

Act No. 380
Public Acts of 2010
Approved by the Governor
December 22, 2010
Filed with the Secretary of State
December 22, 2010
EFFECTIVE DATE: December 22, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Senators Nofs, Olshove, Cherry, Prusi, Hunter, Jansen, Basham, Gleason, Whitmer, Anderson, Brater, Birkholz, Barcia and Allen

ENROLLED SENATE BILL No. 1101

AN ACT to amend 1979 PA 218, entitled "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 and other departments; to prescribe certain fees; to prescribe penalties; and to repeal certain acts and parts of acts," by amending sections 4, 5, and 13 (MCL 400.704, 400.705, and 400.713), sections 4 and 5 as amended by 1996 PA 194 and section 13 as amended by 2004 PA 281.

The People of the State of Michigan enact:

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

(2) "Department" means the department of human services.

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

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

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

(6) "Do-not-resuscitate order" means a document executed according to section 3 of the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1053, directing that, in the event a resident suffers cessation of both spontaneous respiration and circulation, no resuscitation will be initiated.

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

Sec. 5. (1) "Good moral character" means good moral character as defined in 1974 PA 381, MCL 338.41 to 338.47.

(2) "Licensed hospice program" means a health care program that provides a coordinated set of services rendered at home or in an outpatient or institutional setting for individuals suffering from a disease or condition with a terminal prognosis and that is licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

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

(4) "Licensee designee" means the individual designated in writing by the owner or person with legal authority to act on behalf of the company or organization on licensing matters. The licensee designee who is not an owner, partner, or director of the applicant shall not sign the original license application or amendments to the application.

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

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

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

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

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

(a) The financial stability of the facility.

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

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

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

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

(4) The department shall require an applicant or a licensee to disclose the names, addresses, and official positions of all persons who have an ownership interest in the adult foster care facility. If the adult foster care facility is located on or in real estate that is leased, the applicant or licensee shall disclose the name of the lessor of the real estate and any direct or indirect interest that the applicant or licensee has in the lease other than as lessee.

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

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

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

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

(9) The department shall not issue a license to or renew the license of an owner, partner, or director of the applicant, who has regular direct access to residents or who has on-site facility operational responsibilities, or an applicant or the licensee designee, 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.

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

(11) The department may refuse to issue a license to or renew the license of an applicant if the department determines that the applicant has a relationship with a former licensee whose license under this act has been suspended, revoked, or nonrenewed under subsection (9) or section 22 or a convicted person to whom a license has been denied under subsection (9). This subsection applies for 5 years after the suspension, revocation, or nonrenewal of the former licensee's license or the denial of the convicted person's license. For purposes of this subsection, an applicant has a

relationship with a former licensee or convicted person if the former licensee or convicted person is involved with the facility in 1 or more of the following ways:

- (a) Participates in the administration or operation of the facility.
- (b) Has a financial interest in the operation of the facility.
- (c) Provides care to residents of the facility.
- (d) Has contact with residents or staff on the premises of the facility.
- (e) Is employed by the facility.
- (f) Resides in the facility.

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

(13) Subject to subsection (12), a person who violates subsection (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years or a fine of not more than \$50,000.00, or both. A person who has been convicted of a violation of subsection (1) who commits a second or subsequent violation is guilty of a felony, punishable by imprisonment for not more than 5 years or a fine of not more than \$75,000.00, or both.

(14) The department shall issue an initial or renewal license not later than 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. If the department identifies a deficiency or requires the fulfillment of a corrective action plan, the 6-month period is tolled until either of the following occurs:

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

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

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

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

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

(18) The director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with human services issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

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

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

(c) The number of applications rejected.

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

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

(19) An applicant, if an individual, shall give written consent at the time of original license application for the department of state police to conduct the criminal history check and criminal records check required under this section. A licensee designee shall give written consent at the time of appointment for the department of state police to conduct the criminal history check and criminal records check required under this section.

(20) Unless already submitted under subsection (19), an owner, partner, or director of the applicant who has regular direct access to residents or who has on-site facility operational responsibilities shall give written consent at the time of original license application for the department of state police to conduct the criminal history check and criminal records check required under this section.

(21) The department shall request a criminal history check and criminal records check required under this section 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. 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 that does not exceed the actual and reasonable cost of conducting the checks.

(22) Not later than 1 year after the effective date of the 2010 amendatory act that added this subsection, all licensees and licensee designees of facilities licensed on the effective date of the amendatory act that added this subsection and all persons described in subsection (20) shall comply with the requirements of this section.

(23) Beginning the effective date of the 2010 amendatory act that added this subsection, if an applicant or licensee designee or person described in subsection (20) applies for a license or to renew a license to operate an adult foster care facility and he or she or the licensee designee previously underwent a criminal history check and criminal records check required under subsection (19) or (20) and has remained continuously licensed after the criminal history check and criminal records check have been performed, that person is not required to submit to another criminal history check or criminal records check upon renewal of the license obtained under subsection (3).

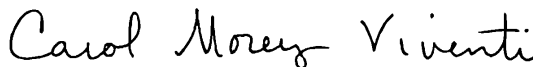
(24) The department of state police shall store and maintain all fingerprints submitted under this act in an automated fingerprint identification system database that provides for an automatic notification at the time of a subsequent criminal arrest fingerprint card submitted into the system that matches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

(25) A licensee, licensee designee, owner, partner, or director of the licensee shall not be permitted on the premises of an adult foster care facility if he or she has been convicted of any of the following: adult abuse, neglect, or financial exploitation; or listed offenses as defined in section 2 of the sex offenders registration act, 1943 PA 295, MCL 28.722.

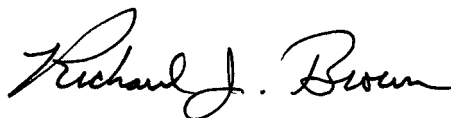
(26) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state. A completed application does not include a health inspection performed by a local health department.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1102 of the 95th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor