

SENATE BILL No. 1101

February 3, 2010, Introduced by Senators NOFS, OLSHOVE, CHERRY, PRUSI, HUNTER, JANSEN, BASHAM, GLEASON, WHITMER, ANDERSON, BRATER, BIRKHOLZ, BARCIA and ALLEN and referred to the Committee on Families and Human Services.

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 5 and 13 (MCL 400.705 and 400.713), section 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. 5. (1) "Good moral character" means good moral character
 2 as defined in ~~Act No. 381 of the Public Acts of 1974, being~~
 3 ~~sections 338.41 to 338.47 of the Michigan Compiled Laws 1974 PA~~
 4 **381, MCL 338.41 TO 338.47.**

5 (2) "Licensed hospice program" means a health care program
 6 that provides a coordinated set of services rendered at home or in
 7 an outpatient or institutional setting for individuals suffering
 8 from a disease or condition with a terminal prognosis and that is
 9 licensed under article 17 of the public health code, ~~Act No. 368 of~~

1 ~~the Public Acts of 1978, being sections 333.20101 to 333.22260 of~~
2 ~~the Michigan Compiled Laws 1978 PA 368, MCL 333.20101 TO 333.22260.~~

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

7 (4) "LICENSEE DESIGNEE" MEANS THE INDIVIDUAL DESIGNATED IN
8 WRITING BY THE OWNER OR PERSON WITH LEGAL AUTHORITY TO ACT ON
9 BEHALF OF THE COMPANY OR ORGANIZATION ON LICENSING MATTERS. ALL
10 LICENSE APPLICATIONS MUST BE SIGNED BY THE LICENSEE IN THE CASE OF
11 THE INDIVIDUAL OR MEMBER OF THE CORPORATION, COMPANY, OR
12 ORGANIZATION.

13 (5) ~~(4)~~"Mental illness" means a substantial disorder of
14 thought or mood that significantly impairs judgment, behavior,
15 capacity to recognize reality, or ability to cope with the ordinary
16 demands of life.

17 (6) ~~(5)~~"New construction" means a newly constructed facility
18 or a facility that has been completely renovated for use as an
19 adult foster care facility.

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

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

27 (3) Before issuing or renewing a license, the department shall

1 investigate the activities and standards of care of the applicant
2 and shall make an on-site evaluation of the facility. On-site
3 inspections conducted in response to the application may be
4 conducted without prior notice to the applicant. Subject to
5 subsections (9), (10), and (11), the department shall issue or
6 renew a license if satisfied as to all of the following:

7 (a) The financial stability of the facility.

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

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

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

17 (e) The good moral character of the person responsible for the
18 daily operations of the facility and all employees of the facility.
19 The applicant shall be responsible for assessing the good moral
20 character of the employees of the facility. The person responsible
21 for the daily operation of the facility shall be not less than 18
22 years of age.

23 (4) The department shall require an applicant or a licensee to
24 disclose the names, addresses, and official positions of all
25 persons who have an ownership interest in the adult foster care
26 facility. If the adult foster care facility is located on or in
27 real estate that is leased, the applicant or licensee shall

1 disclose the name of the lessor of the real estate and any direct
2 or indirect interest that the applicant or licensee has in the
3 lease other than as lessee.

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

6 (6) If applicable, a license shall state the type of
7 specialized program for which certification has been received from
8 the department.

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

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

1 purchaser of all licensure requirements.

2 (9) The department shall not issue a license to or renew the
3 license of ~~a person who~~ **AN APPLICANT IF THE INDIVIDUAL APPLICANT,**
4 **OR THE OWNER, PARTNER, OR DIRECTOR OF THE APPLICANT, IF OTHER THAN**
5 **AN INDIVIDUAL,** has been convicted of ~~a~~ **1 OR MORE OF THE FOLLOWING:**

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

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

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

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

27 (11) The department may refuse to issue a license to or renew

1 the license of an applicant if the department determines that the
2 applicant has a relationship with a former licensee whose license
3 under this act has been suspended, revoked, or nonrenewed under
4 subsection (9) or section 22 or a convicted person to whom a
5 license has been denied under subsection (9). This subsection
6 applies for 5 years after the suspension, revocation, or nonrenewal
7 of the former licensee's license or the denial of the convicted
8 person's license. For purposes of this subsection, an applicant has
9 a relationship with a former licensee or convicted person if the
10 former licensee or convicted person is involved with the facility
11 in 1 or more of the following ways:

12 (a) Participates in the administration or operation of the
13 facility.

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

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

16 (d) Has contact with residents or staff on the premises of the
17 facility.

18 (e) Is employed by the facility.

19 (f) Resides in the facility.

20 (12) If the department determines that an unlicensed facility
21 is an adult foster care facility, the department shall notify the
22 owner or operator of the facility that it is required to be
23 licensed under this act. A person receiving the notification
24 required under this section who does not apply for a license within
25 30 days is subject to the penalties described in subsection (13).

26 (13) Subject to subsection (12), a person who violates
27 subsection (1) is guilty of a misdemeanor, punishable by

1 imprisonment for not more than 2 years or a fine of not more than
2 \$50,000.00, or both. A person who has been convicted of a violation
3 of subsection (1) who commits a second or subsequent violation is
4 guilty of a felony, punishable by imprisonment for not more than 5
5 years or a fine of not more than \$75,000.00, or both.

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

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

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

23 (15) The determination of the completeness of an application
24 does not operate as an approval of the application for the license
25 and does not confer eligibility of an applicant determined
26 otherwise ineligible for issuance of a license.

27 (16) If the department fails to issue or deny a license within

1 the time required by this section, the department shall return the
2 license fee and shall reduce the license fee for the applicant's
3 next renewal application, if any, by 15%. Failure to issue or deny
4 a license within the time period required under this section does
5 not allow the department to otherwise delay processing an
6 application. The completed application shall be placed in sequence
7 with other completed applications received at that same time. The
8 department shall not discriminate against an applicant in the
9 processing of an application based on the fact that the application
10 fee was refunded or discounted under this subsection.

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

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

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

25 (b) The number of applications requiring a request for
26 additional information.

27 (c) The number of applications rejected.

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

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

5 (19) A PERSON OR PARTNER SHALL GIVE WRITTEN CONSENT AT THE
6 TIME OF ORIGINAL LICENSE APPLICATION, OR LICENSEE DESIGNEE AT THE
7 TIME OF APPOINTMENT, FOR THE DEPARTMENT OF STATE POLICE TO CONDUCT
8 THE CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK REQUIRED
9 UNDER THIS SECTION.

10 (20) THE DEPARTMENT SHALL REQUEST A CRIMINAL HISTORY CHECK AND
11 CRIMINAL RECORDS CHECK REQUIRED UNDER THIS SECTION IN THE MANNER
12 PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THE DEPARTMENT OF
13 STATE POLICE SHALL CONDUCT THE CRIMINAL HISTORY CHECK AND PROVIDE A
14 REPORT OF THE RESULTS TO THE LICENSING OR REGULATORY BUREAU OF THE
15 DEPARTMENT. THE REPORT SHALL CONTAIN ANY CRIMINAL HISTORY
16 INFORMATION ON THE PERSON MAINTAINED BY THE DEPARTMENT OF STATE
17 POLICE AND THE RESULTS OF THE CRIMINAL RECORDS CHECK FROM THE
18 FEDERAL BUREAU OF INVESTIGATION. THE DEPARTMENT OF STATE POLICE MAY
19 CHARGE THE APPLICANT, LICENSEE, OR LICENSEE DESIGNEE A FEE FOR A
20 CRIMINAL HISTORY CHECK AND A CRIMINAL RECORDS CHECK REQUIRED UNDER
21 THIS SECTION THAT DOES NOT EXCEED THE ACTUAL COST AND REASONABLE
22 COST OF CONDUCTING THE CHECK.

23 (21) NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THE
24 AMENDATORY ACT THAT ADDED THIS SUBSECTION, ALL ADULT FOSTER CARE
25 LICENSEES AND LICENSEE DESIGNEES OF FACILITIES LICENSED ON THE
26 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION
27 SHALL COMPLETE A CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK.

1 (22) BEGINNING JANUARY 1, 2010, IF A PERSON APPLIES TO RENEW A
2 LICENSE TO OPERATE AN ADULT FOSTER CARE FACILITY AND HE OR SHE OR
3 THE LICENSEE DESIGNEE PREVIOUSLY UNDERWENT A CRIMINAL HISTORY CHECK
4 AND CRIMINAL RECORDS CHECK REQUIRED UNDER SUBSECTION (19) AND HAS
5 REMAINED CONTINUOUSLY LICENSED AFTER THE CRIMINAL HISTORY CHECK AND
6 CRIMINAL RECORDS CHECK HAVE BEEN PERFORMED, THAT PERSON IS NOT
7 REQUIRED TO SUBMIT TO ANOTHER CRIMINAL HISTORY CHECK OR CRIMINAL
8 RECORDS CHECK UPON RENEWAL OF THE LICENSE OBTAINED UNDER SUBSECTION
9 (3).

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

19 (24) A LICENSEE OR LICENSEE DESIGNEE SHALL NOT BE PERMITTED ON
20 THE PREMISES OF AN ADULT FOSTER CARE FACILITY IF HE OR SHE HAS BEEN
21 CONVICTED OF ANY OF THE FOLLOWING: ADULT ABUSE, NEGLECT, OR
22 FINANCIAL EXPLOITATION; OR LISTED OFFENSES AS DEFINED IN SECTION 2
23 OF THE SEX OFFENDERS REGISTRATION ACT, 1943 PA 295, MCL 28.722.

24 (25) ~~(19)~~As used in this section, "completed application"
25 means an application complete on its face and submitted with any
26 applicable licensing fees as well as any other information,
27 records, approval, security, or similar item required by law or

1 rule from a local unit of government, a federal agency, or a
2 private entity but not from another department or agency of this
3 state. ~~Beginning October 1, 2005, a~~ ~~A~~ completed application does
4 not include a health inspection performed by a local health
5 department.