted of a violation
17 of subsection (1) who commits a second or subsequent violation is
18 guilty of a felony ~~—~~punishable by imprisonment for not more than 5
19 years or a fine of not more than \$75,000.00, or both.

20 (14) ~~Beginning the effective date of the amendatory act that~~
21 ~~added this subsection~~ **JULY 23, 2004**, the department shall issue an
22 initial or renewal license not later than 6 months after the
23 applicant files a completed application. Receipt of the application
24 is considered the date the application is received by any agency or
25 department of this state. If the application is considered
26 incomplete by the department, the department shall notify the
27 applicant in writing or make notice electronically available within

1 30 days after receipt of the incomplete application, describing the
2 deficiency and requesting additional information. If the department
3 identifies a deficiency or requires the fulfillment of a corrective
4 action plan, the 6-month period is tolled until either of the
5 following occurs:

6 (a) Upon notification by the department of a deficiency, until
7 the date the requested information is received by the department.

8 (b) Upon notification by the department that a corrective
9 action plan is required, until the date the department determines
10 the requirements of the corrective action plan have been met.

11 (15) The determination of the completeness of an application
12 does not operate as an approval of the application for the license
13 and does not confer eligibility of an applicant determined
14 otherwise ineligible for issuance of a license.

15 (16) If the department fails to issue or deny a license within
16 the time required by this section, the department shall return the
17 license fee and shall reduce the license fee for the applicant's
18 next renewal application, if any, by 15%. Failure to issue or deny
19 a license within the time period required under this section does
20 not allow the department to otherwise delay processing an
21 application. The completed application shall be placed in sequence
22 with other completed applications received at that same time. The
23 department shall not discriminate against an applicant in the
24 processing of an application based on the fact that the application
25 fee was refunded or discounted under this subsection.

26 (17) If, on a continual basis, inspections performed by a
27 local health department delay the department in issuing or denying

1 licenses under this act within the 6-month period, the department
2 may use department staff to complete the inspections instead of the
3 local health department causing the delays.

4 (18) Beginning October 1, 2005, the director of the department
5 shall submit a report by December 1 of each year to the standing
6 committees and appropriations subcommittees of the senate and house
7 of representatives concerned with human services issues. The
8 director shall include all of the following information in the
9 report concerning the preceding fiscal year:

10 (a) The number of initial and renewal applications the
11 department received and completed within the 6-month time period
12 described in subsection (14).

13 (b) The number of applications requiring a request for
14 additional information.

15 (c) The number of applications rejected.

16 (d) The number of licenses not issued within the 6-month
17 period.

18 (e) The average processing time for initial and renewal
19 licenses granted after the 6-month period.

20 (19) THERE SHALL BE NOT MORE THAN 1 ADULT FOSTER CARE FACILITY
21 PER 800 RESIDENTS WITHIN A MUNICIPALITY. IN DETERMINING WHETHER TO
22 APPROVE AN APPLICATION FOR AN ADULT FOSTER CARE FACILITY, THE
23 DEPARTMENT SHALL CONSIDER WHETHER THE NEW ADULT FOSTER CARE
24 FACILITY WOULD CAUSE THE NUMBER OF ADULT FOSTER CARE FACILITIES TO
25 BE GREATER THAN 1 PER 800 RESIDENTS WITHIN A MUNICIPALITY. IF THE
26 NEW ADULT FOSTER CARE FACILITY WOULD CAUSE THE NUMBER OF ADULT
27 FOSTER CARE FACILITIES TO BE GREATER THAN 1 PER 800 RESIDENTS

1 WITHIN A MUNICIPALITY, THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO
 2 THAT ADULT FOSTER CARE FACILITY. FOR THE PURPOSE OF DETERMINING THE
 3 NUMBER OF ADULT FOSTER CARE FACILITIES IN A MUNICIPALITY, THE
 4 DEPARTMENT SHALL INCLUDE AN ADULT FOSTER CARE FACILITY ISSUED A
 5 SPECIAL LICENSE UNDER SECTION 18.

6 (20) ~~(19)~~As used in this section, "completed application"
 7 means an application complete on its face and submitted with any
 8 applicable licensing fees as well as any other information,
 9 records, approval, security, or similar item required by law or
 10 rule from a local unit of government, a federal agency, or a
 11 private entity but not from another department or agency of this
 12 state. Beginning October 1, 2005, a completed application does not
 13 include a health inspection performed by a local health department.

14 Sec. 16. (1) ~~Unless~~**SUBJECT TO SECTION 13(19), UNLESS** the
 15 city, village, or township approves a temporary license, a
 16 temporary license shall not be granted under this act if the
 17 issuance of the license would substantially contribute to an
 18 excessive concentration of community residential facilities within
 19 a city, village, or township of this state.

20 (2) A temporary license shall not be granted under this act if
 21 the proposed adult foster care facility for more than 6 adults has
 22 not obtained zoning approval or obtained a special or conditional
 23 use permit if required by an ordinance of the city, village, or
 24 township in which the proposed facility is located.

25 (3) The department shall not issue a temporary license to an
 26 adult foster care facility ~~which~~**THAT** does not comply with section
 27 ~~16a of Act No. 183 of the Public Acts of 1943, as amended, being~~

~~section 125.216a of the Michigan Compiled Laws, section 16a of Act No. 184 of the Public Acts of 1943, as amended, being section 125.286a of the Michigan Compiled Laws, and section 3b of Act No. 207 of the Public Acts of 1921, as amended, being section 125.583b of the Michigan Compiled Laws~~ **206 OF THE MICHIGAN ZONING ENABLING ACT, 2006 PA 110, MCL 125.3206.**

(4) This section shall not apply to an applicant who has purchased a facility and the facility, at the time of the purchase, or for 1 year preceding the application, was licensed under this act or an act repealed by this act.

Sec. 18. (1) ~~A~~ **SUBJECT TO SECTION 13(19),** A special license may be issued for the duration of the operation of an adult foster care facility if the applicant is a short-term operation.

(2) The department may promulgate rules regulating the issuance and duration of special licenses.

(3) **A SPECIAL LICENSE ISSUED UNDER THIS SECTION MUST COMPLY WITH THE PROVISIONS OF SECTION 13(19).**