

SUBSTITUTE FOR
SENATE BILL NO. 1101

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 4, 5, and 13 (MCL 400.704, 400.705, and 400.713), sections 4 and 5 as amended by 1996 PA 194 and section 13 as amended by 2004 PA 281.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) "Council" means the adult foster care licensing
2 advisory council created in section 8.

3 (2) "Department" means the ~~family independence agency~~
4 **DEPARTMENT OF HUMAN SERVICES.**

5 (3) "Developmental disability" means a disability as defined
6 in section 500(h) of Act No. 258 of the Public Acts of 1974, being
7 ~~section 330.1500 of the Michigan Compiled Laws~~ **100A OF THE MENTAL**
8 **HEALTH CODE, 1974 PA 258, MCL 330.1100A.**

9 (4) "DIRECT ACCESS" MEANS ACCESS TO A RESIDENT OR TO A

1 **RESIDENT'S PROPERTY, FINANCIAL INFORMATION, MEDICAL RECORDS,**
2 **TREATMENT INFORMATION, OR ANY OTHER IDENTIFYING INFORMATION.**

3 (5) ~~(4)~~-"Director" means the director of the department.

4 (6) ~~(5)~~-"Do-not-resuscitate order" means a document executed
5 ~~pursuant~~**ACCORDING** to section 3 of the Michigan do-not-resuscitate
6 procedure act, **1996 PA 193, MCL 333.1053**, directing that, in the
7 event a resident suffers cessation of both spontaneous respiration
8 and circulation, no resuscitation will be initiated.

9 (7) ~~(6)~~-"Foster care" means the provision of supervision,
10 personal care, and protection in addition to room and board, for 24
11 hours a day, 5 or more days a week, and for 2 or more consecutive
12 weeks for compensation.

13 Sec. 5. (1) "Good moral character" means good moral character
14 as defined in ~~Act No. 381 of the Public Acts of 1974, being~~
15 ~~sections 338.41 to 338.47 of the Michigan Compiled Laws 1974 PA~~
16 **381, MCL 338.41 TO 338.47.**

17 (2) "Licensed hospice program" means a health care program
18 that provides a coordinated set of services rendered at home or in
19 an outpatient or institutional setting for individuals suffering
20 from a disease or condition with a terminal prognosis and that is
21 licensed under article 17 of the public health code, ~~Act No. 368 of~~
22 ~~the Public Acts of 1978, being sections 333.20101 to 333.22260 of~~
23 ~~the Michigan Compiled Laws 1978 PA 368, MCL 333.20101 TO 333.22260.~~

24 (3) "Licensee" means the agency, association, corporation,
25 organization, person, or department or agency of the state, county,
26 city, or other political subdivision, that has been issued a
27 license to operate an adult foster care facility.

1 (4) "LICENSEE DESIGNEE" MEANS THE INDIVIDUAL DESIGNATED IN
2 WRITING BY THE OWNER OR PERSON WITH LEGAL AUTHORITY TO ACT ON
3 BEHALF OF THE COMPANY OR ORGANIZATION ON LICENSING MATTERS. THE
4 LICENSEE DESIGNEE WHO IS NOT AN OWNER, PARTNER, OR DIRECTOR OF THE
5 APPLICANT SHALL NOT SIGN THE ORIGINAL LICENSE APPLICATION OR
6 AMENDMENTS TO THE APPLICATION.

7 (5) ~~(4)~~—"Mental illness" means a substantial disorder of
8 thought or mood that significantly impairs judgment, behavior,
9 capacity to recognize reality, or ability to cope with the ordinary
10 demands of life.

11 (6) ~~(5)~~—"New construction" means a newly constructed facility
12 or a facility that has been completely renovated for use as an
13 adult foster care facility.

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

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

21 (3) Before issuing or renewing a license, the department shall
22 investigate the activities and standards of care of the applicant
23 and shall make an on-site evaluation of the facility. On-site
24 inspections conducted in response to the application may be
25 conducted without prior notice to the applicant. Subject to
26 subsections (9), (10), and (11), the department shall issue or
27 renew a license if satisfied as to all of the following:

1 (a) The financial stability of the facility.

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

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

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

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

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

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

27 (6) If applicable, a license shall state the type of

1 specialized program for which certification has been received from
2 the department.

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

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

23 (9) The department shall not issue a license to or renew the
24 license of ~~a person who has~~ **AN OWNER, PARTNER, OR DIRECTOR OF THE**
25 **APPLICANT, WHO HAS REGULAR DIRECT ACCESS TO RESIDENTS OR WHO HAS**
26 **ON-SITE FACILITY OPERATIONAL RESPONSIBILITIES, OR AN APPLICANT OR**
27 **THE LICENSEE DESIGNEE, IF ANY OF THOSE INDIVIDUALS HAVE** been

1 convicted of ~~a~~ **1 OR MORE OF THE FOLLOWING:**

2 (A) A felony under this act or under chapter XXA of the
3 Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r. ~~The~~
4 ~~department shall not issue a license to or renew the license of a~~
5 ~~person who has been convicted of a~~

6 (B) A misdemeanor under this act or under chapter XXA of the
7 Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r, ~~for a~~
8 ~~period of~~ **WITHIN THE 10 years after the conviction IMMEDIATELY**
9 **PRECEDING THE APPLICATION.**

10 (C) **A MISDEMEANOR INVOLVING ABUSE, NEGLIGENCE, ASSAULT, BATTERY,**
11 **OR CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT AGAINST A**
12 **VULNERABLE ADULT AS THAT TERM IS DEFINED IN SECTION 145M OF THE**
13 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M, OR A STATE OR**
14 **FEDERAL CRIME THAT IS SUBSTANTIALLY SIMILAR TO A MISDEMEANOR**
15 **DESCRIBED IN THIS SUBDIVISION WITHIN THE 10 YEARS IMMEDIATELY**
16 **PRECEDING THE APPLICATION.**

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

23 (11) The department may refuse to issue a license to or renew
24 the license of an applicant if the department determines that the
25 applicant has a relationship with a former licensee whose license
26 under this act has been suspended, revoked, or nonrenewed under
27 subsection (9) or section 22 or a convicted person to whom a

1 license has been denied under subsection (9). This subsection
2 applies for 5 years after the suspension, revocation, or nonrenewal
3 of the former licensee's license or the denial of the convicted
4 person's license. For purposes of this subsection, an applicant has
5 a relationship with a former licensee or convicted person if the
6 former licensee or convicted person is involved with the facility
7 in 1 or more of the following ways:

8 (a) Participates in the administration or operation of the
9 facility.

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

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

12 (d) Has contact with residents or staff on the premises of the
13 facility.

14 (e) Is employed by the facility.

15 (f) Resides in the facility.

16 (12) If the department determines that an unlicensed facility
17 is an adult foster care facility, the department shall notify the
18 owner or operator of the facility that it is required to be
19 licensed under this act. A person receiving the notification
20 required under this section who does not apply for a license within
21 30 days is subject to the penalties described in subsection (13).

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

1 years or a fine of not more than \$75,000.00, or both.

2 (14) ~~Beginning the effective date of the amendatory act that~~
3 ~~added this subsection, the~~ **THE** department shall issue an initial or
4 renewal license not later than 6 months after the applicant files a
5 completed application. Receipt of the application is considered the
6 date the application is received by any agency or department of
7 this state. If the application is considered incomplete by the
8 department, the department shall notify the applicant in writing or
9 make notice electronically available within 30 days after receipt
10 of the incomplete application, describing the deficiency and
11 requesting additional information. If the department identifies a
12 deficiency or requires the fulfillment of a corrective action plan,
13 the 6-month period is tolled until either of the following occurs:

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

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

19 (15) The determination of the completeness of an application
20 does not operate as an approval of the application for the license
21 and does not confer eligibility of an applicant determined
22 otherwise ineligible for issuance of a license.

23 (16) If the department fails to issue or deny a license within
24 the time required by this section, the department shall return the
25 license fee and shall reduce the license fee for the applicant's
26 next renewal application, if any, by 15%. Failure to issue or deny
27 a license within the time period required under this section does

1 not allow the department to otherwise delay processing an
2 application. The completed application shall be placed in sequence
3 with other completed applications received at that same time. The
4 department shall not discriminate against an applicant in the
5 processing of an application based on the fact that the application
6 fee was refunded or discounted under this subsection.

7 (17) If, on a continual basis, inspections performed by a
8 local health department delay the department in issuing or denying
9 licenses under this act within the 6-month period, the department
10 may use department staff to complete the inspections instead of the
11 local health department causing the delays.

12 (18) ~~Beginning October 1, 2005, the~~ **THE** director of the
13 department shall submit a report by December 1 of each year to the
14 standing committees and appropriations subcommittees of the senate
15 and house of representatives concerned with human services issues.
16 The director shall include all of the following information in the
17 report concerning the preceding fiscal year:

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

21 (b) The number of applications requiring a request for
22 additional information.

23 (c) The number of applications rejected.

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

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

1 (19) AN APPLICANT, IF AN INDIVIDUAL, SHALL GIVE WRITTEN
2 CONSENT AT THE TIME OF ORIGINAL LICENSE APPLICATION FOR THE
3 DEPARTMENT OF STATE POLICE TO CONDUCT THE CRIMINAL HISTORY CHECK
4 AND CRIMINAL RECORDS CHECK REQUIRED UNDER THIS SECTION. A LICENSEE
5 DESIGNEE SHALL GIVE WRITTEN CONSENT AT THE TIME OF APPOINTMENT FOR
6 THE DEPARTMENT OF STATE POLICE TO CONDUCT THE CRIMINAL HISTORY
7 CHECK AND CRIMINAL RECORDS CHECK REQUIRED UNDER THIS SECTION.

8 (20) UNLESS ALREADY SUBMITTED UNDER SUBSECTION (19), AN OWNER,
9 PARTNER, OR DIRECTOR OF THE APPLICANT WHO HAS REGULAR DIRECT ACCESS
10 TO RESIDENTS OR WHO HAS ON-SITE FACILITY OPERATIONAL
11 RESPONSIBILITIES SHALL GIVE WRITTEN CONSENT AT THE TIME OF ORIGINAL
12 LICENSE APPLICATION FOR THE DEPARTMENT OF STATE POLICE TO CONDUCT
13 THE CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK REQUIRED
14 UNDER THIS SECTION.

15 (21) THE DEPARTMENT SHALL REQUEST A CRIMINAL HISTORY CHECK AND
16 CRIMINAL RECORDS CHECK REQUIRED UNDER THIS SECTION IN THE MANNER
17 PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THE DEPARTMENT OF
18 STATE POLICE SHALL CONDUCT THE CRIMINAL HISTORY CHECK AND PROVIDE A
19 REPORT OF THE RESULTS TO THE LICENSING OR REGULATORY BUREAU OF THE
20 DEPARTMENT. THE REPORT SHALL CONTAIN ANY CRIMINAL HISTORY
21 INFORMATION ON THE PERSON MAINTAINED BY THE DEPARTMENT OF STATE
22 POLICE AND THE RESULTS OF THE CRIMINAL RECORDS CHECK FROM THE
23 FEDERAL BUREAU OF INVESTIGATION. THE DEPARTMENT OF STATE POLICE MAY
24 CHARGE THE PERSON ON WHOM THE CRIMINAL HISTORY CHECK AND CRIMINAL
25 RECORDS CHECK ARE PERFORMED UNDER THIS SECTION A FEE THAT DOES NOT
26 EXCEED THE ACTUAL AND REASONABLE COST OF CONDUCTING THE CHECKS.

27 (22) NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THE

1 2010 AMENDATORY ACT THAT ADDED THIS SUBSECTION, ALL LICENSEES AND
2 LICENSEE DESIGNEES OF FACILITIES LICENSED ON THE EFFECTIVE DATE OF
3 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION AND ALL PERSONS
4 DESCRIBED IN SUBSECTION (20) SHALL COMPLY WITH THE REQUIREMENTS OF
5 THIS SECTION.

6 (23) BEGINNING THE EFFECTIVE DATE OF THE 2010 AMENDATORY ACT
7 THAT ADDED THIS SUBSECTION, IF AN APPLICANT OR LICENSEE DESIGNEE OR
8 PERSON DESCRIBED IN SUBSECTION (20) APPLIES FOR A LICENSE OR TO
9 RENEW A LICENSE TO OPERATE AN ADULT FOSTER CARE FACILITY AND HE OR
10 SHE OR THE LICENSEE DESIGNEE PREVIOUSLY UNDERWENT A CRIMINAL
11 HISTORY CHECK AND CRIMINAL RECORDS CHECK REQUIRED UNDER SUBSECTION
12 (19) OR (20) AND HAS REMAINED CONTINUOUSLY LICENSED AFTER THE
13 CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK HAVE BEEN
14 PERFORMED, THAT PERSON IS NOT REQUIRED TO SUBMIT TO ANOTHER
15 CRIMINAL HISTORY CHECK OR CRIMINAL RECORDS CHECK UPON RENEWAL OF
16 THE LICENSE OBTAINED UNDER SUBSECTION (3).

17 (24) THE DEPARTMENT OF STATE POLICE SHALL STORE AND MAINTAIN
18 ALL FINGERPRINTS SUBMITTED UNDER THIS ACT IN AN AUTOMATED
19 FINGERPRINT IDENTIFICATION SYSTEM DATABASE THAT PROVIDES FOR AN
20 AUTOMATIC NOTIFICATION AT THE TIME OF A SUBSEQUENT CRIMINAL ARREST
21 FINGERPRINT CARD SUBMITTED INTO THE SYSTEM THAT MATCHES A SET OF
22 FINGERPRINTS PREVIOUSLY SUBMITTED IN ACCORDANCE WITH THIS ACT. UPON
23 NOTIFICATION, THE DEPARTMENT OF STATE POLICE SHALL IMMEDIATELY
24 NOTIFY THE DEPARTMENT AND THE DEPARTMENT SHALL TAKE THE APPROPRIATE
25 ACTION.

26 (25) A LICENSEE, LICENSEE DESIGNEE, OWNER, PARTNER, OR
27 DIRECTOR OF THE LICENSEE SHALL NOT BE PERMITTED ON THE PREMISES OF

1 AN ADULT FOSTER CARE FACILITY IF HE OR SHE HAS BEEN CONVICTED OF
2 ANY OF THE FOLLOWING: ADULT ABUSE, NEGLECT, OR FINANCIAL
3 EXPLOITATION; OR LISTED OFFENSES AS DEFINED IN SECTION 2 OF THE SEX
4 OFFENDERS REGISTRATION ACT, 1943 PA 295, MCL 28.722.

5 (26) ~~(19)~~—As used in this section, "completed application"
6 means an application complete on its face and submitted with any
7 applicable licensing fees as well as any other information,
8 records, approval, security, or similar item required by law or
9 rule from a local unit of government, a federal agency, or a
10 private entity but not from another department or agency of this
11 state. ~~Beginning October 1, 2005, a~~ ~~A~~ completed application does
12 not include a health inspection performed by a local health
13 department.

14 Enacting section 1. This amendatory act does not take effect
15 unless Senate Bill No. 1102 of the 95th Legislature is enacted into
16 law.