

Legislative Analysis



HOMES FOR THE AGED REVISIONS

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Senate Bill 378 (Substitute H-1) as reported by committee

Sponsor: Sen. Marty Knollenberg

House Committee: Regulatory Reform

Senate Committee: Regulatory Reform

Complete to 10-16-17

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 167 of 2017)

BRIEF SUMMARY: Among other things, the bill would revise the definition of “home for the aged” to lower the age of persons receiving care in an HFA from 60 to 55, place a cap on the number of employee background checks of which LARA would pay the costs, and clarify which facilities would need to be licensed as an HFA.

FISCAL IMPACT: Senate Bill 378 would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). The bill would establish a cap on the amount that LARA would pay for background checks of employees of homes for the aged facilities. The bill would also create certain licensure exemptions for homes for the aged facilities and a less stringent licensing process for currently operating unlicensed facilities. The impact of these exemptions would depend upon the number of facilities that pursue such exemptions. The bill does not appear to have any significant fiscal impact on other units of state or local government.

THE APPARENT PROBLEM:

Apparently, there has been some confusion regarding when, or if, a facility that provides care to the elderly must be licensed as a home for the aged. Homes for the aged provide supervised care for 21 or more unrelated individuals aged 60 years and older (or 20 or fewer if operated in conjunction with, but as a distinct part of, a nursing home). The confusion stems from changes in interpretation of the HFA statute when regulation of the facilities was transferred from the Department of Health and Human Services to the Department of Licensing and Regulatory Affairs (LARA). Further, there have been facilities who wish to be licensed as an HFA but, due to how the building is constructed, fail to meet certain requirements. Meanwhile, other facilities would like to be exempted from licensure requirements. In addition, LARA currently must cover the costs associated with conducting criminal background checks of potential employees for HFAs; capping the number of checks LARA would be responsible for could reduce costs to the department and ease a financial burden on its budget. Legislation addressing these and other concerns has been offered.

THE CONTENT OF THE BILL:

Briefly, Senate Bill 378 would amend the Public Health Code to make the following changes regarding a home for the aged (HFA):

- Revise the definition of "home for the aged" to include the provision of supervised care for individuals 55 (lowered from 60) years of age and specify that an HFA would be a facility *at a single address*.
- Require the Bureau of Fire Services to amend the rules to allow a facility in existence on or before the bill's effective date and which was continuously operating up to the time of application for licensure as an HFA to be reviewed and inspected to comply with certain provisions of the National Fire Protection Association standards. Information requested by the Department of Licensing and Regulatory Affairs (LARA) allowing it to verify that the facility had been in existence on or before the bill's effective date would have to be provided.
- Require LARA, after October 1, 2018, if the Department of State Police (MSP) or the FBI charge a fee to conduct a criminal history check, to pay the cost of the charge of up to 40 criminal history checks per year for an HFA with fewer than 100 beds and 50 criminal history checks per year for an HFA with 100 beds or more.
- Update language pertaining to the retention of fingerprints to require the MSP and FBI to store and retain all fingerprints submitted for background checks for employment with a covered facility and to provide an automatic notification if and when subsequent criminal information submitted into the system matches a set of fingerprints previously submitted.
- Require LARA to make the determination that a facility is exempt from licensure as an HFA if the owner, operator, or governing body submitted a signed attestation to LARA that assured certain requirements, as specified in the bill, were met and that included an acknowledgement that the penalty for submitting a false or inaccurate attestation is an administrative fine of \$5,000.

Beginning on the bill's effective date, an exemption from licensure as an HFA would be required to be given to an existing facility or a facility under construction if the requirements described above were met and 1 of the following applied:

- The person offering board is not related to the person providing room or supervised personal care, or both.
- The person providing supervised personal care, whether or not related to the person providing room or board, or both, has had a supervised personal care arrangement in effect for at least 2 consecutive years before the date of the required attestation and residents at the facility have the option to select any supervised personal care provider of their choice.

In general, an exemption issued under the bill would continue for a successor owner, operator, or governing body provided that the successor filed the required attestation. However, an exemption granted under the scenario above could not be granted after December 31, 2019, except to a successor owner, operator, or governing body.

An exemption from licensure as an HFA would have to be given to a facility or a facility under construction if the requirements regarding the attestation were met and 1 of the following applied:

- The person providing room and the person providing supervised personal care are related and the facility registered as a continuing care community under the Continuing Care Community Disclosure Act and includes a licensed nursing home as part of the continuing care community.
- The person providing room and the person providing supervised personal care are not related and residents at the facility have the option to select any supervised personal care provider of their choice.

An exemption granted under this scenario would not be limited to an existing facility or a facility under construction on or before the bill's effective date as long as the requirements added by the bill were met.

- Require LARA to act on an exemption request as soon as practicable but no later than 60 days after receipt of the exemption request.
- Specify that a denial of an application for exemption, issuance of a fine, or exemption revocation would be, upon the applicant providing further information, subject to a departmental appeal, or both.
- Allow an exemption to be revoked if false or inaccurate information provided in the attestation was material to granting the exemption; the applicant receiving the exemption was found to be negligent resulting in serious physical injury, death of a resident, or serious mental anguish, and a risk to the health and safety of the residents at the facility continued; or the applicant receiving the exemption did not cooperate in LARA's investigation to make a determination for an exemption.
- Define several new terms, including "supervised personal care", "continuing care community", "related", "serious mental anguish", and "serious physical injury".
- Provide for the bill to take effect 90 days after enactment.

MCL 333.20106 et al.

HOUSE COMMITTEE ACTION:

Significant revisions made by the H-1 substitute include eliminating a requirement for residents of an existing facility to be assessed for self-preservation in order for the facility to be considered for licensure, allowing an exemption from licensure for a facility registered as a continuing care community, and revising language pertaining to licensure exemptions for greater clarity.

ARGUMENTS:

For:

According to advocates, Senate Bill 378 clarifies the definition of a “home for the aged” and also clarifies when a license is or is not required. Language in the bill will give the department more flexibility in allowing some facilities to be licensed as an HFA even though their current building design makes them ineligible for licensure. For other facilities, the bill allows LARA to determine, based on an attestation from a facility’s owner, operator, or governing body, whether a facility may be exempted from licensure. However, the bill contains provisions to ensure the safety of residents, such as granting LARA the authority to revoke an exemption from licensure if serious harm comes to a resident or if fraudulent information was submitted in the attestation to avoid regulation.

Against:

Placing a cap on the number of criminal background check fees for which LARA would be required to cover would increase costs to operators of HFAs. As many of these homes are small and have limited resources for reimbursement, the fees are likely to be passed on to the residents who also may have limited resources.

POSITIONS:

A representative of the Department of Licensing and Regulatory Affairs testified in support of the bill. (9-20-17)

A representative of the Michigan Assisted Living Association testified in support of the bill. (9-20-17)

A representative of the Michigan Center for Assisted Living testified in support of the bill. (9-20-17)

LeadingAge Michigan indicated support for the bill. (9-20-17)

The Countryside Retirement Community indicated support for the bill. (10-11-17)

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Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.