

Legislative Analysis



ADULT FOSTER CARE FACILITY LICENSING

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5505 as enacted
Public Act 557 of 2018
Sponsor: Rep. Frank Liberati

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

House Bill 5506 as enacted
Public Act 558 of 2018
Sponsor: Rep. Daire Rendon

House Bill 6400 as enacted
Public Act 513 of 2018
Sponsor: Rep. Jeffrey R. Noble

House Committee: Families, Children, and Seniors
Senate Committee: Health Policy
Complete to 6-25-19

BRIEF SUMMARY:

House Bills 5505 and 5506, taken together, amend the Adult Foster Care Facility Licensing Act to revise various provisions concerning licensure, renewal procedures, fees, inspection, and contested cases and administrative review of appeals, as well as removing outdated provisions and making technical or editorial changes.

House Bill 6400 amends the Michigan Zoning Enabling Act to specify that a private residence housing up to four adults who receive benefits from a community mental health services program is a residential use of property if certain conditions are met.

The bills took effect March 28, 2019.

House Bill 5505

Under the Adult Foster Care Facility Licensing Act, a person may not establish or maintain an adult foster care facility unless licensed by the Department of Licensing and Regulatory Affairs (LARA). Before issuing or renewing a license, LARA must, among other things, investigate the applicant's activities and standards of care and make an on-site evaluation of the facility.

Definitions and Applicability

The bill revises the definitions of *adult foster care family home* and *adult foster care small group home* to require that each of these facility types must have the approved capacity to receive at least three adults to be provided with foster care. (The act did not previously specify a minimum capacity for either facility type.)

The bill stipulates that an *adult foster care facility* does not include a private residence with the capacity to receive up to four adults who all receive benefits from a community mental health services program if the services being delivered in the residential setting are monitored by the local community mental health services program. The bill also allows an alcohol or substance abuse disorder rehabilitation center to be considered an adult foster care facility if it is licensed as both a substance use disorder program and an adult foster care facility and approved as a co-occurring enhanced crisis residential program (as defined in the bill).

The bill also specifies that providing room under a landlord-and-tenant arrangement does not, by itself, exclude a person from the licensure requirements of the act.

Inspections

The act allows LARA to conduct, without prior notice, on-site inspections of an applicant for licensure as an adult foster care facility. The bill adds that on-site inspections of an applicant for renewal may be conducted within 12 months before the current license expires without having an impact on the license renewal date or license fee.

Good Moral Character

Previously, before issuing a license, LARA had to be satisfied as to the good moral character of the person responsible for the daily operations of the facility and all employees of the facility.

The bill revises this to refer to the good moral character of the licensee or licensee designee, owner, partner, director, and person responsible for the daily operations of the facility.

License Transferability

Under the act, a license issued to a specific person for a facility at a specific location is not transferable. The bill removes an exception to this that applied to homes closed because of eminent domain.

Previous Application Denial

The act allows LARA to refuse to issue or renew the license of a person for five years after the person's license was revoked, suspended, or not renewed. The bill adds to this provision a person whose license application was denied.

Consent to Criminal History Check

Under the act, an applicant must give consent at the time of original license application for the state police to conduct a criminal history check and a criminal records check through the FBI.

The bill further requires the owner, partner, or director of the applicant who has regular direct access to residents or has on-site operational responsibilities to give such consent.

However, under the bill, any of these individuals is exempt from this requirement if he or she already submitted consent and was continuously affiliated with a licensed adult foster care facility as an applicant, owner, partner, or director.

Concurrent Licensure

Under the bill, an adult foster family care home or an adult foster care group home may not be concurrently licensed as a family child care home or a group child care home.

Application Fees

The bill increases application fees for temporary and renewal licenses in two stages, with an initial increase beginning January 1, 2020, and another increase beginning January 1, 2022.

The bill also eliminates the difference between fees for temporary and renewal licenses; beginning January 1, 2020, each license type will be subject to the same fee.

Current fees, and those under the bill, are as follows:

Adult Foster Care Facility License Fee Increases

| Facility Type | Current Temporary License Fee | Current Renewal Fee | Fee Beginning 2020 | Fee Beginning 2022 |
|--------------------------------------|--------------------------------------|----------------------------|---------------------------|---------------------------|
| Family Home | \$ 65 | \$ 25 | \$ 85 | \$ 100 |
| Small Group Home (up to 6 residents) | \$ 105 | \$ 25 | \$ 130 | \$ 150 |
| Small Group Home (7 to 12 residents) | \$ 135 | \$ 60 | \$ 170 | \$ 200 |
| Large Group Home | \$ 170 | \$ 100 | \$ 320 | \$ 500 |
| Congregate Facility | \$ 220 | \$150 | \$ 360* | \$ 500* |
| Camp | \$ 40 | \$ 25 | \$ 120 | \$ 200 |

*Renewal licenses only

Relationship with Former Licensee or Former Applicant

Under the act, LARA may deny, suspend, revoke, or modify a license or an application for licensure if it determines that the licensee or applicant has a relationship with a former licensee whose license has been suspended, revoked, denied, or refused renewal within the previous 10 years.

Under the bill, it may also do so if the licensee or applicant has a relationship with a former applicant whose application under the act was denied within the previous 10 years.

The bill also provides that LARA may deny an application based on a prior settlement agreement that prohibits a person from providing adult foster care.

Notice and Appeal of License/Application Actions

Under the bill, an application for licensure may not be denied, a license may not be revoked, a renewal may not be refused, and a regular license may not be modified to a provisional license unless LARA gives the applicant or licensee written notice of the grounds for the proposed denial, revocation, refusal to renew, or modification.

The applicant or licensee has 30 days after receiving the written notice in which to appeal the proposed action in writing to the director of LARA or the director's designee. If the proposed

action is not appealed within that time, LARA must carry out the action regarding the license or application.

Upon receipt of a written request for appeal, the director or the director's designee must conduct a contested case hearing under the Administrative Procedures Act. Notice of the hearing must be given to the applicant or licensee at least two weeks before the date of the hearing. The decision of the director or designee must be issued as soon as practicable after the hearing and forwarded to the protesting party by registered mail.

However, LARA may immediately deny an application or suspend, revoke, modify, or refuse to renew a license without providing written notice of the grounds for the action or giving the licensee or applicant 30 days to appeal if the licensee or applicant agrees in writing to waive all of the following:

- The requirement that LARA provide written notice of the grounds for the proposed action.
- The 30-day time frame in which to submit a written appeal to the proposed action.
- The right to a contested case hearing under the Administrative Procedures Act.

Emergency License

The bill eliminates provisions that allowed LARA, under certain conditions, to issue a 90-day emergency license in cases involving a license revocation, suspension, or nonrenewal.

Summary Suspension Order

Under the bill, when LARA issues a summary suspension order for closure of an adult foster care facility or when an adult foster care facility cannot provide adequate resident care, LARA must do the following:

- Ensure that the Department of Health and Human Services (DHHS) has been notified to make arrangements for the orderly and safe discharge and transfer of the residents to another facility or appropriate setting.
- Determine whether a representative of LARA must be placed in a facility on a daily basis to monitor the delivery of services during the discharge of residents to another facility or location.
- Determine whether the appointment of a temporary administrative or clinical advisor, with authority and duties specified by LARA, is necessary to assist the facility management and staff to oversee the orderly closure of the facility. The licensee would be required to pay the expense of the appointment.

MCL 400.703 et seq.

House Bill 5506

Review of Determinations Regarding Complaints

In general, a person who believes that the act or a rule under the act has been violated may request an investigation of an adult foster care facility. After receipt of the complaint, LARA must determine whether the act or rule was violated, or is currently being violated or in danger of being violated, and inform the complainant of its findings within 30 days. A complainant who is dissatisfied with a department determination or investigation may submit to the director a written request for a hearing.

The bill provides that, instead of a hearing, the dissatisfied complainant may request an administrative review by LARA. The administrative review must be conducted based on pertinent documentation or a verifiable statement submitted in writing by the complainant. LARA must send the results of the review to the complainant. If the review results in reconsideration of a complaint against the adult foster care facility, LARA must reopen the complaint investigation.

Criminal History Check Fee

Currently under the act, LARA must pay or reimburse any fee charged by the state police or the FBI for conducting a criminal history check. The facility, the staffing agency, or the individual who is the subject of the check may not be charged for such a fee, and the facility or staffing agency is prohibited from seeking reimbursement from the individual.

Under the bill, beginning July 1, 2020, the adult foster care facility, staffing agency, or individual must pay any fee charged by the state police or the FBI for conducting the criminal history check.

Denial of Employment Based on Criminal History Report

Previously, an individual who was denied or disqualified from employment based on a criminal history report could appeal to LARA if he or she believed the report to be inaccurate, and LARA would have to conduct the appeal as a contested case under the Administrative Procedures Act.

The bill instead requires LARA to conduct an administrative review. An individual denied or disqualified based on a conviction that may be expunged or set aside may file an appeal within 15 days after a court grants the expunction. The bill requires the director or his or her designee to review the appeal, along with the pertinent documentation, and to issue a written decision as soon as practicable. (Previously, the director had 30 business days after receiving such an appeal to issue the decision.)

Relying on Criminal History Report

The act allows an adult foster care facility or staffing agency to rely on criminal history record information provided by a licensing or regulatory department concerning an individual if certain conditions are met, including that the individual has been a resident of the state for 12 months and has been continuously employed by a relevant facility since the criminal history check was conducted. Previously under the act, these conditions included that the criminal history check was conducted within the previous 12-month period. Under the bill, the criminal history check must have been conducted during the immediately preceding 24-month period.

Repealer

Finally, the bill repeals section 23 of the act, which contained procedures for a complaint filed by the legislative body of a city, village, or township to have a facility's license denied or revoked.

MCL 400.724 et seq.

House Bill 6400

House Bill 6400 amends the Michigan Zoning Enabling Act, which specifies that a state-licensed residential facility is a residential use of property for the purpose of zoning, is a permitted use in all residential zones, and is not subject to any permits or procedures other than those required for other dwellings of similar density in the same zone.

Under the bill, these provisions also apply to a private residence with up to four adults who all receive benefits from a community mental health services program if the services being delivered in the residential setting are monitored by the local community mental health services program.

MCL 125.3206

FISCAL IMPACT:

House Bill 5505 would have a significant fiscal impact on LARA. The bill would increase fees for Adult Foster Care (AFC) licenses, with increases for both temporary licenses (the license issued to facilities during the first six months of operation) and renewal licenses (which are valid for a two-year period). The following tables display current licensure fees and the amount of the revised licensure fees that would begin on January 1, 2022, when the bill’s fee increases would be fully implemented, as well as the current number of renewal licensees.

Temporary License Fees

| Entity Type | Current Fee | Bill Fee (Beginning January 1, 2022) | Revenue Increase (Per License) |
|-------------------------|--------------------|---|---------------------------------------|
| Family Home | \$65 | \$100 | \$35 |
| Small Group Home (3-6) | \$105 | \$150 | \$45 |
| Small Group Home (7-12) | \$135 | \$200 | \$65 |
| Large Group Home | \$170 | \$500 | \$330 |
| Camp | \$40 | \$200 | \$160 |

Renewal License Fees

| Entity Type | Current Licensees | Current Fee | Bill Fee (Beginning January 1, 2022) | Revenue Increase (Per License) |
|-------------------------|-------------------|-------------|--------------------------------------|--------------------------------|
| Family Home | 802 | \$25 | \$100 | \$75 |
| Small Group Home (3-6) | 2,376 | \$25 | \$150 | \$125 |
| Small Group Home (7-12) | 483 | \$60 | \$200 | \$140 |
| Large Group Home | 563 | \$100 | \$500 | \$400 |
| Congregate Facility | 9 | \$150 | \$500 | \$350 |
| Camp | N/A | \$25 | \$200 | \$175 |

* License count data provided by LARA; no count was provided for camps.

LARA has indicated that it currently collects approximately \$83,000 in AFC licensing fees annually and that, beginning January 1, 2022, when the proposed fee increases are fully implemented, House Bill 5505 would increase the amount of revenue from temporary and renewal license fees by approximately \$410,000 annually. Of that amount, an estimated \$325,000 would come from the two-year renewal license fees each year. The department also indicated that total expenses for the AFC program total approximately \$11.0 million annually and are largely supported with GF/GP.

House Bill 5506 would have a significant impact on expenditures made by LARA related to AFC regulation. Under existing statute, LARA is responsible for covering the costs of criminal history checks conducted by the Michigan State Police for employees and independent contractors of AFC facilities. LARA indicated that costs for fingerprinting totaled \$1.1 million in Fiscal Year 2016-17 (primarily GF/GP). Under the bill, beginning July 1, 2020, these costs would no longer be paid by LARA; rather, they would be paid by the AFC facility, staffing agency, or individual.

House Bill 6400 would not have an impact on state or local expenditures or revenues.

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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.