

SUBSTITUTE FOR
HOUSE BILL NO. 5774

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending the title and sections 3, 4, 10, 11, and 20 (MCL
400.703, 400.704, 400.710, 400.711, and 400.720), the title as
amended by 1992 PA 176, sections 3 and 10 as amended by 2014 PA
450, section 4 as amended by 2013 PA 156, and sections 11 and 20 as
amended by 2006 PA 201, and by adding section 22b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
2
3
4
5
6

TITLE

An act to provide for the licensing and regulation of adult
foster care facilities; to provide for the establishment of
standards of care for adult foster care facilities; to prescribe
powers and duties of the department of ~~social services~~ **LICENSING**
AND REGULATORY AFFAIRS and other departments; to prescribe certain

1 fees; to prescribe penalties; and to repeal certain acts and parts
2 of acts.

3 Sec. 3. (1) "Adult" means:

4 (a) A person 18 years of age or older.

5 (b) A person who is placed in an adult foster care family home
6 or an adult foster care small group home ~~pursuant~~**ACCORDING** to
7 section 5(6) or (8) of 1973 PA 116, MCL 722.115.

8 (2) "Adult foster care camp" or "adult camp" means an adult
9 foster care facility with the approved capacity to receive more
10 than 4 adults to be provided foster care. An adult foster care camp
11 is a facility located in a natural or rural environment.

12 (3) "Adult foster care congregate facility" means an adult
13 foster care facility with the approved capacity to receive more
14 than 20 adults to be provided with foster care.

15 (4) "Adult foster care facility" means a governmental or
16 nongovernmental establishment that provides foster care to adults.
17 Subject to section 26a(1), adult foster care facility includes
18 facilities and foster care family homes for adults who are aged,
19 mentally ill, developmentally disabled, or physically disabled who
20 require supervision on an ongoing basis but who do not require
21 continuous nursing care. Adult foster care facility does not
22 include any of the following:

23 (a) A nursing home licensed under article 17 of the public
24 health code, 1978 PA 368, MCL 333.20101 to 333.22260.

25 (b) A home for the aged licensed under article 17 of the
26 public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

27 (c) A hospital licensed under article 17 of the public health

1 code, 1978 PA 368, MCL 333.20101 to 333.22260.

2 (d) A hospital for the mentally ill or a facility for the
3 developmentally disabled operated by the department of ~~community~~
4 health **AND HUMAN SERVICES** under the mental health code, 1974 PA
5 258, MCL 330.1001 to 330.2106.

6 (e) A county infirmary operated by a county department of
7 ~~social services or family independence agency~~ **HEALTH AND HUMAN**
8 **SERVICES** under section 55 of the social welfare act, 1939 PA 280,
9 MCL 400.55.

10 (f) A child caring institution, children's camp, foster family
11 home, or foster family group home licensed or approved under 1973
12 PA 116, MCL 722.111 to 722.128, if the number of residents who
13 become 18 years of age while residing in the institution, camp, or
14 home does not exceed the following:

15 (i) Two, if the total number of residents is 10 or fewer.

16 (ii) Three, if the total number of residents is not less than
17 11 and not more than 14.

18 (iii) Four, if the total number of residents is not less than
19 15 and not more than 20.

20 (iv) Five, if the total number of residents is 21 or more.

21 (g) A foster family home licensed or approved under 1973 PA
22 116, MCL 722.111 to 722.128, that has a person who is 18 years of
23 age or older placed in the foster family home under section 5(7) of
24 1973 PA 116, MCL 722.115.

25 (h) An establishment commonly described as an alcohol or a
26 substance ~~abuse~~ **USE DISORDER** rehabilitation center, a residential
27 facility for persons released from or assigned to adult

1 correctional institutions, a maternity home, or a hotel or rooming
2 house that does not provide or offer to provide foster care.

3 (i) A facility created by 1885 PA 152, MCL 36.1 to 36.12.

4 (j) An area excluded from the definition of adult foster care
5 facility under section 17(3) of the continuing care community
6 disclosure act, **2014 PA 448**, MCL 554.917.

7 (5) "Adult foster care family home" means a private residence
8 with the approved capacity to receive 6 or fewer adults to be
9 provided with foster care for 5 or more days a week and for 2 or
10 more consecutive weeks. The adult foster care family home licensee
11 shall be a member of the household, and an occupant of the
12 residence.

13 (6) "Adult foster care large group home" means an adult foster
14 care facility with the approved capacity to receive at least 13 but
15 not more than 20 adults to be provided with foster care.

16 (7) "Adult foster care small group home" means an adult foster
17 care facility with the approved capacity to receive 12 or fewer
18 adults to be provided with foster care.

19 (8) "Aged" means an adult whose chronological age is 60 years
20 of age or older or whose biological age, as determined by a
21 physician, is 60 years of age or older.

22 (9) "Assessment plan" means a written statement prepared in
23 cooperation with a responsible agency or person that identifies the
24 specific care and maintenance, services, and resident activities
25 appropriate for each individual resident's physical and behavioral
26 needs and well-being and the methods of providing the care and
27 services taking into account the preferences and competency of the

1 individual.

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

4 (2) "Department" means the department of ~~human~~
5 ~~services~~. **LICENSING AND REGULATORY AFFAIRS.**

6 (3) "Developmental disability" means that term as defined in
7 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

8 (4) "Direct access" means access to a resident or to a
9 resident's property, financial information, medical records,
10 treatment information, or any other identifying information.

11 (5) "Director" means the director of the department.

12 (6) "Do-not-resuscitate order" means a document executed under
13 the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL
14 333.1051 to 333.1067, directing that, in the event a resident
15 suffers cessation of both spontaneous respiration and circulation,
16 no resuscitation will be initiated.

17 (7) "Foster care" means the provision of supervision, personal
18 care, and protection in addition to room and board, for 24 hours a
19 day, 5 or more days a week, and for 2 or more consecutive weeks for
20 compensation.

21 Sec. 10. (1) The department shall promulgate rules ~~pursuant~~
22 **ACCORDING** to the administrative procedures act of 1969, 1969 PA
23 306, MCL 24.201 to 24.328, in the areas provided under subsection
24 (4).

25 (2) The bureau of fire services created in section 1b of the
26 fire prevention code, 1941 PA 207, MCL 29.1b, shall promulgate
27 rules providing for adequate fire prevention and safety in an adult

1 foster care facility licensed or proposed to be licensed for more
2 than 6 adults. The rules shall be promulgated in cooperation with
3 the department and the state fire safety board and shall provide
4 for the protection of the health, safety, and welfare of the adults
5 residing in a facility. The bureau of fire services shall
6 promulgate the rules ~~pursuant to~~ **ACCORDING** to the administrative
7 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A person
8 may request a variance from the application of a rule promulgated
9 ~~pursuant to~~ **UNDER** this subsection by application to the state fire
10 marshal. The state fire marshal may make a variance upon a finding
11 that the variance does not result in a hazard to life or property.
12 The finding shall be transmitted to the person requesting the
13 variance and shall be entered into the records of the bureau of
14 fire services. If the variance requested concerns a building, the
15 finding shall also be transmitted to the governing body of the
16 city, village, or township in which the building is located. The
17 entire state fire safety board shall act as a hearing body in
18 accordance with the administrative procedures act of 1969, 1969 PA
19 306, MCL 24.201 to 24.328, to review and render decisions on a
20 ruling of the state fire marshal interpreting or applying these
21 rules. After a hearing, the state fire safety board may modify the
22 ruling of the state fire marshal if the enforcement of the ruling
23 would do manifest injustice and would be contrary to the spirit and
24 purpose of the rules or the public interest. A decision of the
25 state fire safety board to modify or change a ruling of the state
26 fire marshal shall specify in what manner the modification or
27 change is made, the conditions upon which it is made, and the

1 reasons for the modification or change.

2 (3) The department ~~of human services~~ shall promulgate rules
3 for the certification of specialized programs offered in an adult
4 foster care facility to a mentally ill or developmentally disabled
5 resident. The rules shall include provision for an appeal of a
6 denial or limitation of the terms of certification to the
7 department ~~pursuant to~~ **UNDER** chapter 4 of the administrative
8 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

9 (4) The rules promulgated by the department under this act
10 shall be restricted to the following:

11 (a) The operation and conduct of adult foster care facilities.

12 (b) The character, suitability, training, and qualifications
13 of applicants and other persons directly responsible for the care
14 and welfare of adults served.

15 (c) The general financial ability and competence of applicants
16 to provide necessary care for adults and to maintain prescribed
17 standards.

18 (d) The number of individuals or staff required to ensure
19 adequate supervision and care of the adults served.

20 (e) The appropriateness, safety, cleanliness, and general
21 adequacy of the premises, including maintenance of adequate health
22 standards to provide for the physical comfort, care, protection,
23 and well-being of the adults received and maintenance of adequate
24 fire protection for adult foster care facilities licensed to
25 receive 6 or fewer adults. Rules promulgated in the areas provided
26 by this subdivision shall be promulgated in cooperation with the
27 state fire safety board.

1 (f) Provisions for food, clothing, educational opportunities,
2 equipment, and individual supplies to ensure the healthy physical,
3 emotional, and mental development of adults served.

4 (g) The type of programs and services necessary to provide
5 appropriate care to each resident admitted.

6 (h) Provisions to safeguard the rights of adults served,
7 including cooperation with rights protection systems established by
8 law.

9 (i) Provisions to prescribe the rights of licensees.

10 (j) Maintenance of records pertaining to admission, progress,
11 health, and discharge of adults. The rules promulgated under this
12 subdivision shall include a method by which a licensee promptly
13 shall notify the appropriate placement agency or responsible agent
14 of any indication that a resident's assessment plan is not
15 appropriate for that resident.

16 (k) Filing of reports with the department.

17 (l) Transportation safety.

18 (5) The rules promulgated under subsection (1) shall be
19 reviewed by the council not less than once every 5 years.

20 (6) Rules promulgated under subsection (1) are subject to
21 section 17 of the continuing care community disclosure act, **2014 PA**
22 **448**, MCL 554.917.

23 Sec. 11. (1) The director, the director's agent, or personnel
24 of another department or agency, acting at the request of the
25 director, may enter upon the premises of an applicant or licensee
26 at a reasonable time to make inspections, as permitted by
27 applicable law, to determine whether the applicant or licensee is

1 complying with this act and the rules promulgated under this act.
2 On-site inspections may be conducted without prior notice to the
3 adult foster care facility. A health and sanitation inspection of
4 an adult foster care facility shall be conducted upon the request
5 of the department by 1 of the following:

6 (a) Department staff.

7 (b) The department of ~~community health~~ **AND HUMAN SERVICES**.

8 (c) A local health department.

9 (2) The department of ~~community health~~ **AND HUMAN SERVICES**, the
10 bureau of fire services created in section 1b of the fire
11 prevention code, 1941 PA 207, MCL 29.1b, or local authorities, in
12 carrying out this act, may visit an adult foster care facility more
13 often than annually to advise in matters affecting health or fire
14 protection. Inspections shall be made as permitted by law.

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

17 (a) Department staff, if the facility is licensed or proposed
18 to be licensed for 6 or fewer adults. The department may request
19 that a fire safety inspection be performed by or at the direction
20 of the bureau of fire services, for a facility licensed or proposed
21 to be licensed for 6 or fewer adults, if such an inspection would
22 result in the efficient administration of this act.

23 (b) The bureau of fire services or the designated
24 representative of the bureau of fire services, if the facility is
25 licensed or proposed to be licensed for more than 6 adults. The
26 bureau of fire services shall inspect or have inspected for fire
27 safety an adult foster care facility licensed or proposed to be

1 licensed for 6 or fewer adults upon request by the department. The
2 bureau of fire services may contract with the fire marshal of a
3 city having a population of not less than ~~1,000,000~~ **600,000** to
4 inspect adult foster care facilities licensed or proposed to be
5 licensed for more than 6 adults if the facility is located within
6 that city. The fire marshal of a city shall conduct an inspection
7 in compliance with procedures established and on forms provided by
8 the bureau of fire services.

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

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

26 (6) Inspection reports required by this section shall be
27 furnished to the department and shall be used in the evaluation for

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

8 (7) The inspection reports required by this section shall be
9 available for public inspection during reasonable business hours.

10 Sec. 20. (1) The department shall not issue a temporary,
11 provisional, or regular license to an adult foster care facility
12 with a capacity of more than 6 adults until the facility receives a
13 certificate of approval from the bureau of fire services created in
14 section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b,
15 after compliance with fire safety standards prescribed in rules
16 promulgated by the bureau of fire services pursuant to section
17 10(2).

18 (2) The department shall not issue a license to an adult
19 foster care facility indicating approval to operate a specialized
20 program for developmentally disabled adults or mentally ill adults
21 until the facility receives a certificate of approval as required
22 under section 11(5).

23 (3) A licensee or applicant who is denied a certificate of
24 approval by the bureau of fire services or who is denied or
25 certified with limitations for a specialized program by the
26 department of **HEALTH AND** human services may request a hearing. The
27 hearing shall be conducted by the state fire safety board or the

1 department of **HEALTH AND** human services, as applicable, ~~pursuant to~~
2 **UNDER** chapter 4 of the administrative procedures act of 1969, 1969
3 PA 306, MCL 24.271 to 24.287.

4 **SEC. 22B. WHEN THE DEPARTMENT ISSUES A SUMMARY SUSPENSION**
5 **ORDER FOR CLOSURE OF AN ADULT FOSTER CARE FACILITY, OR WHEN AN**
6 **ADULT FOSTER CARE FACILITY CANNOT PROVIDE ADEQUATE RESIDENT CARE,**
7 **THE DEPARTMENT MUST DO THE FOLLOWING:**

8 (A) **ENSURE THAT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**
9 **HAS BEEN NOTIFIED TO MAKE ARRANGEMENTS FOR THE ORDERLY AND SAFE**
10 **DISCHARGE AND TRANSFER OF THE RESIDENTS TO ANOTHER FACILITY OR**
11 **APPROPRIATE SETTING.**

12 (B) **DETERMINE WHETHER A REPRESENTATIVE OF THE DEPARTMENT MUST**
13 **BE PLACED IN A FACILITY ON A DAILY BASIS TO MONITOR THE DELIVERY OF**
14 **SERVICES DURING THE DISCHARGE OF RESIDENTS TO OTHER FACILITIES OR**
15 **LOCATIONS.**

16 (C) **DETERMINE IF IT IS NECESSARY TO APPOINT A TEMPORARY**
17 **ADMINISTRATIVE ADVISOR OR A TEMPORARY CLINICAL ADVISOR, OR BOTH,**
18 **WITH AUTHORITY AND DUTIES SPECIFIED BY THE DEPARTMENT TO ASSIST THE**
19 **ADULT FOSTER CARE FACILITY MANAGEMENT AND STAFF TO OVERSEE THE**
20 **ORDERLY CLOSURE OF THE ADULT FOSTER CARE FACILITY. THE ADULT FOSTER**
21 **CARE FACILITY SHALL PAY THE EXPENSE OF THE PERSON APPOINTED.**

22 (D) **THE COMMUNITY AND HEALTH SYSTEMS BUREAU WITHIN THE**
23 **DEPARTMENT SHALL NOTIFY THE CLERK OF THE CITY, VILLAGE, OR TOWNSHIP**
24 **AND THE FIRE SERVICES BUREAU WITHIN THE DEPARTMENT SHALL NOTIFY THE**
25 **FIRE CHIEF OF AN ORGANIZED FIRE DEPARTMENT OF THE EMERGENCY CLOSURE**
26 **OF AN ADULT FOSTER CARE FACILITY CONTEMPORANEOUSLY WHEN THE SUMMARY**
27 **SUSPENSION ORDER IS SERVED.**

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.