

# Legislative Analysis



## ADULT FOSTER CARE FACILITIES

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<http://www.house.mi.gov/hfa>

**House Bill 4841 as introduced**  
**Sponsor: Rep. Stephanie A. Young**  
**Committee: Families, Children and Seniors**  
**Revised 9-28-23**

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

### SUMMARY:

House Bill 4841 would amend the Adult Foster Care Facility Licensing Act to provide new requirements and procedures for adult foster care facilities and for the Department of Licensing and Regulatory Affairs (LARA) in regulating those facilities.

#### Public information

The bill would require LARA to provide the following information concerning adult foster care facilities to the public, in compliance with the Freedom of Information Act (FOIA), and to post it online as part of the adult foster care facility search tool:

- Facility ownership information, including the owner's name, address, and phone number.
- Whether the facility is profit or nonprofit.
- The facility's name, address, and telephone number, and the administrator's name.
- The staff-to-resident ratio in the facility.
- The total number of beds in the facility.
- A list of services and specialty services provided by the facility.
- The number of current violations of specific rules promulgated under the act for which the facility has been cited.
- A link to a detailed report of the facility's violations or a special investigation report regarding the facility.
- The education requirements of facility staff.
- Certifications required of staff members.
- The number of complaints filed against the facility.
- The number of violations that have been committed three or more times.

#### License renewals

The act currently requires LARA to investigate the activities and standards of care of an applicant for license issuance or renewal, including an on-site evaluation of the facility. The bill would require LARA staff conducting a license renewal inspection to include a registered nurse licensed or authorized under the Public Health Code, a dietitian, and a social worker licensed under the Public Health Code.

In addition to existing license renewal requirements, the bill would require LARA to consider the following when a licensee applies for renewal:

- The licensee's training plan for direct care staff and direct care staff's completion of that training and of mandated continuing education core classes and yearly competency tests as described below.
- The successful completion of annual training and educational assessments by each of the direct care staff.

- The posting in a conspicuous area of the contact information for all agencies that investigate complaints regarding an adult foster care facility and contact information for Adult Protective Services.
- The number of new and repeated violations since the last license renewal.
- Civil penalties and any late fines assessed by LARA unpaid at the time of renewal.
- Any incomplete corrective action plan past the completion date. If there is one, the license could be renewed for a three-month period, when the corrective action plan would have to be completed for the license to be renewed (if still incomplete after the three months, the license would not be renewed).
- Resident satisfaction survey results from residents, residents' family, or a resident's designee.
- Interviews with residents and family councils if applicable.
- Staff satisfaction surveys.

LARA could "waive certain requirements" (unspecified in the bill) for the owner or licensee of one adult foster care group home or family home if LARA determines that those requirements would cause the facility financial hardship. (It is unclear whether the ownership requirement means "only one" or "at least one.")

The bill would also newly allow LARA to refuse to issue or renew a license if it determines that the applicant has a relationship with a person whose license was not renewed due to not meeting the above requirements.

### **Complaint procedure**

The bill would require LARA's complaint process to include all of the following:

- A clear and concise overview of the complaint process, including how to file a complaint, the steps in the process, and information on how the complainant will be kept informed at each step.
- Escalation procedures if the complainant is not satisfied at any step of the process.
- The ability for a complainant to participate and give verbal input for each step of the process, including the administrative review process.
- A complainant satisfaction survey at the completion or closure of a complaint or investigation, including the administrative review process.
- The appeals process for a complainant who is not satisfied with the outcome of an investigation.

### **Licensee disclosure and complaint process requirements**

A licensee would have to identify the facility as an adult foster care facility in all legal and marketing documents. In addition, before a *resident* is admitted to an adult foster care facility, the licensee would have to inform the resident or the *resident's designee* of all of the following, verbally and in a written copy signed by both the licensee and the resident or resident's designee:

- The facility's designation as an adult foster care facility governed by the Adult Foster Care Facility Licensing Act and its rules.
- The resident's rights and the right to file a complaint without intimidation, retaliation, or threat of retaliation.
- The facility's complaint policy, process, and contact information.
- Website information for the following entities:
  - The facility's internal complaint department.

- The local long-term care ombudsman.
- LARA’s Bureau of Community and Health Systems.
- The local law enforcement agency.
- All violations currently pending and cited against the facility.
- The licensee’s medication administration policy and standards.
- The staff-to-resident ratio.
- Information regarding staff training, education, and certification.

**Resident** would include a **vulnerable adult**.

**Resident designee** would mean the person designated by the resident in writing or by a court order with legal authority to act on the resident’s behalf. (The bill defines the term *resident designee*, but uses the term *resident’s designee*.)

**Vulnerable adult** would mean one or more of the following:

- An individual 18 years of age or older who, because of age, developmental disability, mental illness, or physical disability, requires supervision or personal care or lacks the personal and social skills required to live independently.
- A person 18 years of age or older who is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or advanced age and who is suspected of being abused, neglected, or exploited.<sup>1</sup>
- A child who is placed in an adult foster care family home or an adult foster care small group home under the child care licensing act, 1973 PA 116.

Each adult foster care facility would have to establish and maintain a structured and documented internal complaint policy and process that includes all of the following:

- Designating a staff person who is responsible for receiving complaints and determining resolution of complaints.
- Investigating and resolving complaints. The facility would have to respond in writing to a complainant within seven business days after receiving the complaint.
- Maintaining a log of all complaints and resolutions of complaints, which would have to be made available to LARA when it reviews the facility’s next licensing renewal.

### **Staffing requirements**

An adult foster care facility would have to meet all of the following staffing requirements:

- The facility administrator would have to be competent in the following areas:
  - Knowledge of the physical, emotional, and mental health needs of the facility’s residents being housed and cared for.
  - Knowledge of residents’ rights.
  - Development of training and education courses for direct care staff in order for them to understand the physical, emotional, mental, and social needs of the residents they are hired to serve.
- The facility would have to maintain a **licensed practical nurse** on duty on the premises 24 hours per day, five days per week.
- The facility would have to maintain a staff member on duty on the premises 24 hours per day, seven days per week who holds a valid certification in cardiopulmonary

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<sup>1</sup> For the definitions of “abuse,” “neglect,” and “exploitation” that pertain to this provision, see MCL 400.11: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-400-11.pdf>

resuscitation issued by the American Heart Association, American Red Cross, or a similar nationally recognized association.

- The facility would have to maintain a social worker who is licensed, registered, or otherwise authorized under the Public Health Code, with a minimum availability for one hour per week for each resident.

**Licensed practical nurse** would mean an individual who is licensed or otherwise authorized to engage in the practice of nursing as a licensed practical nurse under part 172 of the Public Health Code.

Except for a registered nurse, only a staff member who has successfully completed a diabetic continuing education course approved by LARA could administer an insulin injection.

### **Resident rights**

In addition to rights, benefits, and privileges guaranteed under law, a resident would have the rights described below unless otherwise restricted by law:

- A resident or resident's designee would have the right to request meals be delivered to the resident's room. A resident could not be forced to accept or eat a meal in a dining room.
- A resident or resident's designee would have to be given 60 days' notice before a new rule or update to a rule takes effect.
- A resident could not be deprived of their rights under this act. A waiver of a resident's rights would be void and unenforceable. A resident's rights could not be used as a reward or sanction.
- An adult foster care facility would have to ensure that a resident's physical, emotional, and mental health needs are met and that the resident is protected from **neglect** and **abuse**, including **physical abuse**, **mental abuse**, **verbal abuse**, and **sexual abuse**.
- An adult foster care facility must ensure that a resident's rights are protected.
- An adult foster care facility would have to ensure that a resident is treated with dignity and respect.

**Neglect** would mean failure to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, mental stress, or emotional distress.

**Abuse** would mean willfully inflicting injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish, and would include mental abuse, physical abuse, sexual abuse, and verbal abuse.

**Physical abuse** would mean a willful act directed at a resident that is likely to result in injury or pain, including such things as slapping, pinching, kicking, shoving, corporal punishment, rough handling during caregiving or when moving a resident, isolating a resident from visitors or other residents, and abandonment.

**Mental abuse** would mean a willful act directed at a resident that is likely to result in mental distress or mental anguish, including such things as humiliation, harassment, threat of punishment, or threat of deprivation.

**Verbal abuse** would mean using oral, written, or gestured language that willfully includes disparaging or derogatory terms to residents or their families, or that is used

or uttered within hearing distance of residents or their families, regardless of their age, ability to comprehend, or disability.

**Sexual abuse** would mean sexually oriented behavior directed at a resident by a staff member, sexually oriented behavior between residents that is not fully and freely consented to by both residents involved or when either or both are incapable of consenting to the behavior, or any sexually oriented behavior by a visitor directed at a resident incapable of consenting to the behavior.

A resident or resident's designee would have to be provided with a written copy of their rights and of the complaint process. The documents would have to be signed by both the resident or resident's designee and an individual representing the adult foster care facility.

A licensee would have to conspicuously post the following in an area of the adult foster care facility accessible to residents, employees, and visitors:

- The resident's rights.
- The adult foster care facility's internal complaint process
- The contact information and website information for the following:
  - The facility's internal complaint department.
  - The local long-term care ombudsman.
  - LARA's Bureau of Community and Health Systems.
  - The local law enforcement agency.

A licensee would have to accept and respond to an oral or written complaint from any source regarding an alleged violation of a resident's rights, quality of care, or any other matter, without retaliation or threat of retaliation.

A licensee would have to conspicuously post on the premises contact information for all agencies that investigate complaints regarding an adult foster care facility and contact information for Adult Protective Services.

The bill would not affect any right of a resident to damages under any other law.

### **Continuing education**

In addition to in-service training or on-the-job training, a direct care staff member who is not a **certified nurse assistant** would have to be educated to understand the physical and emotional needs of the population the staff member is hired to serve by completing the following continuing education core classes within 90 days after the date of hire:

- Empathy and simulation of the aging process, which would have to provide staff members with the experience of sensory challenges related to aging and the emotional challenges that come with the loss of independence, home, and relationships with family and friends.
- Dignity and sensitivity, which would have to include basic techniques for effectively and compassionately communicating with the elderly, including those experiencing hearing loss, dementia, or other issues that impair communication for the population being served, and how to handle and defuse difficult situations in a respectful manner.
- Death and dying, which would have to provide basic understanding of end-of-life issues and the impact on the resident, including appropriate behavior and communication with the resident and resident's family.

- Resident rights, which would have to instruct staff members on all rights granted to the resident.
- Basic medication training for staff assisting with self-administration, which would have to be provided by a registered nurse to an unlicensed direct care worker employed by the adult foster care facility who will be assisting in *self-administration of medication*. The course would have to include appropriate medication handling.
- Understanding dementia, which would have to instruct the staff member on the fundamentals of dementia, including how to recognize signs of dementia, effects on the resident, effective communication, and proper care standards of a resident with dementia.
- Identifying and reporting abuse, neglect, and exploitation. The preferred method of delivery for this course would be in person.

*Certified nurse assistant* would mean an individual who is certified through the nurse aide training program administered by LARA and whose certification has been verified by the management of the adult foster care facility.

*Self-administration of medication* would mean the removal and understanding of the correct dosage from the pharmaceutical container, understanding the reason for medication, and self-injecting, self-ingesting, or self-applying the medication by the resident with no assistance. Qualified personnel of the facility could assist with providing reminders of frequency, opening containers, pouring medication, and physically bringing medication to the resident.

An adult foster care facility would have to conduct training assessments annually, separately from examinations given upon completion of a training or educational course, to ensure that staff members recall what they learned during training and educational programs and are implementing this knowledge appropriately while providing care.

A staff member could not have unsupervised contact with a resident until they have completed the training and educational course requirements.

A licensee would have to maintain a written training plan for all staff members and retain a record of all training and educational requirements for a period of three years, including all of the following:

- The staff member's name and title.
- The date the course was taken and completed.
- The source of the course.
- The course name, instructor's name, instructor's qualifications, and course location.
- Documentation of the successful completion of the course

Acceptable sponsors of the training described above would include any of the following:

- Training offered by a nationally recognized or state-recognized health-related organization.
- Training offered by, or in conjunction with, a state or federal agency.
- Training obtained in an educational program that has been approved by any health professional board created under Article 15 of the Public Health Code, except for veterinary medicine, for initial licensure or registration or for the accumulation of continuing education credits.

- Training offered by an accredited college or university.
- Training offered by an organization specializing in diversity, equity, and inclusion issues.

Acceptable modalities of the training required would include any of the following:

- A teleconference or webinar that allows live synchronous interaction that provides for the opportunity for participants to interact with the instructor and other participants.
- A live presentation that provides the opportunity for participants to interact with the instructor and other participants.
- An asynchronous teleconference or webinar.

After one year of employment at a facility, a direct care worker who is not a certified nurse assistant would have to annually complete an additional eight hours of continuing education that addresses the unique needs of residents in an adult foster care facility.

### **Surveys**

LARA would have to create resident satisfaction surveys and staff surveys to be presented to residents and staff of an adult foster care facility.

The resident satisfaction surveys would have to measure the following:

- Satisfaction with the facility's physical environment, including the resident's room, dining facilities, and social gathering places.
- The staff's competency, kindness, and empathy.
- Whether the facility and staff are meeting the resident's physical and emotional needs.
- Whether the resident feels safe and cared for in the facility.
- Whether the resident feels respected and honored in the facility.
- Satisfaction with the quality of the facility's meals and snacks.
- Satisfaction with the quality and quantity of activities available to the resident.

An adult foster care facility would have to present the resident satisfaction survey to each resident or resident's designee annually and upon discharge from the adult foster care facility. A resident or resident's designee would have to be able to complete the resident satisfaction survey anonymously.

The staff surveys would have to measure the following:

- Whether the staff feels sufficiently trained or educated to care for residents.
- Whether the staff feels supported by management.
- The staff's job satisfaction.
- The staff's challenges on the job.

The adult foster care facility would have to present the staff surveys to staff on an annual basis. The staff would need to be allowed to complete the surveys anonymously.

The adult foster care facility would have to maintain the surveys for a period of three years and make them available to LARA for review upon license renewal.

### **Administering medication**

Under the bill, medication could be administered only by *licensed staff* or, under the direction of the resident or their delegate, a certified nurse assistant. A certified nurse assistant could

administer medication only if they have successfully completed a certified medication aide training program and passed the examination that meets the medication assistant certified model curriculum adopted by the National Council of State Boards of Nursing.

Unlicensed staff could assist a resident with self-administration of medication only if both of the following apply:

- It is done under the direction of a registered nurse or licensed practical nurse.
- The unlicensed staff has completed all training and education requirements under the act and as required by LARA.

*Licensed staff* would mean a health care provider licensed under Article 15 (Occupations) of the Public Health Code.<sup>2</sup>

### **Penalty for violation of the act**

Currently, with some exceptions, a person, adult foster care facility, agency or representative or officer of a corporation association or organization who violates the act is guilty of a misdemeanor, punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.

The bill would additionally authorize LARA to assess a civil penalty of \$500 to \$5,000 for each occurrence or act by an adult foster care facility that does any of the following:

- Inflicts physical harm or injury, emotional distress, or mental anguish on a resident, whether willfully or not.
- Violates a resident's rights.
- Fails to ensure the resident's safety or protection.
- Fails to ensure that the resident is treated with dignity and respect.
- Neglects a resident.
- Abuses a resident physically, mentally, verbally, financially, or sexually.

A civil penalty would have to be paid within 30 days after the date of assessment if an appeal has not been filed. If the civil penalty is not paid by the due date, a late fee of 1.5% would be assessed for every day the payment is late. A licensee could not avoid payment of a civil penalty by closing, selling, or otherwise transferring the license to a third party.

A facility could appeal a decision to impose a civil penalty. An appeal would have to be filed no later than 14 days after the civil penalty is assessed. A hearing for an appeal would be conducted as a contested case under the Administrative Procedures Act. Once an appeal has been heard, if the appeal determination upholds the assessed civil penalty, the facility would have to pay the civil penalty not later than 14 days after the date of the appeal determination.

Civil penalties and fees assessed by the department that are collected would be credited to the general fund of the state to be appropriated by the legislature to LARA for the purpose of adequate staffing to conduct inspections that are either scheduled or resulting from a complaint and for managing and administering the civil penalty and appeals process.

When a violation has been cited, a licensee would have to submit a specific, measurable, achievable realistic time-bound corrective action plan that does all of the following:

- Describes the issue that needs to be corrected.
- Establishes what caused the issue.

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<sup>2</sup> <http://legislature.mi.gov/doc.aspx?mcl-368-1978-15>

- Determines and implements action to prevent the issue from reoccurring.
- Provides a method for measuring compliance with and effectiveness of the corrective action plan.

Within 30 days after the implementation date of the corrective action plan, LARA would need to follow up with the licensee. Failure of the licensee to comply with the corrective action plan within 30 days after the plan's implementation date would result in an additional 10% fine of the amount described above.

Documentation of a violation, including special investigation reports, would have to remain on the licensee's record for public disclosure for at least seven years.

MCL 400.703 et seq.

### **FISCAL IMPACT:**

House Bill 4841 would have significant cost implications for the Department of Licensing and Regulatory Affairs. LARA indicated that the projected cost for compliance with the bill would total \$6.75 million. LARA estimates that 44.0 FTEs would need to be added, at a projected cost of \$5.9 million. Additional costs would include necessary IT modifications/enhancements (\$250,000), support from the attorney general's office (\$250,000), and additional physical space and equipment (\$100,000). The bill would not be expected to have a fiscal impact on other units of state or local government.

The bill would allow LARA to assess civil penalties ranging between \$500 and \$5,000 (with a separate provision for late fees) for specific infractions outlined within the bill. The bill would require the revenue from these penalties to be deposited to the general fund to be "appropriated by the legislature to the department for the purpose of adequate staffing to conduct inspections that are either scheduled or resulting from a complaint and for managing and administering the civil penalty and appeals process." The amount of revenue from the penalties would depend on the number of infractions and the amount of the assessed fines, and is therefore indeterminate.

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■ 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.