

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

PART 213
HOMES FOR THE AGED

333.21301 Definitions and principles of construction.

Sec. 21301. Article 1 contains general definitions and principles of construction applicable to all articles in this code and part 201 contains definitions applicable to this part.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Compiler's note: For transfer of powers and duties of the division of health facility licensing and certification in the bureau of health systems, division of federal support services, and the division of emergency medical services, with the exception of the division of managed care and division of health facility development, from the department of public health to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of the bureau of health services from the department of consumer and industry services to the director of the department of community health by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 368

333.21302 "Continuing care community," and "supervised personal care" defined.

Sec. 21302. (1) "Continuing care community" means that term as defined in section 3 of the continuing care community disclosure act, 2014 PA 448, MCL 554.903.

(2) "Supervised personal care" means the direct guidance or hands-on assistance with activities of daily living offered by a facility to residents of the facility that include 2 or more of the following services provided by the facility to any resident for 30 or more consecutive days as documented in the resident's service plan:

(a) Direct and regular involvement by staff in assisting a resident with the administration of the resident's prescription medications, including direct supervision of the resident taking medication in accordance with the instructions of the resident's licensed health care professional.

(b) Hands-on assistance by staff in carrying out 2 or more of the following activities of daily living: eating, toileting, bathing, grooming, dressing, transferring, and mobility.

(c) Direct staff involvement in a resident's personal and social activities or the use of devices to enhance resident safety by controlling resident egress from the facility.

History: Add. 2017, Act 167, Eff. Feb. 11, 2018.

Popular name: Act 368

333.21307 Exemptions.

Sec. 21307. This part does not authorize the medical supervision, regulation, or control of the remedial care or treatment of residents in a home for the aged operated for the adherents of a bona fide church or religious denomination who rely on treatment by prayer or spiritual means only in accordance with the creed or tenets of that church or denomination. The residents, personnel, or employees, other than food handlers, of the home are not required to submit to a medical or physical examination.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368

333.21311 License required; use of "home for aged" or similar term or abbreviation; minimum age for admission; waiver of age limitation; documentation; determination by director.

Sec. 21311. (1) Except as provided in section 21311a, a home for the aged shall be licensed under this article.

(2) "Home for the aged" or a similar term or abbreviation shall not be used to describe or refer to a health facility or agency unless the health facility or agency is licensed as a home for the aged by the department under this article.

(3) Except as otherwise provided in this subsection, a home for the aged shall not admit an individual under 55 years of age. Upon the request of a home for the aged and subject to subsection (4), the director shall waive the age limitation imposed by this subsection if the individual, the individual's guardian or other legal representative, if appointed, and the owner, operator, and governing body of the home for the aged, upon consultation with the individual's physician, agree on each of the following:

(a) The home for the aged is capable of meeting all of the individual's medical, social, and other needs as determined in the individual's plan of service.

(b) The individual will be compatible with the other residents of that home for the aged.

(c) The placement in that home for the aged is in the best interests of the individual.

(4) The owner, operator, and governing body of the home for the aged shall submit, with its request for a waiver, documentation to the director that supports each of the points of agreement necessary under subsection (3). Within 5 days after receipt of the information required under this subsection, the director shall determine if that documentation collectively substantiates each of the points of agreement necessary under subsection (3) and approve or deny the waiver. If denied, the director shall send a written notice of the denial and the reasons for denial to the requesting party.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1984, Act 311, Eff. Mar. 29, 1985;—Am. 2004, Act 74, Imd. Eff. Apr. 21, 2004;—Am. 2017, Act 167, Eff. Feb. 11, 2018.

Popular name: Act 368

333.21311a Existing facility or facility under construction; exemption.

Sec. 21311a. (1) Beginning on the effective date of the amendatory act that added this section, an exemption from licensure as a home for the aged under this article shall be given to an existing facility or a facility under construction if the requirements of subsection (3) are met and 1 of the following applies:

(a) The person that offers board is not related to the person that provides room or supervised personal care, or both.

(b) The person that provides supervised personal care, whether or not related to the person that provides 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 attestation required under subsection (3) and residents at the facility have the option to select any supervised personal care provider of their choice.

(2) An exemption from licensure as a home for the aged under this article shall be given to a facility or a facility under construction if the requirements of subsection (3) are met and 1 of the following applies:

(a) The person that provides room and the person that provides supervised personal care are related and the facility is registered as a continuing care community under the continuing care community disclosure act, 2014 PA 448, MCL 554.901 to 554.993, and includes a licensed nursing home as part of the continuing care community.

(b) The person that provides room and the person that provides supervised personal care are not related and residents at the facility have the option to select any supervised personal care from a person of their choice.

(3) The department shall make a determination that a facility is exempt from licensure as a home for the aged under this article if the owner, operator, or governing body of the facility submits an attestation to the department that certifies that all of the requirements under subsection (1)(a) or (b) or (2)(a) or (b) are met, is signed by the owner, operator, or governing body for the facility, and includes an acknowledgment that the penalty for submitting a false or inaccurate attestation is an administrative fine of \$5,000.00.

(4) An exemption granted under this section continues to exist for a successor owner, operator, or governing body if the successor files the attestation required under subsection (3). An exemption under subsection (1)(a) or (b) shall not be granted under this section after December 31, 2019, except to a successor owner, operator, or governing body as provided in this subsection. An exemption under subsection (2)(a) or (b) is not limited to an existing facility or a facility under construction on or before the effective date of the amendatory act that added this section as long as the requirements of this section are met.

(5) The department shall act on an application for exemption requested under this section as soon as practicable but no later than 60 days after receipt of the application for the exemption.

(6) A denial of an application for exemption, an issuance of a fine, or a revocation of an exemption is, upon the applicant providing further information, subject to a review by the department or an appeal as provided in section 1205, or both.

(7) An exemption granted under this section may be revoked if the department determines 1 of the following:

(a) That the false or inaccurate information provided in the attestation was material to granting the exemption.

(b) The person receiving the exemption is found to be negligent, which negligence results in serious physical injury, death of a resident, or serious mental anguish, and there continues to be a risk to the health and safety of the residents at that facility.

(c) The person receiving the exemption does not cooperate in the department's investigation to make a determination for subsection (3).

(8) As used in this section:

(a) "Board" means food service provided at a facility.

(b) "Related" means any of the following personal relationships by marriage, blood, or adoption: spouse, child, parent, brother, sister, grandparent, grandchild, aunt, uncle, stepparent, stepbrother, stepsister, or

cousin. Related also means an entity owns or is owned by a person that has a direct or indirect ownership interest in another entity that provides a component of operations or service under subsections (1) and (2).

(c) "Serious mental anguish" means damage suffered by a resident that a physician, physician assistant, or nurse practitioner determines caused or could have caused extreme emotional distress that resulted in hospitalization, psychiatric treatment, or death of a resident.

(d) "Serious physical injury" means damage suffered by a resident that a physician, physician assistant, or nurse practitioner determines caused or could have caused death of a resident, caused the impairment of his or her bodily function, or caused the permanent disfigurement of a resident.

History: Add. 2017, Act 167, Eff. Feb. 11, 2018.

Popular name: Act 368

333.21313 Owner, operator, and governing body of home for aged; responsibilities and duties; good moral character; issuance of license by department; criminal history check and criminal records check required; renewal of license; storage of fingerprints in automated fingerprint identification system database; convictions.

Sec. 21313. (1) The owner, operator, and governing body of a home for the aged are responsible for all phases of the operation of the home and shall assure that the home maintains an organized program to provide room and board, protection, supervision, assistance, and supervised personal care for its residents.

(2) The owner, operator, and governing body shall assure the availability of emergency medical care required by a resident.

(3) The owner, operator, or member of the governing body of a home for the aged and the authorized representative shall be of good moral character.

(4) The department of human services shall not issue a license to or renew the license of an owner, operator, or member of the governing body, who has regular direct access to residents or who has on-site facility operational responsibilities, or an applicant, if an individual or the authorized representative, if any of those individuals have been convicted of 1 or more of the following:

(a) A felony under this act or under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(b) A misdemeanor under this act or under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r, within the 10 years immediately preceding the application.

(c) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor described in this subdivision within the 10 years immediately preceding the application.

(5) The applicant for a license for a home for the aged, if an individual, shall give written consent at the time of license application and the authorized representative shall give written consent at the time of appointment, for the department of state police to conduct both of the following:

(a) A criminal history check.

(b) A criminal records check through the federal bureau of investigation.

(6) Unless already submitted under subsection (5), an owner, operator, or member of the governing body who has regular direct access to residents or who has on-site facility operational responsibilities for a home for the aged shall give written consent at the time of license application for the department of state police to conduct both of the following:

(a) A criminal history check.

(b) A criminal records check through the federal bureau of investigation.

(7) The department of human services shall require the applicant, authorized representative, owner, operator, or member of the governing body who has regular direct access to residents or who has on-site facility operational responsibilities to submit his or her fingerprints to the department of state police for the criminal history check and criminal records check described in subsections (5) and (6).

(8) Not later than 1 year after the effective date of the 2012 amendatory act that amended this subsection, all owners, operators, and members of the governing body of homes for the aged who have regular direct access to residents or who have on-site facility operational responsibilities and all authorized representatives shall comply with the requirements of this section.

(9) The department of human services shall request a criminal history check and criminal records check in the manner prescribed by the department of state police. The department of state police shall conduct the criminal history check and provide a report of the results to the licensing or regulatory bureau of the department of human services. The report shall contain any criminal history information on the person

maintained by the department of state police and the results of the criminal records check from the federal bureau of investigation. The department of state police may charge the person on whom the criminal history check and criminal records check are performed under this section a fee for the checks required under this section that does not exceed the actual cost and reasonable cost of conducting the checks.

(10) Beginning the effective date of the 2012 amendatory act that added this subsection, if an applicant, authorized representative, owner, operator, or member of the governing body who has regular direct access to residents or who has on-site facility operational responsibilities applies for a license or to renew a license to operate a home for the aged and previously underwent a criminal history check and criminal records check required under subsection (5) or (6) or under section 134a of the mental health code, 1974 PA 258, MCL 330.1134a, and has remained continuously licensed or continuously employed under section 20173a or under section 34b of the adult foster care facility licensing act, 1979 PA 218, MCL 400.734b, after the criminal history check and criminal records check have been performed, the applicant, authorized representative, owner, operator, or member of the governing body who has regular direct access to residents or who has on-site facility operational responsibilities is not required to submit to another criminal history check or criminal records check upon renewal of the license obtained under this section.

(11) The department of state police shall store and maintain all fingerprints submitted under this act in an automated fingerprint identification system database that provides for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this act. At the time of that notification, the department of state police shall immediately notify the department of human services. The department of human services shall take the appropriate action upon notification by the department of state police under this subsection.

(12) An applicant, owner, operator, member of a governing body, or authorized representative of a home for the aged shall not be present in a home for the aged if he or she has been convicted of either of the following:

(a) Vulnerable adult abuse, neglect, or financial exploitation.

(b) A listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 2010, Act 381, Imd. Eff. Dec. 22, 2010;—Am. 2012, Act 51, Imd. Eff. Mar. 13, 2012.

Popular name: Act 368

333.21321 Bond required.

Sec. 21321. (1) Before issuance of a license under this article, the owner, operator, or governing body of the applicant shall give a bond with a surety approved by the department. The bond shall insure the department for the benefit of the residents. The bond shall be conditioned that the applicant do all of the following:

(a) Hold separately and in trust all resident funds deposited with the applicant.

(b) Administer the funds on behalf of a resident in the manner directed by the depositor.

(c) Render a true and complete account to the resident, the depositor, and the department when requested.

(d) Account, on termination of the deposit, for all funds received, expended, and held on hand.

(2) The bond shall be in an amount equal to not less than 1-1/4 times the average balance of resident funds held during the prior year. The department may require an additional bond or permit filing of a bond in a lower amount, if the department determines that a change in the average balance has occurred or may occur. An applicant for a new license shall file a bond in an amount which the department estimates as 1-1/4 times the average amount of funds which the applicant, upon issuance of the license, is likely to hold during the first year of operation.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368

333.21325 Removal of resident from home for the aged; conditions.

Sec. 21325. If a resident of a home for the aged is receiving care in the facility in addition to the room, board, and supervised personal care specified in section 20106(3), as determined by a physician, the department shall not order the removal of the resident from the home for the aged if both of the following conditions are met:

(a) The resident, the resident's family, the resident's physician, and the owner, operator, and governing body of the home for the aged consent to the resident's continued stay in the home for the aged.

(b) The owner, operator, and governing body of the home for the aged commit to assuring that the resident receives the necessary additional services.

History: Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001.

Popular name: Act 368

333.21331 Licensee considered consumer of tangible personal property.

Sec. 21331. A licensee of a home for the aged operated for profit is considered to be the consumer, and not the retailer, of tangible personal property purchased and used or consumed in operation of the home.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368

333.21332 Home for the aged; influenza vaccination.

Sec. 21332. A home for the aged shall offer each resident, or shall provide each resident with information and assistance in obtaining, an annual vaccination against influenza in accordance with the most recent recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention, as approved by the department of community health.

History: Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001.

Popular name: Act 368

333.21333 Repealed. 2009, Act 188, Eff. May 1, 2010.

Compiler's note: The repealed section pertained to smoking policies in homes for the aged.

333.21335 Requirement of emergency generator system in home for the aged.

Sec. 21335. (1) Except as provided under subsection (2), a home for the aged seeking a license or a renewal of a license under this article shall have, at a minimum, an emergency generator system that during an interruption of the normal electrical supply is capable of both of the following:

(a) Providing not less than 4 hours of service.

(b) Generating enough power to provide lighting at all entrances and exits and to operate equipment to maintain fire detection, alarm, and extinguishing systems, telephone switchboards, heating plant controls, and other critical mechanical equipment essential to the safety and welfare of the residents, personnel, and visitors.

(2) A home for the aged that is licensed under this article on the effective date of the amendatory act that added this section is not required to comply with subsection (1) until that home for the aged undergoes any major building modification. As used in this section, "major building modification" means an alteration of walls that creates a new architectural configuration or revision to the mechanical or electrical systems that significantly revises the design of the system or systems. Major building modification does not include normal building maintenance, repair, or replacement with equivalent components or a change in room function.

(3) A home for the aged that is exempt from compliance under subsection (2) shall notify the local medical control authority and the local law enforcement agency that it does not have an emergency generator on site. Until a home for the aged undergoes any major building modification as provided under subsection (2), a home for the aged that is exempt from compliance under subsection (2) shall file with the department a copy of the home for the aged's written policies and procedures and existing plans or agreements for emergency situations, including in the event of an interruption of the normal electrical supply.

(4) A home for the aged that fails to comply with this section is subject to a civil penalty of not more than \$2,000.00 for each violation. Each day a violation continues is a separate offense and shall be assessed a civil penalty of not less than \$500.00 for each day during which the failure continues.

History: Add. 2004, Act 397, Eff. Apr. 15, 2005.

Popular name: Act 368