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BILL ANALYSIS



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Senate Bill 378 (as enacted)
Sponsor: Senator Marty Knollenberg
Senate Committee: Regulatory Reform
House Committee: Regulatory Reform

PUBLIC ACT 167 of 2017

Date Completed: 1-17-19

CONTENT

The bill amended the Public Health Code to do the following:

- **Modify the definition of "home for the aged" to refer to a facility at a single address, and to individuals 55 years of age or older, rather than 60 or older.**
- **Require the Department of Licensing and Regulatory Affairs (LARA) to make a determination, based on two sets of criteria, on whether a facility is exempt from licensure as a home for the aged.**
- **Require LARA to grant an exemption from licensure to an existing facility or a facility under construction, under certain circumstances.**
- **Specify that an exemption continues to exist for a successor owner, operator, or governing body under certain circumstances.**
- **Require LARA to act on an application for exemption no later than 60 days after receipt of the application.**
- **Allow LARA to revoke an exemption under certain circumstances.**
- **Specify that a denial of an application for exemption, an issuance of a fine, or a revocation of an exemption is subject to a review by LARA or an appeal, or both.**
- **Limit the number of criminal history checks of prospective employees that LARA must pay for, after October 1, 2018, to 40 per year for a home for the aged with fewer than 100 licensed beds, or 50 per year for a home for the aged with 100 or more beds.**
- **Require the Bureau of Fire Services to amend rules to allow facilities in existence on or before the bill's effective date and continuously operating up to the time of application for a home for the aged license, to be reviewed and inspected to comply with certain provisions of a National Fire Protection Association standard.**

The bill took effect on February 11, 2018.

Home for the Aged Definition

The bill defines "home for the aged" as a supervised personal care facility at a single address, other than a hotel, adult foster care facility, hospital, nursing home, or county medical care facility, that provides room, board, and supervised personal care to 21 or more unrelated, nontransient, individuals 55 years of age or older. The term includes a supervised personal care facility for 20 or fewer individuals 55 years of age or older if the facility is operated in conjunction with and as a distinct part of a licensed nursing home. Previously, the Code

referred to a supervised personal care facility that provided room, board, and supervised personal care to individuals 60 years of age or older.

The bill defines "supervised personal care" as the direct guidance or hands-on assistance with activities of daily living offered by a facility to its residents that include two 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:

- Direct and regular involvement by staff in assisting a resident with the administration of his or her prescription medications, including direct supervision of the resident taking medication in accordance with the instructions of his or her licensed health care professional.
- Hands-on assistance by staff in carrying out two or more of the following activities of daily living: eating, toileting, bathing, grooming, dressing, transferring, and mobility.
- 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.

Minimum Allowed Age

Previously, the Code prohibited a home for the aged from admitting an individual under 60 years of age, subject to the Director of LARA waiving the age limitation under certain circumstances. The bill changes the minimum age for a person to be admitted to a home for the aged from 60 to 55, subject to the waiver provisions.

Licensing Exemption

The Code requires a home for the aged to be licensed. Under the bill, LARA must make a determination that a facility is exempt from licensure as a home for the aged if the owner, operator, or governing body of the facility submits an attestation to LARA that certifies that one or two sets of criteria 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.

Under the first set of criteria, one of the following must be met:

- The person that offers board is not related to the person that provides room or supervised personal care, or both.
- 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 two consecutive years before the date of the required attestation and residents at the facility have the option to select any supervised personal care provider of their choice.

Under the second set of criteria, one of the following must met:

- 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, and includes a licensed nursing home as part of the continuing care community.
- 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.

("Continuing care community" means a retirement community in which a person undertakes to provide or arrange for continuing care, and that is one or more of the following:

- An adult foster care facility.
- A home for the aged.
- An independent living unit.
- A nursing home.
- A home health care services agency.
- Hospice.
- A place that undertakes to provide care to a member for more than one year.)

A granted exemption continues to exist for a successor owner, operator, or governing body if the successor files the attestation described above. An exemption under the first set of criteria may not be granted after December 31, 2019, except to a successor owner, operator, or governing body. An exemption under the second set of criteria is not limited to an existing facility or a facility under construction on or before February 11, 2018, as long as the bill's requirements are met.

The Department must act on an application for exemption as soon as practicable but no later than 60 days after receipt of the application for the exemption. 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 LARA or an appeal as provided in the Public Health Code, or both.

An exemption may be revoked if LARA determines one or more of the following:

- That the false or inaccurate information provided in the attestation was material to granting the exemption.
- The person receiving the exemption is found to be negligent, and that 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.
- The person receiving the exemption does not cooperate in LARA's investigation to make an exemption determination.

As used in these provisions, "board" means food service provided at a facility.

"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 any person that has a direct or indirect ownership interest in another entity that provides a component of operations or service concerning the provisions of room or supervised personal care.

"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. "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, the impairment of his or her bodily function, or the permanent disfigurement of a resident.

Criminal History Checks

Under the Code, a covered facility generally may not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct

services to patients or residents in the covered facility if he or she has been convicted of a crime listed in the Code, or meets other criteria. (A covered facility is a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency.)

A covered facility may not employ, independently contract with, or grant privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the covered facility until the facility or staffing agency has a criminal history check conducted in compliance with the Code or has received criminal history record information, subject to certain exceptions. The Code establishes procedures regarding the consent, request, and possession of a criminal history check.

After receiving from an applicant a written consent to conduct a criminal history check and required identification check, a staffing agency or covered facility that has made an offer of employment or an independent contract or clinical privileges to the applicant must request the Michigan State Police (MSP) to conduct a criminal history check on the applicant, enter his or her fingerprints into the automated fingerprint identification system database, and forward the applicant's fingerprints to the FBI. The MSP must request the FBI to determine the existence of any national criminal history pertaining to the applicant. The applicant must provide the MSP with a set of fingerprints.

If the MSP or the FBI charges a fee for conducting the criminal history check, the staffing agency or covered facility must pay the cost of the charge; however, LARA must pay the charge for a covered facility that is a home for the aged. A prospective employee or prospective independent contractor may not be charged for the cost of a criminal history check.

Under the bill, LARA must pay the cost of the MSP or FBI charge for up to 40 criminal history checks per year for a covered facility that is a home for the aged with fewer than 100 beds, and 50 checks per year for a home for the aged with 100 beds or more.

Fire Inspection & Review

Under the Code, the Bureau of Fire Services must enforce rules promulgated by the Bureau for health facilities and agencies to ensure that physical facilities owned, maintained, or operated by a health facility or agency are planned, constructed, and maintained in a manner to protect the health, safety, and welfare of patients.

The Department of Licensing and Regulatory Affairs may not issue a license or certificate to a health facility or agency until it receives an appropriate certificate of approval from the Bureau of Fire Services.

Under the bill, beginning on February 11, 2018, the Bureau of Fire Services must amend the rules to allow facilities in existence on or before the bill's effective date and continuously operating up to the time of application for a home for the aged license, to be reviewed and inspected to comply with the provisions of Chapter 18 or 19 or Chapter 32 or 33 of the National Fire Protection Association (NFPA) Standard No. 101.

An applicant for a license or certificate must provide information requested by LARA to verify that the facility was in existence on or before February 11, 2018, and has been continuously operating up to the time of application.

(The NFPA Standard No. 101, known as the Life Safety Code, governs construction and operating conditions for health care organizations. Chapters 18 and 19, and 32 and 33, pertain to health care occupancies and residential board and care occupancies, respectively.)

MCL 333.20106 et al.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local units of government. The bill effectively caps the amount LARA must pay out for employee background checks per facility. According to LARA, the caps on background checks will not significantly change the number that it pays for currently, but rather will control its costs going forward. In fiscal year (FY) 2015-16, LARA paid a total of about \$585,500 for background checks for employees at homes for the aged.

Another impact of the bill will be on the number of homes for the aged licensed as such. The bill specifies criteria under which a facility may be exempt from licensure as a home for the aged; it is unknown how many facilities will pursue exemption but those that do will reduce revenue received by LARA, as well as expenditures associated with licensure. The homes for the aged licensure program receives revenue from an annual fee of \$6.27 per bed, which in FY 2015-16 generated about \$108,000. The Department's total expenditures for the program in that year were about \$960,000, with the expenditures in excess of fee revenue covered by Federal sources as well as the State General Fund. Any reduction in the number of licensed homes for the aged will result in some savings to the General Fund.

Additionally, the bill establishes a way for currently unlicensed facilities operating before the date the bill went into effect, to pursue licensure with relaxed facilities requirements. To the extent that this provision causes additional facilities to pursue licensure, LARA will require additional resources from the State General Fund.

As of June 2017, there were 232 licensed homes for the aged. It is unknown what the net impact on the number of licensed facilities will be under the bill, so the fiscal impact of the bill is indeterminate.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.