

Act No. 525
Public Acts of 2016
Approved by the Governor
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STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016

Introduced by Reps. Cox, Kosowski, Heise, LaFontaine, Inman, Santana and Darany

ENROLLED HOUSE BILL No. 5774

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 the title and sections 3, 4, 10, 11, and 20 (MCL 400.703, 400.704, 400.710, 400.711, and 400.720), the title as amended by 1992 PA 176, sections 3 and 10 as amended by 2014 PA 450, section 4 as amended by 2013 PA 156, and sections 11 and 20 as amended by 2006 PA 201, and by adding section 22b.

The People of the State of Michigan enact:

TITLE

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 licensing and regulatory affairs and other departments; to prescribe certain fees; to prescribe penalties; and to repeal certain acts and parts of acts.

Sec. 3. (1) “Adult” means:

- (a) A person 18 years of age or older.
- (b) A person who is placed in an adult foster care family home or an adult foster care small group home according to section 5(6) or (8) of 1973 PA 116, MCL 722.115.
- (2) “Adult foster care camp” or “adult camp” means an adult foster care facility with the approved capacity to receive more than 4 adults to be provided foster care. An adult foster care camp is a facility located in a natural or rural environment.
- (3) “Adult foster care congregate facility” means an adult foster care facility with the approved capacity to receive more than 20 adults to be provided with foster care.
- (4) “Adult foster care facility” means a governmental or nongovernmental establishment that provides foster care to adults. Subject to section 26a(1), adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care. Adult foster care facility does not include any of the following:
 - (a) A nursing home licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.
 - (b) A home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.
 - (c) A hospital licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.
 - (d) A hospital for the mentally ill or a facility for the developmentally disabled operated by the department of health and human services under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(e) A county infirmary operated by a county department of health and human services under section 55 of the social welfare act, 1939 PA 280, MCL 400.55.

(f) A child caring institution, children's camp, foster family home, or foster family group home licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, if the number of residents who become 18 years of age while residing in the institution, camp, or home does not exceed the following:

- (i) Two, if the total number of residents is 10 or fewer.
- (ii) Three, if the total number of residents is not less than 11 and not more than 14.
- (iii) Four, if the total number of residents is not less than 15 and not more than 20.
- (iv) Five, if the total number of residents is 21 or more.

(g) A foster family home licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, that has a person who is 18 years of age or older placed in the foster family home under section 5(7) of 1973 PA 116, MCL 722.115.

(h) An establishment commonly described as an alcohol or a substance use disorder rehabilitation center, a residential facility for persons released from or assigned to adult correctional institutions, a maternity home, or a hotel or rooming house that does not provide or offer to provide foster care.

(i) A facility created by 1885 PA 152, MCL 36.1 to 36.12.

(j) An area excluded from the definition of adult foster care facility under section 17(3) of the continuing care community disclosure act, 2014 PA 448, MCL 554.917.

(5) "Adult foster care family home" means a private residence with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks. The adult foster care family home licensee shall be a member of the household, and an occupant of the residence.

(6) "Adult foster care large group home" means an adult foster care facility with the approved capacity to receive at least 13 but not more than 20 adults to be provided with foster care.

(7) "Adult foster care small group home" means an adult foster care facility with the approved capacity to receive 12 or fewer adults to be provided with foster care.

(8) "Aged" means an adult whose chronological age is 60 years of age or older or whose biological age, as determined by a physician, is 60 years of age or older.

(9) "Assessment plan" means a written statement prepared in cooperation with a responsible agency or person that identifies the specific care and maintenance, services, and resident activities appropriate for each individual resident's physical and behavioral needs and well-being and the methods of providing the care and services taking into account the preferences and competency of the individual.

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

(2) "Department" means the department of licensing and regulatory affairs.

(3) "Developmental disability" means that term 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 under the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1051 to 333.1067, 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. 10. (1) The department shall promulgate rules according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the areas provided under subsection (4).

(2) The bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b, shall promulgate rules providing for adequate fire prevention and safety in an adult foster care facility licensed or proposed to be licensed for more than 6 adults. The rules shall be promulgated in cooperation with the department and the state fire safety board and shall provide for the protection of the health, safety, and welfare of the adults residing in a facility. The bureau of fire services shall promulgate the rules according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A person may request a variance from the application of a rule promulgated under this subsection by application to the state fire marshal. The state fire marshal may make a variance upon a finding that the variance does not result in a hazard to life or property. The finding shall be transmitted to the person requesting the variance and shall be entered into the records of the bureau of fire services. If the variance requested concerns a building, the finding shall also be transmitted to the governing body of the city, village, or township in which the building is located. The entire state fire safety board shall act as a hearing body in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to review and render decisions on a ruling of the state fire

marshal interpreting or applying these rules. After a hearing, the state fire safety board may modify the ruling of the state fire marshal if the enforcement of the ruling would do manifest injustice and would be contrary to the spirit and purpose of the rules or the public interest. A decision of the state fire safety board to modify or change a ruling of the state fire marshal shall specify in what manner the modification or change is made, the conditions upon which it is made, and the reasons for the modification or change.

(3) The department shall promulgate rules for the certification of specialized programs offered in an adult foster care facility to a mentally ill or developmentally disabled resident. The rules shall include provision for an appeal of a denial or limitation of the terms of certification to the department under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(4) The rules promulgated by the department under this act shall be restricted to the following:

(a) The operation and conduct of adult foster care facilities.

(b) The character, suitability, training, and qualifications of applicants and other persons directly responsible for the care and welfare of adults served.

(c) The general financial ability and competence of applicants to provide necessary care for adults and to maintain prescribed standards.

(d) The number of individuals or staff required to ensure adequate supervision and care of the adults served.

(e) The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate health standards to provide for the physical comfort, care, protection, and well-being of the adults received and maintenance of adequate fire protection for adult foster care facilities licensed to receive 6 or fewer adults. Rules promulgated in the areas provided by this subdivision shall be promulgated in cooperation with the state fire safety board.

(f) Provisions for food, clothing, educational opportunities, equipment, and individual supplies to ensure the healthy physical, emotional, and mental development of adults served.

(g) The type of programs and services necessary to provide appropriate care to each resident admitted.

(h) Provisions to safeguard the rights of adults served, including cooperation with rights protection systems established by law.

(i) Provisions to prescribe the rights of licensees.

(j) Maintenance of records pertaining to admission, progress, health, and discharge of adults. The rules promulgated under this subdivision shall include a method by which a licensee promptly shall notify the appropriate placement agency or responsible agent of any indication that a resident's assessment plan is not appropriate for that resident.

(k) Filing of reports with the department.

(l) Transportation safety.

(5) The rules promulgated under subsection (1) shall be reviewed by the council not less than once every 5 years.

(6) Rules promulgated under subsection (1) are subject to section 17 of the continuing care community disclosure act, 2014 PA 448, MCL 554.917.

Sec. 11. (1) The director, the director's agent, or personnel of another department or agency, acting at the request of the director, may enter upon the premises of an applicant or licensee at a reasonable time to make inspections, as permitted by applicable law, to determine whether the applicant or licensee is complying with this act and the rules promulgated under this act. On-site inspections may be conducted without prior notice to the adult foster care facility. A health and sanitation inspection of an adult foster care facility shall be conducted upon the request of the department by 1 of the following:

(a) Department staff.

(b) The department of health and human services.

(c) A local health department.

(2) The bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b, or local authorities, in carrying out this act, may visit an adult foster care facility more often than annually to advise in matters affecting health or fire protection. Inspections shall be made as permitted by law.

(3) An adult foster care facility shall be inspected for fire safety by 1 of the following:

(a) Department staff, if the facility is licensed or proposed to be licensed for 6 or fewer adults. The department may request that a fire safety inspection be performed by or at the direction of the bureau of fire services, for a facility licensed or proposed to be licensed for 6 or fewer adults, if such an inspection would result in the efficient administration of this act.

(b) The bureau of fire services or the designated representative of the bureau of fire services, if the facility is licensed or proposed to be licensed for more than 6 adults. The bureau of fire services shall inspect or have inspected for fire safety an adult foster care facility licensed or proposed to be licensed for 6 or fewer adults upon request by the department. The bureau of fire services may contract with the fire marshal of a city having a population of not less than 600,000 to inspect adult foster care facilities licensed or proposed to be licensed for more than 6 adults if the facility is

located within that city. The fire marshal of a city shall conduct an inspection in compliance with procedures established and on forms provided by the bureau of fire services.

(4) Except as provided in subsection (3)(b) and section 10(2), the inspector shall administer and enforce the rules promulgated by the department.

(5) Upon receipt of a request from an adult foster care facility for certification of a specialized program for developmentally disabled or mentally ill adults, the department shall inspect the facility to determine whether the proposed specialized program conforms with the requirements of applicable law and rules. The department shall provide the department of health and human services with an inspection report and a certification, denial of certification, or certification with limited terms for the proposed specialized program. The department shall reinspect a certified specialized program not less than once biennially. In carrying out this subsection, the department may contract with a county community mental health board or any other agency for services.

(6) Inspection reports required by this section shall be furnished to the department and shall be used in the evaluation for licensing of an adult foster care facility. The department shall consider the reports carefully and may make special consultations if necessary. The department shall be responsible for the final determination of the issuance, denial, or revocation and the temporary or provisional nature of a license issued to an adult foster care facility. A report of the department's findings shall be furnished to the licensee or applicant.

(7) The inspection reports required by this section shall be available for public inspection during reasonable business hours.

Sec. 20. (1) The department shall not issue a temporary, provisional, or regular license to an adult foster care facility with a capacity of more than 6 adults until the facility receives a certificate of approval from the bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b, after compliance with fire safety standards prescribed in rules promulgated by the bureau of fire services pursuant to section 10(2).

(2) The department shall not issue a license to an adult foster care facility indicating approval to operate a specialized program for developmentally disabled adults or mentally ill adults until the facility receives a certificate of approval as required under section 11(5).

(3) A licensee or applicant who is denied a certificate of approval by the bureau of fire services or who is denied or certified with limitations for a specialized program by the department may request a hearing. The hearing shall be conducted by the state fire safety board or the department, as applicable, under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

Sec. 22b. The community and health systems bureau within the department shall notify the clerk of the city, village, or township and the fire services bureau within the department shall notify the fire chief of an organized fire department of the emergency closure of an adult foster care facility contemporaneously when the summary suspension order is served.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor