

HOUSE BILL No. 4643

March 19, 2009, Introduced by Rep. Johnson and referred to the Committee on Regulatory Reform.

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 13, 16, and 18 (MCL 400.713, 400.716, and 400.718), section 13 as amended by 2004 PA 281.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

8 (3) Before issuing or renewing a license, the department shall
9 investigate the activities and standards of care of the applicant

1 and shall make an on-site evaluation of the facility. On-site
2 inspections conducted in response to the application may be
3 conducted without prior notice to the applicant. Subject to
4 subsections (9), (10), ~~and (11)~~, **AND (19)**, the department shall
5 issue or renew a license if satisfied as to all of the following:

6 (a) The financial stability of the facility.

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

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

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

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

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

1 or indirect interest that the applicant or licensee has in the
2 lease other than as lessee.

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

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

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

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

1 (9) The department shall not issue a license to or renew the
2 license of a person who has been convicted of a felony under this
3 act or under chapter XXA of the Michigan penal code, 1931 PA 328,
4 MCL 750.145m to 750.145r. The department shall not issue a license
5 to or renew the license of a person who has been convicted of a
6 misdemeanor under this act or under chapter XXA of the Michigan
7 penal code, 1931 PA 328, MCL 750.145m to 750.145r, for a period of
8 10 years after the conviction.

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

15 (11) The department may refuse to issue a license to or renew
16 the license of an applicant if the department determines that the
17 applicant has a relationship with a former licensee whose license
18 under this act has been suspended, revoked, or nonrenewed under
19 subsection (9) or section 22 or a convicted person to whom a
20 license has been denied under subsection (9). This subsection
21 applies for 5 years after the suspension, revocation, or nonrenewal
22 of the former licensee's license or the denial of the convicted
23 person's license. For purposes of this subsection, an applicant has
24 a relationship with a former licensee or convicted person if the
25 former licensee or convicted person is involved with the facility
26 in 1 or more of the following ways:

27 (a) Participates in the administration or operation of the

1 facility.

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

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

4 (d) Has contact with residents or staff on the premises of the
5 facility.

6 (e) Is employed by the facility.

7 (f) Resides in the facility.

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

14 (13) Subject to subsection (12), a person who violates
15 subsection (1) is guilty of a misdemeanor ~~7~~-punishable by
16 imprisonment for not more than 2 years or a fine of not more than
17 \$50,000.00, or both. A person who has been convicted of a violation
18 of subsection (1) who commits a second or subsequent violation is
19 guilty of a felony ~~7~~-punishable by imprisonment for not more than 5
20 years or a fine of not more than \$75,000.00, or both.

21 (14) Beginning ~~the effective date of the amendatory act that~~
22 ~~added this subsection~~ **JULY 23, 2004**, the department shall issue an
23 initial or renewal license not later than 6 months after the
24 applicant files a completed application. Receipt of the application
25 is considered the date the application is received by any agency or
26 department of this state. If the application is considered
27 incomplete by the department, the department shall notify the

1 applicant in writing or make notice electronically available within
2 30 days after receipt of the incomplete application, describing the
3 deficiency and requesting additional information. If the department
4 identifies a deficiency or requires the fulfillment of a corrective
5 action plan, the 6-month period is tolled until either of the
6 following occurs:

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

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

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

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

27 (17) If, on a continual basis, inspections performed by a

1 local health department delay the department in issuing or denying
2 licenses under this act within the 6-month period, the department
3 may use department staff to complete the inspections instead of the
4 local health department causing the delays.

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

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

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

16 (c) The number of applications rejected.

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

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

21 **(19) THERE SHALL BE NOT MORE THAN 1 ADULT FOSTER CARE FACILITY**
22 **PER 800 RESIDENTS WITHIN A MUNICIPALITY. IN DETERMINING WHETHER TO**
23 **APPROVE AN APPLICATION FOR AN ADULT FOSTER CARE FACILITY, THE**
24 **DEPARTMENT SHALL CONSIDER WHETHER THE NEW ADULT FOSTER CARE**
25 **FACILITY WOULD CAUSE THE NUMBER OF ADULT FOSTER CARE FACILITIES TO**
26 **BE GREATER THAN 1 PER 800 RESIDENTS WITHIN A MUNICIPALITY. IF THE**
27 **NEW ADULT FOSTER CARE FACILITY WOULD CAUSE THE NUMBER OF ADULT**

1 FOSTER CARE FACILITIES TO BE GREATER THAN 1 PER 800 RESIDENTS
2 WITHIN A MUNICIPALITY, THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO
3 THAT ADULT FOSTER CARE FACILITY. FOR THE PURPOSE OF DETERMINING THE
4 NUMBER OF ADULT FOSTER CARE FACILITIES IN A MUNICIPALITY, THE
5 DEPARTMENT SHALL INCLUDE AN ADULT FOSTER CARE FACILITY ISSUED A
6 SPECIAL LICENSE UNDER SECTION 18.

7 (20) ~~(19)~~As used in this section, "completed application"
8 means an application complete on its face and submitted with any
9 applicable licensing fees as well as any other information,
10 records, approval, security, or similar item required by law or
11 rule from a local unit of government, a federal agency, or a
12 private entity but not from another department or agency of this
13 state. ~~Beginning October 1, 2005, a~~ **A** completed application does
14 not include a health inspection performed by a local health
15 department.

16 Sec. 16. (1) ~~Unless~~ **SUBJECT TO SECTION 13(19), UNLESS** the
17 city, village, or township approves a temporary license, a
18 temporary license shall not be granted under this act if the
19 issuance of the license would substantially contribute to an
20 excessive concentration of community residential facilities within
21 a city, village, or township of this state.

22 (2) A temporary license shall not be granted under this act if
23 the proposed adult foster care facility for more than 6 adults has
24 not obtained zoning approval or obtained a special or conditional
25 use permit if required by an ordinance of the city, village, or
26 township in which the proposed facility is located.

27 (3) The department shall not issue a temporary license to an

1 adult foster care facility ~~which~~ **THAT** does not comply with section
2 ~~16a of Act No. 183 of the Public Acts of 1943, as amended, being~~
3 ~~section 125.216a of the Michigan Compiled Laws, section 16a of Act~~
4 ~~No. 184 of the Public Acts of 1943, as amended, being section~~
5 ~~125.286a of the Michigan Compiled Laws, and section 3b of Act No.~~
6 ~~207 of the Public Acts of 1921, as amended, being section 125.583b~~
7 ~~of the Michigan Compiled Laws~~ **206 OF THE MICHIGAN ZONING ENABLING**
8 **ACT, 2006 PA 110, MCL 125.3206.**

9 (4) This section shall not apply to an applicant who has
10 purchased a facility and the facility, at the time of the purchase,
11 or for 1 year preceding the application, was licensed under this
12 act or an act repealed by this act.

13 Sec. 18. (1) ~~A~~ **SUBJECT TO SECTION 13(19), A** special license
14 may be issued for the duration of the operation of an adult foster
15 care facility if the applicant is a short-term operation.

16 (2) The department may promulgate rules regulating the
17 issuance and duration of special licenses.

18 (3) **A SPECIAL LICENSE ISSUED UNDER THIS SECTION MUST COMPLY**
19 **WITH THE PROVISIONS OF SECTION 13(19).**