ADULT FOSTER CARE FACILITY LICENSING ACT
Act 218 of 1979

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.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1992, Act 176, Imd. Eff. July 23, 1992;—Am. 2016, Act 525, Eff. Apr. 9, 2017.

Compiler's note: For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

The People of the State of Michigan enact:

400.701 Short title.

Sec. 1. This act shall be known and may be cited as the "adult foster care facility licensing act".

History: 1979, Act 218, Eff. Mar. 27, 1980.

Compiler's note: For transfer of powers and duties of adult foster care licensing and child welfare licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.702 Meanings of words and phrases.

Sec. 2. For the purposes of this act, the words and phrases defined in sections 3 to 7 have the meanings ascribed to them in those sections.

History: 1979, Act 218, Eff. Mar. 27, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.703 Definitions; A.

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 home or facility that provides foster care to adults. Subject to

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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 part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e.

(b) A home for the aged licensed under part 213 of the public health code, 1978 PA 368, MCL 333.21301 to 333.21335.

(c) A hospital licensed under part 215 of the public health code, 1978 PA 368, MCL 333.21501 to 333.21571.

(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, except if licensed as both a substance use disorder program and an adult foster care facility and approved as a co-occurring enhanced crisis residential program, 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.

(k) A private residence with the capacity to receive at least 1 but not more than 4 adults who all receive benefits from a community mental health services program if the local community mental health services program monitors the services being delivered in the residential setting.

(5) "Adult foster care family home" means a private residence with the approved capacity to receive at least 3 but not more than 6 adults to be provided with foster care. The adult foster care family home licensee must 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 at least 3 but not more than 12 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.

(10) "Board" means food service provided at the adult foster care facility.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1981, Act 124, Imd. Eff. July 23, 1981;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984;—Am. 1984, Act 140, Imd. Eff. June 1, 1984;—Am. 1990, Act 262, Eff. Mar. 28, 1991;—Am. 1991, Act 161, Imd. Eff. Dec. 9, 1991;—Am. 1995, Act 82, Imd. Eff. June 15, 1995;—Am. 1996, Act 194, Eff. Aug. 1, 1996;—Am. 1998, Act 442, Imd. Eff. Dec. 30, 1998;—Am. 2014, Act 450, Imd. Eff. Jan. 2, 2015;—Am. 2016, Act 525, Eff. Apr. 9, 2017;—Am. 2018, Act 388, Eff. Mar. 19, 2019;—Am. 2018, Act 557, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.704 Definitions; C to F.

Sec. 4. (1) "Co-occurring enhanced crisis residential program" means a program approved by the department of health and human services for providing short-term intensive mental health and substance use disorder services that is able to address the mental health needs, substance use disorder needs, or both of an individual through enhanced programming and staffing patterns that are reviewed and approved by the department of health and human services.

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

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

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

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

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

(7) "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.

(8) "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 provided at a single address. Providing room under a landlord and tenant arrangement does not, by itself, exclude a person from the licensure requirement under this act.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1996, Act 194, Eff. Aug. 1, 1996;—Am. 2010, Act 380, Imd. Eff. Dec. 22, 2010;—Am. 2013, Act 156, Eff. Feb. 4, 2014;—Am. 2016, Act 525, Eff. Apr. 9, 2017;—Am. 2018, Act 388, Eff. Mar. 19, 2019;—Am. 2018, Act 557, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.705 Definitions; G to N.

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 must meet the licensee qualification requirements of this act and rules promulgated under this act. 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.

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(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.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984;—Am. 1996, Act 194, Eff. Aug. 1, 1996;—Am. 2010, Act 380, Imd. Eff. Dec. 22, 2010;—Am. 2018, Act 557, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.706 Definitions; P to Q.

Sec. 6. (1) "Personal care" means personal assistance provided by a licensee or an agent or employee of a licensee to a resident who requires assistance with dressing, personal hygiene, grooming, maintenance of a medication schedule as directed and supervised by the resident's physician, or the development of those personal and social skills required to live in the least restrictive environment.

(2) "Physical disability" means a determinable physical characteristic of an individual that may result from disease, injury, congenital condition of birth, or functional disorder.

(3) "Physical plant" means the structure in which a facility is located and all physical appurtenances to the facility.

(4) "Physician orders for scope of treatment form" or "POST form" means that term as defined in section 5674 of the public health code, 1978 PA 368, MCL 333.5674.

(5) "Protection", subject to section 26a(2), means the continual responsibility of the licensee to take reasonable action to ensure the health, safety, and well-being of a resident, including protection from physical harm, humiliation, intimidation, and social, moral, financial, and personal exploitation while on the premises, while under the supervision of the licensee or an agent or employee of the licensee, or when the resident's assessment plan states that the resident needs continuous supervision.

(6) "Provisional license" means a license issued to a facility that has previously been licensed under this act or an act repealed by this act but is temporarily unable to conform to the requirements of a regular license prescribed in this act or rules promulgated under this act.

(7) "Quality of care" means the foster care of residents of a facility and other similar items not related to the physical plant that address themselves to the general physical and mental health, welfare, and well-being of residents.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1996, Act 194, Eff. Aug. 1, 1996;—Am. 1998, Act 442, Imd. Eff. Dec. 30, 1998;—Am. 2017, Act 156, Eff. Feb. 6, 2018.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.707 Definitions; R to T.

Sec. 7. (1) "Regular license" means a license issued to an adult foster care facility that is in compliance with this act and the rules promulgated under this act.

(2) "Related" means any of the following relationships by marriage, blood, or adoption: spouse, child, parent, brother, sister, grandparent, grandchild, aunt, uncle, stepparent, stepbrother, stepsister, or cousin.

(3) "Short-term operation" means an adult foster care facility that operates for a period of time less than 6

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months within a calendar year.

(4) "Special license" means a license issued for the duration of the operation of an adult foster care facility if the licensee is a short-term operation.

(5) "Specialized program" means a program of services or treatment provided in an adult foster care facility licensed under this act that is designed to meet the unique programmatic needs of the residents of that home as set forth in the assessment plan for each resident and for which the facility receives special compensation.

(6) "Special compensation" means payment to an adult foster care facility to ensure the provision of a specialized program in addition to the basic payment for adult foster care. Special compensation does not include payment received by the adult foster care facility directly from the Medicaid program for personal care services for a resident, or payment received under the supplemental security income program under title XVI of the social security act, 42 USC 1381 to 1383f.

(7) "Supervision" means guidance of a resident in the activities of daily living, including 1 or more of the following:

(a) Reminding a resident to maintain his or her medication schedule, as directed by the resident's physician.

(b) Reminding a resident of important activities to be carried out.

(c) Assisting a resident in keeping appointments.

(d) Being aware of a resident's general whereabouts even though the resident may travel independently about the community.

(8) "Temporary license" means a license issued to a facility that has not previously been licensed under this act or under former 1972 PA 287.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987;—Am. 2018, Act 557, Eff. Mar. 28, 2019.

Compiler's note: Act 287 of 1972, referred to in this section, was repealed by Act 218 of 1979.

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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Administrative rules: R 400.2101 et seq. of the Michigan Administrative Code.

400.708 Adult foster care licensing advisory council; creation; appointment, qualifications, and terms of members; vacancy; compensation; schedule for reimbursement; content and enforcement of rules; conducting business at public meeting; availability of writings to public.

Sec. 8. (1) The adult foster care licensing advisory council is created within the department. The council shall consist of 11 members, appointed by the director. The director shall appoint at least 1 member of the council from appropriate state and local agencies, private or public organizations, adult foster care providers, and residents of adult foster care facilities or their representatives. In appointing the first members of the council, the director shall appoint 3 members for a term of 1 year, 4 for 2 years, and 4 for 3 years. After the initial appointment, members shall serve 3-year terms. A vacancy shall be filled for the remainder of the unexpired term in the same manner as original appointments are made.

(2) The per diem compensation of the council members and the schedule for reimbursement of travel and other expenses shall be pursuant to the compensation and schedules established by the legislature. The council shall meet not more than once each month. The council shall advise the department on the content of rules and their enforcement.

(3) The business which the council may perform shall be conducted at a public meeting of the council held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

(4) Except as provided in section 12, a writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan

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Compiled Laws.

History: 1979, Act 218, Eff. Mar. 27, 1980.

Compiler's note: For transfer of powers and duties of the adult foster care licensing advisory council from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.709 Administration of act; reports, procedures, inspections, and investigations; advice and technical assistance; consultations; cooperation with other agencies; education of public.

Sec. 9. (1) The department shall administer this act and shall require reports, establish procedures, make inspections, and conduct investigations pursuant to law to enforce the requirements of this act and the rules promulgated under this act.

(2) The department shall provide advice and technical assistance to facilities covered by this act to assist facilities in meeting the requirements of this act and the rules promulgated under this act. The department shall offer consultation, upon request, in developing methods for the improvement of service. The department shall cooperate with other state departments and agencies and local units of government in administering this act.

(3) The department shall provide education to the public regarding the requirements of this act through the ongoing use of mass media and other methods.

History: 1979, Act 218, Eff. Mar. 27, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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Administrative rules: R 400.11101 et seq. of the Michigan Administrative Code.

400.710 Rules; variance, modification, or change; purposes; restriction; review; rules subject to MCL 554.917.

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

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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.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987;—Am. 2006, Act 201, Imd. Eff. June 19, 2006;—Am. 2014, Act 450, Imd. Eff. Jan. 2, 2015;—Am. 2016, Act 525, Eff. Apr. 9, 2017.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

Administrative rules: R 400.1401 et seq.; R 400.1601 et seq.; R 400.2101 et seq.; R 400.11101 et seq.; and R 400.16001 of the Michigan Administrative Code.

400.711 Inspections; visitations; administration and enforcement of rules; reports; final determination as to license; public inspection of reports; biannual inspection report for

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certain entities.

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 must be made as permitted by law.

(3) An adult foster care facility must 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 that 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 must 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 must 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 must 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 must inspect the facility to determine whether the proposed specialized program conforms with the requirements of applicable law and rules. The department must 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 must 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 must be furnished to the department and shall be used in the evaluation for licensing of an adult foster care facility. The department must consider the reports carefully and may make special consultations if necessary. The department is 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 must 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.

(8) The department shall submit biannual reports to the appropriation subcommittees for the department, the senate and house fiscal agencies, and the state budget director containing a summary of input from individuals who perform inspections for entities regulated by the bureau of community and health systems, or a successor agency within the department. The feedback and input must be regarding the adequacy of federal and state guidelines pertaining to the areas that the individual inspects for the entities described in this section. The summary must include details of the feedback excluding information that identifies the inspectors providing the feedback. The summary may be cumulative in nature, but must be understandable to the general public.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987;—Am. 1992, Act 176, Imd. Eff. July 23, 1992;—Am. 2006, Act 201, Imd. Eff. June 19, 2006;—Am. 2016, Act 525, Eff. Apr. 9, 2017;—Am. 2022, Act 118, Imd. Eff. June 24, 2022.

Compiler's note: For transfer of powers and duties of the fire marshal division programs relating to plan review and construction inspections of schools, colleges, universities, school dormitories, as well as adult foster care, correctional, and health care facilities, from the department of state police to the department of consumer and industry services, see E.R.O. No. 1997-2, compiled at MCL 29.451 of the Michigan Compiled Laws.

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and

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fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

Administrative rules: R 400.1401 et seq.; R 400.1601 et seq.; R 400.2101 et seq.; and R 400.11101 et seq. of the Michigan Administrative Code.

400.712 Keeping and maintaining records and reports; examination and copying of books, records, and reports; confidentiality; inspection of records by resident.

Sec. 12. (1) The department may prescribe appropriate records to be kept and maintained regarding each adult received by a licensee and may require reports, upon forms furnished or approved by the department, setting forth facts or circumstances related to the care of adults received by the licensee.

(2) The department may examine the books, records, and reports of a facility. Members of the department shall be provided reasonable facilities for the thorough examination and copying of the books, records, and reports of the facility.

(3) The records of the residents of a facility which are required to be kept by the facility under this act or rules promulgated under this act shall be confidential and properly safeguarded. These materials shall be open only to the inspection of the director, an agent of the director, another executive department of the state pursuant to a contract between that department and the facility, a party to a contested case involving the facility, or on the order of a court or tribunal of competent jurisdiction. The records of a resident of a facility which are required to be kept by the facility under this act or rules promulgated under this act shall be open to inspection by the resident, unless medically contraindicated, or the guardian of a resident.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

Administrative rules: R 400.1401 et seq.; R 400.2101 et seq.; and R 400.11101 et seq. of the Michigan Administrative Code.

400.713 License required; application; forms; investigation; on-site evaluation; issuance or renewal of license; disclosures; maximum number of persons; stating type of specialized program; issuance of license to specific person at specific location; transferability of license; sale of facility; notice; items of noncompliance; refusal by department to issue or renew license; conditions; unlicensed facility; violation as misdemeanor; penalty; receipt of completed application; issuance of license within certain time period; inspections; report; criminal history and records check; storage of fingerprints in automated fingerprint identification system database; convictions; "completed application" defined.

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. On-site inspections conducted for renewing a license may be conducted within 12 months before the expiration date of the current license without impact on the license renewal date or the license fee. Subject to subsections (9), (10), and

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(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 licensee or licensee designee, owner, partner, director, and person responsible for the daily operation of the facility. The applicant is 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 and is nontransferable.

(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, or denied an application for a 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, or denial of the application.

(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

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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 an 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 department director 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 department 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, or 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 and a licensee designee shall give written consent at the time of appointment for the department of state police to conduct both of the following:

(a) A criminal history check.

(b) A criminal records check through the Federal Bureau of Investigation.

(20) An owner, partner, or director of the applicant who has regular direct access to residents or who has on-site facility operational responsibilities is exempt from the requirements of subsection (19) if he or she has already submitted consent described in subsection (19) and were continuously affiliated with a licensed adult foster care facility as an applicant, owner, partner, or director.

(21) The department shall require the applicant, if an individual, the licensee designee, owner, partner, or director of the applicant who has regular direct access to residents or who has on-site facility operational responsibilities to submit his or her fingerprints to the department of state police for the criminal history check and criminal records check described in subsection (19).

(22) 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

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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.

(23) Beginning March 13, 2012, 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 under section 134a of the mental health code, 1974 PA 258, MCL 330.1134a, and has remained continuously licensed or continuously employed under section 34b or under section 20173a of the public health code, 1978 PA 368, MCL 333.20173a, 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 or have direct access to residents or resident records 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, 1994 PA 295, MCL 28.722.

(26) An adult foster family care home or an adult foster care group home shall not be concurrently licensed as a group child care home or a family child care home.

(27) As used in this section, "completed application" means an application complete on its face with all requested information provided and answers to all questions provided 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.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984;—Am. 1986, Act 257, Eff. Mar. 31, 1987;—Am. 1992, Act 176, Imd. Eff. July 23, 1992;—Am. 1994, Act 150, Imd. Eff. June 7, 1994;—Am. 2004, Act 59, Eff. Aug. 1, 2004;—Am. 2004, Act 281, Imd. Eff. July 23, 2004;—Am. 2010, Act 380, Imd. Eff. Dec. 22, 2010;—Am. 2012, Act 52, Imd. Eff. Mar. 13, 2012;—Am. 2018, Act 557, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

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Administrative rules: R 400.1401 et seq.; R 400.2101 et seq.; and R 400.11101 et seq. of the Michigan Administrative Code.

400.713a Fees.

Sec. 13a. (1) Until December 31, 2019, application fees for an individual, partnership, firm, corporation, association, governmental organization, or nongovernmental organization licensed or seeking licensure under this act are as follows:

(a) Application fee for a temporary license:

(*i*) Family home.....	$	65.00
(*ii*) Small group home (1-6).....		105.00
(*iii*) Small group home (7-12).....		135.00
(*iv*) Large group home.....		170.00
(*v*) Congregate facility.....		220.00
(*vi*) Camp.....		40.00

(b) Application fee for subsequent licenses:

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(*i*) Family home.....	$	25.00
(*ii*) Small group home (1-6).....		25.00
(*iii*) Small group home (7-12).....		60.00
(*iv*) Large group home.....		100.00
(*v*) Congregate facility.....		150.00
(*vi*) Camp.....		25.00

(2) Until December 31, 2019, fees collected under this act shall be credited to the general fund of the state to be appropriated by the legislature to the department for the enforcement of this act.

(3) Application fees for an individual, partnership, firm, corporation, association, governmental organization, or nongovernmental organization licensed or seeking licensure under this act for a temporary or renewal license are as follows:

(a) Beginning January 1, 2020, as follows:

(*i*) Family home (3-6).....	$	85.00
(*ii*) Small group home (3-6).....		130.00
(*iii*) Small group home (7-12).....		170.00
(*iv*) Large group home.....		320.00
(*v*) Congregate facility (renewal only).....		360.00
(*vi*) Camp.....		120.00

(b) Beginning January 1, 2022, as follows:

(*i*) Family home.....	$	100.00
(*ii*) Small group home (3-6).....		150.00
(*iii*) Small group home (7-12).....		200.00
(*iv*) Large group home.....		500.00
(*v*) Congregate facility (renewal only).....		500.00
(*vi*) Camp.....		200.00

History: Add. 1992, Act 176, Imd. Eff. July 23, 1992;—Am. 2004, Act 285, Imd. Eff. July 23, 2004;—Am. 2018, Act 557, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.714 Temporary license; issuance of regular license or provisional license; refusal to issue license; temporary license nonrenewable; plan of correction.

Sec. 14. (1) A temporary license shall be issued to an adult foster care facility for the first 6 months of operation. At the end of the first 6 months of operation, the department shall either issue a regular license, issue a provisional license, or refuse to issue a license in the manner provided for in section 22. A temporary license shall not be renewed.

(2) Before issuing a temporary license, the department may require an adult foster care facility to submit to the department an acceptable plan of correction for the adult foster care facility. The adult foster care facility shall implement the plan of correction within the time limitations of the temporary license period.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 2018, Act 557, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.715 Temporary license; adult foster care congregate facility.

Sec. 15. The department shall not issue a temporary license to an adult foster care congregate facility, except to replace an existing adult foster care congregate facility. The new construction must satisfy all applicable state construction code requirements and the fire safety requirements prescribed by section 20; and the bed capacity must not exceed that of the licensed facility that it replaces.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984;—Am. 2018, Act 557, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

400.716 Temporary license; prohibitions.

Sec. 16. (1) Unless the city, village, or township approves a temporary license, a temporary license shall not be granted under this act if the issuance of the license would substantially contribute to an excessive concentration of community residential facilities within a city, village, or township of this state.

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

(3) The department shall not issue a temporary license to an adult foster care facility which does not comply with section 16a of Act No. 183 of the Public Acts of 1943, as amended, being section 125.216a of the Michigan Compiled Laws, section 16a of Act No. 184 of the Public Acts of 1943, as amended, being section 125.286a of the Michigan Compiled Laws, and section 3b of Act No. 207 of the Public Acts of 1921, as amended, being section 125.583b of the Michigan Compiled Laws.

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

History: 1979, Act 218, Eff. Mar. 27, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.717 Provisional license.

Sec. 17. (1) A provisional license may be issued to an adult foster care facility that has previously held a temporary or regular license under this act or an act repealed by this act. A provisional license may be issued for 6 months if an adult foster care facility is temporarily unable to conform to the requirements of this act for a regular license and may be renewed not more than 2 consecutive times as provided in subsections (2) and (4). The issuance of a provisional license shall be contingent upon the submission to the department of an acceptable plan of correction for the adult foster care facility within the time limitations of the provisional period.

(2) If the provisional license is issued for deficiencies in the physical plant of the adult foster care facility, the provisional license may be renewed for not more than 2 consecutive 6-month terms for the same physical plant deficiencies.

(3) If the provisional license is issued for deficiencies in the quality of care provided in the adult foster care facility, the provisional license is not renewable. If the quality of care deficiencies are corrected and intervening deficiencies of any kind are not incurred, a regular license shall be issued.

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(4) If a provisional license has been issued because of deficiencies in both the quality of care and the physical plant of the adult foster care facility, the provisional license may be renewed under subsection (2) if the quality of care deficiencies have been corrected.

(5) The department shall notify the applicant of the reasons for issuing a provisional license and shall designate whether the deficiencies are physical plant deficiencies or quality of care deficiencies.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1992, Act 176, Imd. Eff. July 23, 1992.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.718 Special license; rules.

Sec. 18. (1) A special license may be issued for the duration of the operation of an adult foster care facility if the applicant is a short-term operation.

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

History: 1979, Act 218, Eff. Mar. 27, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.719 Regular license; issuance; validity; application for temporary license; subsection (4) applicable to previously licensed facilities.

Sec. 19. (1) A regular license shall be issued to an adult foster care facility which is in compliance with the requirements of this act and rules promulgated under this act for issuance of a regular license.

(2) A regular license for all adult foster care facilities except adult foster care camps is valid for 2 years after the date of issuance unless revoked as authorized by section 22 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated under this act. The license shall be renewed biennially on application and approval.

(3) A regular license for an adult foster care camp is effective for the specific dates of operation not to exceed a 12-month period unless revoked as authorized by section 22 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated under this act. The license shall be renewed annually on application and approval.

(4) Any increase beyond 6 in the number of persons to be received for foster care at 1 time in a small group home requires application for a temporary license pursuant to sections 14 and 16. This subsection applies to facilities that have been previously licensed.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987;—Am. 1992, Act 176, Imd. Eff. July 23, 1992.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O.

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No. 2015-1, compiled at MCL 400.227.

400.720 Certificate of approval from bureau of fire services and department; compliance; denial or certification with limitations; hearing.

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.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987;—Am. 2006, Act 201, Imd. Eff. June 19, 2006;—Am. 2016, Act 525, Eff. Apr. 9, 2017.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.721 Facility licensed on March 27, 1980; compliance with fire safety standards; section inapplicable to installation of smoke and heat detection equipment.

Sec. 21. (1) Except as provided in subsection (2), an adult foster care facility licensed on March 27, 1980 shall be considered to be in compliance with the fire safety standards prescribed in rules promulgated under this act if the facility meets the fire safety standards prescribed in rules promulgated under former Act No. 287 of the Public Acts of 1972 which were in effect on March 27, 1980.

(2) This section does not apply to the installation of smoke and heat detection equipment as required by rules promulgated pursuant to this act.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987.

Compiler's note: Act 287 of 1972, referred to in this section, was repealed by Act 218 of 1979.

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.722 Denying, suspending, revoking, refusing to renew, or modifying license; grounds; written notice; hearing; decision; protest; receiving or maintaining adults requiring foster care as felony; penalty; relocation services.

Sec. 22. (1) The department may deny, suspend, revoke, or refuse to renew a license, or modify a regular license to a provisional license, if the licensee falsifies information on the application for license or willfully and substantially violates this act, the rules promulgated under this act, or the terms of the license.

(2) The department may deny, suspend, revoke, or modify an application for licensure or a license of a licensee if the department determines that the applicant or licensee has a relationship with a former applicant

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whose application under this act has been denied or a former licensee whose license under this act has been suspended, revoked, or refused renewal under this section or section 13(9) or a convicted person to whom a license has been denied under section 13(9). This subsection applies for 10 years after the suspension, revocation, or refused renewal of the former licensee's license, the denial of the former applicant's application for licensure, or the denial of the convicted person's application for licensure. As used in this subsection, an applicant has a relationship with a former licensee or convicted person if the former applicant, 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.

(3) The department may deny an application for licensure based on a prior settlement agreement that prohibits a person from providing adult foster care.

(4) An application for licensure shall not be denied, a license shall not be revoked, a renewal shall not be refused, and a regular license shall not be modified to a provisional license unless the department gives the applicant or licensee written notice of the grounds for the proposed denial, revocation, refusal to renew, or modification. If the proposed denial, revocation, refusal to renew, or modification is not appealed within 30 days after receipt, the department shall deny, revoke, refuse to renew, or modify the application or license. The applicant or licensee must appeal in writing to the department director, or the director's designee, a proposed denial, revocation, refusal to renew, or modification within 30 days after receipt of the written notice. Upon receipt of the written request for appeal, the director or the director's designee must conduct a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.328. Notice of the hearing must be given to the applicant or licensee by personal service or delivery to the proper address by registered mail not less than 2 weeks before the date of the hearing. The decision of the director or his or her designee shall be issued as soon as practicable after the hearing and forwarded to the protesting party by registered mail. The formal notice and hearing requirement in this subsection does not apply if the licensee and the department comply with section 22a.

(5) A license shall not be denied, suspended, or revoked, a renewal shall not be refused, and a regular license shall not be modified to a provisional license unless the department gives the licensee or applicant written notice of the grounds of the proposed denial, revocation, refusal to renew, or modification. If the licensee or applicant appeals the denial, revocation, refusal to renew, or modification by filing a written appeal with the director within 30 days after receipt of the written notice, the director or the director's designated representative shall conduct a contested case hearing at which the licensee or applicant may present testimony and confront witnesses. Notice of the hearing shall be given to the licensee or applicant by personal service or delivery to the proper address by registered mail not less than 2 weeks before the date of the hearing. The decision of the director shall be made and forwarded to the protesting party by registered mail not more than 30 days after the hearing. If the proposed denial, revocation, refusal to renew, or modification is not protested within 30 days, the license shall be denied, revoked, refused, or modified.

(6) If the department has revoked, suspended, or refused to renew a license, the former licensee shall not receive or maintain in that facility an adult who requires foster care. A person who violates this subsection 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.

(7) If the department has revoked, suspended, or refused to renew a license, relocation services shall be provided to adults who were being served by the formerly licensed facility, upon the department's determination that the adult or his or her designated representative is unable to relocate the adult in another facility without assistance. The relocation services shall be provided by the responsible agency, as defined in administrative rules, or, if the adult has no agency designated as responsible, by the department of health and human services.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1990, Act 262, Eff. Mar. 28, 1991;—Am. 1994, Act 150, Imd. Eff. June 7, 1994;—Am. 2004, Act 59, Eff. Aug. 1, 2004;—Am. 2018, Act 557, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult

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foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

400.722a Denying, suspending, revoking, modifying, or refusing to renew license; grounds; without written notice; 30-day appeal.

Sec. 22a. The department may immediately suspend, revoke, modify, or refuse to renew a license or deny an application for a license without providing written notice of the grounds for the proposed action or giving the licensee or applicant 30 days to appeal if the licensee or applicant agrees in writing to do all of the following:

(a) Waive the requirement that the department provide written notice of the grounds for the proposed action.

(b) Waive the 30-day time frame in which to submit a written appeal to the proposed action.

(c) Waive the right to a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.328.

History: Add. 2018, Act 557, Eff. Mar. 28, 2019.

400.722b Emergency closure of adult foster care facility; notification.

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.

History: Add. 2016, Act 525, Eff. Apr. 9, 2017.

Compiler's note: For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

400.722c Summary suspension order for closure; departmental duties; temporary advisor.

Sec. 22c. When the department 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, the department must do the following:

(a) Ensure that the department of health and human services has been notified to make arrangements for the orderly and safe discharge and transfer of the residents to another facility or appropriate setting.

(b) Determine whether a representative of the department 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.

(c) Determine if the appointment of a temporary administrative advisor or a temporary clinical advisor, or both, is necessary, with authority and duties specified by the department to assist the facility management and staff to oversee the orderly closure of the facility. The licensee must pay the expense of the person appointed.

History: Add. 2018, Act 557, Eff. Mar. 28, 2019.

400.723 Repealed. 2018, Act 558, Eff. Mar. 28, 2019.

Compiler's note: The repealed section pertained to the authority of a city, village, or township in which an adult foster care facility is located to file a complaint with the department.

400.724 Request for investigation; providing substance of complaint; disclosures; determining violation; initiation of investigation; findings; written determination or status report; final report; additional copies of documents; reimbursement; informing licensee of findings; public inspection of written determination; administrative review; sharing of information or records.

Sec. 24. (1) A person who believes that this act or a rule promulgated under this act may have been violated may request an investigation of an adult foster care facility. The request shall be submitted to the department in writing or the department shall assist the person in reducing an oral complaint to writing within 7 days after the oral request is made.

(2) The substance of the complaint shall be provided to the licensee not earlier than at the commencement of the on-site inspection of the adult foster care facility that takes place according to the complaint.

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(3) The complaint, a copy of the complaint, or a record published, released, or otherwise disclosed to the adult foster care facility shall not disclose the name of the complainant or an adult resident named in the complaint unless the complainant or an adult resident consents in writing to the disclosure or the investigation results in an administrative hearing or a judicial proceeding, or unless disclosure is considered essential to the investigation by the department. If disclosure is considered essential to the investigation, the complainant shall be given the opportunity to withdraw the complaint before disclosure.

(4) Upon receipt of a complaint, the department shall determine, based on the allegations presented, whether this act or a rule promulgated under this act has been, is, or is in danger of being violated. The department shall investigate the complaint according to the urgency determined by the department. The initiation of a complaint investigation shall commence within 15 days after receipt of the written complaint by the department.

(5) The department shall inform the complainant of its findings. Within 30 days after the receipt of complaint, the department shall provide the complainant a copy, if any, of the written determination or a status report indicating when these documents may be expected. The final report shall include a copy of the original complaint. The complainant may request additional copies of the documents listed in this subsection and shall reimburse the department for the copies according to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) The department shall inform the licensee of the department's findings at the same time that the department informs the complainant under subsection (5).

(7) A written determination concerning a complaint shall be available for public inspection, but the name of the complainant or adult resident shall not be disclosed without the complainant's or adult resident's consent.

(8) A complainant who is dissatisfied with the determination or investigation by the department may request an administrative review by the department. A request shall be submitted in writing to the director within 30 days after the mailing of the department's findings as described in subsection (5). The administrative review shall be conducted based on pertinent documentation or a verifiable statement submitted in writing by the complainant. The department shall send the results of the administrative review to the complainant. If the administrative review results in reconsideration of a complaint against the adult foster care facility, the department shall reopen the complaint investigation.

(9) Notwithstanding subsection (3) and sections 5 and 7(2) of the child protection law, 1975 PA 238, MCL 722.625 and 722.627, information or records in the possession of the department of health and human services or the department may be shared to the extent necessary for the proper functioning of the department of health and human services or the department in administering adult welfare or adult foster care licensing under this act or in an investigation conducted under section 43b of the social welfare act, 1939 PA 280, MCL 400.43b. Information or records shared under this subsection shall not be released by the department of health and human services or the department unless otherwise permitted under this act or other state or federal law.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 2016, Act 492, Eff. Apr. 6, 2017;—Am. 2018, Act 558, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.725 Contested case hearing; judicial review.

Sec. 25. A party aggrieved by the decision of the director following a contested case hearing under section 22 may seek judicial review in accordance with chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 2018, Act 558, Eff. Mar. 28, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II

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transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

400.726 Name or designation of facility.

Sec. 26. (1) An adult foster care facility shall not utilize a name or designation which implies, infers, or leads the public to believe that the facility provides nursing care.

(2) An adult foster care facility shall not include in its name the name of a religious, fraternal, or charitable corporation, organization, or association unless the corporation, organization, or association is an owner of the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

400.726a Resident enrolled in licensed hospice program or co-occurring enhanced crisis residential program; exception to continuous nursing care requirement for purposes of MCL 400.703(4); do-not-resuscitate order or POST form included in assessment plan; protection to resident.

Sec. 26a. (1) A resident of an adult foster care facility who is enrolled in a licensed hospice program is not considered to require continuous nursing care for the purpose of section 3(4).

(2) A resident of an adult foster care facility, which facility is also licensed as a substance use disorder program and is approved as a co-occurring enhanced crisis residential program, is not considered to require continuous nursing care for the purpose of section 3(4).

(3) A licensee providing foster care to a resident who is enrolled in a licensed hospice program and whose assessment plan includes a do-not-resuscitate order or a validly executed POST form under part 56B of the public health code, 1978 PA 368, MCL 333.5671 to 333.5685, is considered to be providing protection to the resident for purposes of section 6(5) and the rules promulgated under this act if, in the event the resident suffers cessation of both spontaneous respiration and circulation, the licensee contacts the licensed hospice program.

History: Add. 1996, Act 194, Eff. Aug. 1, 1996;—Am. 2017, Act 156, Eff. Feb. 6, 2018;—Am. 2018, Act 388, Eff. Mar. 19, 2019.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.726b Adult foster care; description of services to patients or residents with alzheimer's disease; contents; “represents to the public” defined.

Sec. 26b. (1) Beginning not more than 90 days after the effective date of the amendatory act that added this section, an adult foster care large group home, an adult foster care small group home, or an adult foster care congregate facility that represents to the public that it provides inpatient or residential care or services, or both, to persons with Alzheimer's disease or related conditions shall provide to each prospective patient, resident, or surrogate decision maker a written description of the services provided by the home or facility to

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patients or residents with Alzheimer's disease or related conditions. A written description shall include, but not be limited to, all of the following:

(a) The overall philosophy and mission reflecting the needs of residents with Alzheimer's disease or related conditions.

(b) The process and criteria for placement in or transfer or discharge from a program for residents with alzheimer's disease or related conditions.

(c) The process used for assessment and establishment of a plan of care and its implementation.

(d) Staff training and continuing education practices.

(e) The physical environment and design features appropriate to support the function of residents with Alzheimer's disease or related conditions.

(f) The frequency and types of activities for residents with Alzheimer's disease or related conditions.

(g) Identification of supplemental fees for services provided to patients or residents with Alzheimer's disease or related conditions.

(2) As used in this section, "represents to the public" means advertises or markets the facility as providing specialized Alzheimer's or dementia care services.

History: Add. 2000, Act 476, Imd. Eff. Jan. 11, 2001.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.726c Medical orders provided on POST form; compliance required; failure to comply because of policy, religious belief, or moral conviction; referral or transfer to another foster care facility.

Sec. 26c. (1) An adult foster care facility shall comply with medical orders provided on a validly executed POST form as required under the provisions of part 56B of the public health code, 1978 PA 368, MCL 333.5671 to 333.5685.

(2) If an adult foster care facility is unwilling to comply with the medical orders provided on a validly executed form because of a policy, religious belief, or moral conviction, the adult foster care facility shall take all reasonable steps to refer or transfer the patient to another adult foster care facility.

History: Add. 2017, Act 156, Eff. Feb. 6, 2018.

400.727 Posting license, inspection report, and other documents; retention of materials for public inspection.

Sec. 27. (1) A licensee operating an adult foster care congregate facility shall conspicuously post all of the following in an area of the facility accessible to residents, employees, and visitors:

(a) A current license.

(b) A complete copy of the most recent inspection report of the facility received from the department.

(c) A description, provided by the department, of complaint procedures established under this act and the name, address, and telephone number of a person authorized by the department to receive complaints.

(d) A complete list of materials available for public inspection which the facility is required to retain under subsection (2).

(2) A licensee operating an adult foster care congregate facility shall retain all of the following for public inspection:

(a) A complete copy of each inspection report of the facility received from the department during the past 5 years.

(b) A description of the services provided by the facility and the rates charged for those services and items for which a resident may be separately charged.

(c) A list of the name, address, and official position of each person having an ownership interest in the facility as required by section 13(4).

(d) A list of personnel employed or retained by the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980.

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Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

400.728 Repealed. 1984, Act 40, Imd. Eff. Mar. 26, 1984.

Compiler's note: The repealed section pertained to persons not within area of specialization.

400.729 Providing foster care to person related to licensee or licensee's spouse.

Sec. 29. This act shall not prohibit an adult foster care facility from providing foster care to a person related to the licensee or the licensee's spouse for compensation or otherwise. The related person shall be considered in determining the number of residents being cared for in the facility if the person is provided adult foster care services for compensation.

History: 1979, Act 218, Eff. Mar. 27, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.730 Injunction.

Sec. 30. The attorney general, on behalf of the department, may seek an injunction against an adult foster care facility in either of the following cases:

(a) The facility is being operated without a license in violation of section 13.

(b) A licensee violates this act or a rule promulgated under this act and the violation may result in serious harm to the residents under care.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1992, Act 176, Imd. Eff. July 23, 1992.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.731 Violation as misdemeanor; prohibited conduct.

Sec. 31. (1) Except as otherwise provided in section 13 or section 22, a person, adult foster care facility, agency, or representative or officer of a corporation, association, or organization who violates this act is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(2) A person convicted of a misdemeanor under this act or under chapter XXA of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.145m to 750.145r of the Michigan Compiled Laws, shall not be involved with an adult foster care facility for a period of 5 years after the conviction in any of the following ways:

(a) Participate in the administration or operation of the facility.

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(b) Have a financial interest in the operation of the facility.
(c) Provide care to residents of the facility.
(d) Have contact with residents or staff on the premises of the facility.
(e) Be employed by the facility.
(f) Reside in the facility.

(3) A person convicted of a felony under this act or under chapter XXA of Act No. 328 of the Public Acts of 1931 shall not be involved with an adult foster care facility in any of the following ways:
(a) Participate in the administration or operation of the facility.
(b) Have a financial interest in the operation of the facility.
(c) Provide care to residents of the facility.
(d) Have contact with residents or staff on the premises of the facility.
(e) Be employed by the facility.
(f) Reside in the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1990, Act 262, Eff. Mar. 28, 1991;—Am. 1994, Act 150, Imd. Eff. June 7, 1994.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.731a Person sentenced to perform community service.

Sec. 31a. (1) In addition to or as an alternative to imposing a term of imprisonment under this act, the court may sentence the person to perform community service as follows:
(a) If the person is convicted of a felony, community service for not more than 160 days.
(b) If the person is convicted of a misdemeanor, community service for not more than 80 days.

(2) For purposes of this section, community service shall not include activities involving interaction with or care of vulnerable adults.

(3) A person sentenced to perform community service under this section shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

History: Add. 1994, Act 150, Imd. Eff. June 7, 1994.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.732 Notices required.

Sec. 32. (1) The department shall notify the clerk of the city, village, or township where a proposed adult foster care facility is to be located at least 45 days before the issuance of a license.

(2) The department shall notify the clerk of the city, village, or township of all newly licensed adult foster care facilities within 30 days after the issuance of a license.

(3) The department shall notify the clerk of the city, village, or township of the location of all licensed adult foster care facilities within the boundaries of that city, village, or township within 30 days after receipt of the request.

History: 1979, Act 218, Eff. Mar. 27, 1980.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.733 Local ordinances, regulations, or construction codes.

Sec. 33. This act supersedes all local regulations applicable specifically to adult foster care facilities. Local ordinances, regulations, or construction codes regulating institutions shall not be applied to adult foster care large group homes, adult foster care small group homes, or adult foster care family homes. This section shall not be construed to exempt adult foster care facilities from local construction codes which are applicable to private residences.

History: 1979, Act 218, Eff. Mar. 27, 1980.

Constitutionality: Section 3b of the City and Village Zoning Act and § 33 of the Adult Foster Care Facility Licensing Act do not violate the Title-Object Clause of the Michigan Constitution. City of Livonia v Department of Social Services, 423 Mich 466; 335 NW2d 473 (1985).

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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400.734 Repealed. 1984, Act 40, Imd. Eff. Mar. 26, 1984.

Compiler's note: The repealed section pertained to legislative review.

400.734a Repealed. 2006, Act 29, Eff. Apr. 1, 2006.

Compiler's note: The repealed section pertained to criminal history check of employee providing direct services.

400.734b Employing or contracting with certain individuals providing direct services to residents; prohibitions; criminal history check; exemptions; written consent and identification; conditional employment; use of criminal history record information; disclosure; determination of existence of national criminal history; failure to conduct criminal history check; automated fingerprint identification system database; electronic web-based system; costs; definitions.

Sec. 34b. (1) In addition to the restrictions prescribed in sections 13, 22, and 31, and except as otherwise provided in subsection (2), an adult foster care facility shall not employ or independently contract with an individual who regularly has direct access to or provides direct services to residents of the adult foster care facility if the individual satisfies 1 or more of the following:

(a) Has been convicted of a relevant crime described under 42 USC 1320a-7(a).

(b) Has been convicted of any of the following felonies, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described in this subdivision, other than a felony for a relevant crime described under 42 USC 1320a-7(a), unless 15 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction before the date of application for employment or the date of the execution of the independent contract:

(*i*) A felony that involves the intent to cause death or serious impairment of a body function, that results in death or serious impairment of a body function, that involves the use of force or violence, or that involves the threat of the use of force or violence.

(*ii*) A felony involving cruelty or torture.

(*iii*) A felony under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(*iv*) A felony involving criminal sexual conduct.

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(*v*) A felony involving abuse or neglect.

(*vi*) A felony involving the use of a firearm or dangerous weapon.

(*vii*) A felony involving the diversion or adulteration of a prescription drug or other medications.

(c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7(a) or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction before the date of application for employment or the date of the execution of the independent contract.

(d) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7(a), or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 10 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(*i*) A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.

(*ii*) A misdemeanor under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(*iii*) A misdemeanor involving criminal sexual conduct.

(*iv*) A misdemeanor involving cruelty or torture unless otherwise provided under subdivision (e).

(*v*) A misdemeanor involving abuse or neglect.

(e) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7(a), or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 5 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(*i*) A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age.

(*ii*) A misdemeanor involving home invasion.

(*iii*) A misdemeanor involving embezzlement.

(*iv*) A misdemeanor involving negligent homicide or a violation of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL 257.601d.

(*v*) A misdemeanor involving larceny unless otherwise provided under subdivision (g).

(*vi*) A misdemeanor of retail fraud in the second degree unless otherwise provided under subdivision (g).

(*vii*) Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under subdivision (d), (f), or (g).

(f) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7(a), or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 3 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(*i*) A misdemeanor for assault if there was no use of a firearm or dangerous weapon and no intent to commit murder or inflict great bodily injury.

(*ii*) A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g).

(*iii*) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided under subdivision (g).

(g) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7(a), or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the year immediately preceding the date of application for employment or the date of the execution of the independent contract:

(*i*) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of conviction, is under the age of 18.

(*ii*) A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the age of 16.

(h) Is the subject of an order or disposition under section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(i) Engages in conduct that becomes the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency according to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in this subsection or subsection (6), an adult foster care facility shall not employ or independently contract with an individual who has direct access to residents until the adult foster care facility or staffing agency has conducted a criminal history check in compliance with this section or has

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received criminal history record information in compliance with subsections (3) and (11). This subsection and subsection (1) do not apply to an individual who is employed by or under contract to an adult foster care facility before April 1, 2006. On or before April 1, 2011, an individual who is exempt under this subsection and who has not been the subject of a criminal history check conducted in compliance with this section shall provide the department of state police a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (14). An individual who is exempt under this subsection is not limited to working within the adult foster care facility with which he or she is employed by or under independent contract with on April 1, 2006 but may transfer to another adult foster care facility, mental health facility, or covered health facility. If an individual who is exempt under this subsection is subsequently convicted of a crime or offense described under subsection (1)(a) to (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under 42 USC 1320a-7(a), he or she is no longer exempt and shall be terminated from employment or denied employment.

(3) An individual who applies for employment either as an employee or as an independent contractor with an adult foster care facility or staffing agency and who has not been the subject of a criminal history check conducted in compliance with this section shall give written consent at the time of application for the department of state police to conduct a criminal history check under this section, along with identification acceptable to the department of state police. If the individual has been the subject of a criminal history check conducted in compliance with this section, the individual shall give written consent at the time of application for the adult foster care facility or staffing agency to obtain the criminal history record information as prescribed in subsection (4) or (5) from the relevant licensing or regulatory department and for the department of state police to conduct a criminal history check under this section if the requirements of subsection (11) are not met and a request to the Federal Bureau of Investigation to make a determination of the existence of any national criminal history pertaining to the individual is necessary, along with identification acceptable to the department of state police. Upon receipt of the written consent to obtain the criminal history record information and identification required under this subsection, the adult foster care facility or staffing agency that has made a good-faith offer of employment or an independent contract to the individual shall request the criminal history record information from the relevant licensing or regulatory department and shall make a request regarding that individual to the relevant licensing or regulatory department to conduct a check of all relevant registries in the manner required in subsection (4). If the requirements of subsection (11) are not met and a request to the Federal Bureau of Investigation to make a subsequent determination of the existence of any national criminal history pertaining to the individual is necessary, the adult foster care facility or staffing agency shall proceed in the manner required in subsection (5). A staffing agency that employs an individual who regularly has direct access to or provides direct services to residents under an independent contract with an adult foster care facility shall submit information regarding the criminal history check conducted by the staffing agency to the adult foster care facility that has made a good-faith offer of independent contract to that applicant.

(4) Upon receipt of the written consent to conduct a criminal history check and identification required under subsection (3), the adult foster care facility or staffing agency that has made a good-faith offer of employment or independent contract to the individual shall make a request to the department of state police to conduct a criminal history check on the individual and input the individual's fingerprints into the automated fingerprint identification system database, and shall make a request to the relevant licensing or regulatory department to perform a check of all relevant registries established according to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. The request shall be made in a manner prescribed by the department of state police and the relevant licensing or regulatory department or agency. The adult foster care facility or staffing agency shall make the written consent and identification available to the department of state police and the relevant licensing or regulatory department or agency. Until June 30, 2020, if the department of state police or the Federal Bureau of Investigation charges a fee for conducting the criminal history check, the charge shall be paid by or reimbursed by the department. Until June 30, 2020, the adult foster care facility or staffing agency shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the criminal history check. Beginning July 1, 2020, if the department of state police or the Federal Bureau of Investigation charges a fee for conducting the criminal history check, the charge shall be paid by the adult foster care facility, the staffing agency, or the individual. The department of state police shall conduct a criminal history check on the individual named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection. The report shall contain any criminal history record information on the individual maintained by the

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department of state police.

(5) Upon receipt of the written consent to conduct a criminal history check and identification required under subsection (3), if the individual has applied for employment either as an employee or as an independent contractor with an adult foster care facility or staffing agency, the adult foster care facility or staffing agency that has made a good-faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police to forward the individual's fingerprints to the Federal Bureau of Investigation. The department of state police shall request the Federal Bureau of Investigation to make a determination of the existence of any national criminal history pertaining to the individual. An individual described in this subsection shall provide the department of state police with a set of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of its determination under subsection (4) and the results of the Federal Bureau of Investigation determination to the department within 30 days after the request is made. If the requesting adult foster care facility or staffing agency is not a state department or agency and if criminal history record information is disclosed on the written report of the criminal history check or the Federal Bureau of Investigation determination that resulted in a conviction, the department shall notify the adult foster care facility or staffing agency and the individual in writing of the type of crime disclosed on the written report of the criminal history check or the Federal Bureau of Investigation determination without disclosing the details of the crime. The notification shall inform the adult foster care facility or staffing agency and the applicant regarding the appeal process in section 34c and shall include a statement that the individual has a right to appeal the information relied upon by the adult foster care facility or staffing agency in making its decision regarding his or her employment eligibility based on the criminal history check. Any charges imposed by the department of state police or the Federal Bureau of Investigation for conducting a criminal history check or making a determination under this subsection shall be paid in the manner required under subsection (4).

(6) If an adult foster care facility determines it necessary to employ or independently contract with an individual before receiving the results of the individual's criminal history check or criminal history record information required under this section, the adult foster care facility may conditionally employ the individual if all of the following apply:

(a) The adult foster care facility requests the criminal history check or criminal history record information required under this section, upon conditionally employing the individual.

(b) The individual signs a written statement indicating all of the following:

(*i*) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) to (g) within the applicable time period prescribed by subsection (1)(a) to (g).

(*ii*) That he or she is not the subject of an order or disposition described in subsection (1)(h).

(*iii*) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

(*iv*) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statement under subparagraphs (*i*) to (*iii*), his or her employment will be terminated by the adult foster care facility as required under subsection (1) unless and until the individual can prove that the information is incorrect.

(*v*) That he or she understands the conditions described in subparagraphs (*i*) to (*iv*) that result in the termination of his or her employment and that those conditions are good cause for termination.

(c) Except as otherwise provided in this subdivision, the adult foster care facility does not permit the individual to have regular direct access to or provide direct services to residents in the adult foster care facility without supervision until the criminal history check or criminal history record information is obtained and the individual is eligible for that employment. If required under this subdivision, the adult foster care facility shall provide on-site supervision of an individual in the facility on a conditional basis under this subsection by an individual who has undergone a criminal history check conducted in compliance with this section. An adult foster care facility may permit an individual in the facility on a conditional basis under this subsection to have regular direct access to or provide direct services to residents in the adult foster care facility without supervision if all of the following conditions are met:

(*i*) The adult foster care facility, at its own expense and before the individual has direct access to or provides direct services to residents of the facility, conducts a search of public records on that individual through the internet criminal history access tool maintained by the department of state police and the results of that search do not uncover any information that would indicate that the individual is not eligible to have regular direct access to or provide direct services to residents under this section.

(*ii*) Before the individual has direct access to or provides direct services to residents of the adult foster care facility, the individual signs a statement in writing that he or she has resided in this state without interruption for at least the immediately preceding 12-month period.

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(*iii*) If applicable, the individual provides to the department of state police a set of fingerprints on or before the expiration of 10 business days following the date the individual was conditionally employed under this subsection.

(7) The department shall develop and distribute the model form for the statements required under subsection (6)(b) and (c). The department shall make the model form available to adult foster care facilities upon request at no charge.

(8) If an individual is conditionally employed under subsection (6), and the information under subsection (3) or report under subsection (4) or (5), if applicable, does not confirm the individual's statement under subsection (6)(b)(*i*) to (*iii*), the adult foster care facility shall terminate the individual's employment as required by subsection (1).

(9) An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subsection (6)(b)(*i*) to (*iii*) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(10) An adult foster care facility or staffing agency shall use criminal history record information obtained under subsection (3), (4), or (5) only for the purpose of evaluating an individual's qualifications for employment in the position for which he or she has applied and for the purposes of subsections (6) and (8). An adult foster care facility or staffing agency or an employee of the adult foster care facility or staffing agency shall not disclose criminal history record information obtained under this section to a person who is not directly involved in evaluating the individual's qualifications for employment or independent contract. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (3), (4), or (5) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. Except for a knowing or intentional release of false information, an adult foster care facility or staffing agency has no liability in connection with a criminal history check conducted in compliance with this section or the release of criminal history record information under this subsection.

(11) Upon consent of an individual as required in subsection (3) and upon request from an adult foster care facility or staffing agency that has made a good-faith offer of employment or an independent contract to the individual, the relevant licensing or regulatory department shall review the criminal history record information, if any, and notify the requesting adult foster care facility or staffing agency of the information in the manner prescribed in subsection (4) or (5). Until the Federal Bureau of Investigation implements an automatic notification system similar to the system required of the state police under subsection (14) and federal regulations allow the federal criminal record to be used for subsequent authorized uses, as determined in an order issued by the department, an adult foster care facility or staffing agency may rely on the criminal history record information provided by the relevant licensing or regulatory department under this subsection and a request to the Federal Bureau of Investigation to make a subsequent determination of the existence of any national criminal history pertaining to the individual is not necessary if all of the following requirements are met:

(a) The criminal history check was conducted during the immediately preceding 24-month period.

(b) The individual has been continuously employed by an adult foster care facility, mental health facility, or covered health facility, or the staffing agency since the criminal history check was conducted in compliance with this section or meets the continuous employment requirement of this subdivision other than being on layoff status for less than 1 year from an adult foster care facility, mental health facility, or covered health facility.

(c) The individual can provide evidence acceptable to the relevant licensing or regulatory department that he or she has been a resident of this state for the immediately preceding 12-month period.

(12) As a condition of continued employment, each employee or independent contractor shall do both of the following:

(a) Agree in writing to report to the adult foster care facility or staffing agency immediately upon being arraigned on 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon becoming the subject of a substantiated finding described under subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

(b) If a set of fingerprints is not already on file with the department of state police, provide the department of state police with a set of fingerprints.

(13) In addition to sanctions set forth in this act, a licensee, owner, administrator, or operator of an adult foster care facility or staffing agency who knowingly and willfully fails to conduct the criminal history checks

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as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both.

(14) In collaboration with the department of state police, the department of technology, management, and budget shall establish and maintain an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted under this section. Upon notification, the department of state police shall immediately notify the department and the department shall immediately contact each respective adult foster care facility or staffing agency with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(15) If an individual independently contracts with an adult foster care facility, subsections (1) and (2) do not apply if the individual is not under the adult foster care facility's control and the contractual work performed by the individual is not directly related to the clinical, health care, or personal services delivered by the adult foster care facility or if the individual's duties are not performed on an ongoing basis with direct access to residents. This exception includes, but is not limited to, an individual who independently contracts with the adult foster care facility to provide utility, maintenance, construction, or communication services.

(16) The department shall maintain an electronic web-based system to assist the adult foster care facilities and staffing agencies required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to the adult foster care facilities and staffing agencies for the individuals entered in the system who, since the initial criminal history check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property. The department may charge a staffing agency a 1-time set-up fee of up to $100.00 for access to the electronic web-based system under this section.

(17) As used in this section:

(a) "Convicted" means either of the following:

(*i*) For a crime that is not a relevant crime, a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime.

(*ii*) For a relevant crime described under 42 USC 1320a-7(a), convicted means that term as defined in 42 USC 1320a-7.

(b) "Covered health facility" means a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(c) "Criminal history check conducted in compliance with this section" includes a criminal history check conducted under this section, under section 134a of the mental health code, 1974 PA 258, MCL 330.1134a, or under section 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

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

(e) "Home health agency" means that term as defined in section 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

(f) "Independent contract" means a contract entered into by an adult foster care facility with an individual who provides the contracted services independently or a contract entered into by an adult foster care facility with a staffing agency that complies with the requirements of this section to provide the contracted services to the adult foster care facility on behalf of the staffing agency.

(g) "Mental health facility" means a psychiatric facility or other facility defined in 42 USC 1396d(d) as described under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(h) "Staffing agency" means an entity that recruits candidates and provides temporary and permanent qualified staffing for adult foster care facilities, including independent contractors.

(i) "Title XIX" means title XIX of the social security act, 42 USC 1396 to 1396w-5.

(j) "Under the adult foster care facility's control" means an individual employed by or under independent contract with an adult foster care facility for whom the adult foster care facility does both of the following:

(*i*) Determines whether the individual who has access to residents may provide care, treatment, or other similar support service functions to residents served by the adult foster care facility.

(*ii*) Directs or oversees 1 or more of the following:

(A) The policy or procedures the individual must follow in performing his or her duties.

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(B) The tasks performed by the individual.

(C) The individual's work schedule.

(D) The supervision or evaluation of the individual's work or job performance, including imposing discipline or granting performance awards.

(E) The compensation the individual receives for performing his or her duties.

(F) The conditions under which the individual performs his or her duties.

History: Add. 2006, Act 29, Eff. Apr. 1, 2006;—Am. 2008, Act 135, Imd. Eff. May 21, 2008;—Am. 2008, Act 441, Imd. Eff. Jan. 9, 2009;—Am. 2008, Act 442, Eff. Oct. 31, 2010;—Am. 2010, Act 292, Imd. Eff. Dec. 16, 2010;—Am. 2014, Act 73, Imd. Eff. Mar. 28, 2014;—Am. 2018, Act 558, Eff. Mar. 28, 2019.

Compiler's note: Enacting section 2 of Act 29 of 2006 provides:

"Enacting section 2. Sections 34b and 34c of the adult foster care facility licensing act, 1979 PA 218, MCL 400.734b, as added by this amendatory act, take effect April 1, 2006, since the department has secured the necessary federal approval to utilize federal funds to reimburse those facilities for the costs incurred for requesting a national criminal history check to be conducted by the federal bureau of investigation and the department has filed written notice of that approval with the secretary of state. The department shall issue a medicaid policy bulletin regarding the payment and reimbursement for the criminal history checks by April 1, 2006."

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

400.734c Disqualification from or denial of employment based on criminal history check; administrative review; decision; "business day" defined.

Sec. 34c. (1) An individual who has been disqualified from or denied employment by an adult foster care facility based on a criminal history check conducted under section 34b may appeal to the department if he or she believes that the criminal history report is inaccurate, and the department shall conduct an administrative review. The individual shall file the appeal with the director of the department within 15 business days after receiving the written report of the criminal history check unless the conviction contained in the criminal history report is a conviction that may be expunged or set aside. If an individual has been disqualified or denied employment based on a conviction that may be expunged or set aside, then he or she shall file the appeal within 15 business days after a court order granting or denying his or her application to expunge or set aside that conviction is granted. If the order is granted and the conviction is expunged or set aside, the individual shall not be disqualified or denied employment based solely on that conviction. The director or the director's designee shall review the appeal, along with all pertinent documentation, and shall issue a written decision as soon as practicable. The decision of the director or the director's designee is final.

(2) As used in this section, "business day" means a day other than a Saturday, Sunday, or any legal holiday.

History: Add. 2006, Act 29, Eff. Apr. 1, 2006;—Am. 2018, Act 558, Eff. Mar. 28, 2019.

Compiler's note: Enacting section 2 of Act 29 of 2006 provides:

"Enacting section 2. Sections 34b and 34c of the adult foster care facility licensing act, 1979 PA 218, MCL 400.734b, as added by this amendatory act, take effect April 1, 2006, since the department has secured the necessary federal approval to utilize federal funds to reimburse those facilities for the costs incurred for requesting a national criminal history check to be conducted by the federal bureau of investigation and the department has filed written notice of that approval with the secretary of state. The department shall issue a medicaid policy bulletin regarding the payment and reimbursement for the criminal history checks by April 1, 2006."

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400.735 Repeal of MCL 331.681 to 331.694.

Sec. 35. Act No. 287 of the Public Acts of 1972, as amended, being sections 331.681 to 331.694 of the Michigan Compiled Laws, is repealed.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

400.736 Concurrent license as foster family home or foster family group home; receiving additional minor children; definitions.

Sec. 36. (1) An adult foster care family home may be concurrently licensed as a foster family home or a foster family group home. Except as provided in subsection (2), additional minor children who are not related to a resident of the adult foster care family home shall not be received in the adult foster care family home after the filing of an application for a license under this act.

(2) A licensee may receive a minor child placed in foster care under the laws of this state after filing an application for a license under this act. A placement under this subsection shall be approved at the discretion of the director or his or her designee and shall be based upon a recommendation by a licensed child placing agency or an approved governmental unit and shall be subject to appropriate terms and conditions determined by the department.

(3) As used in this section:

(a) "Foster family home" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(b) "Foster family group home" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

History: Add. 1984, Act 140, Imd. Eff. June 1, 1984;—Am. 2004, Act 59, Eff. Aug. 1, 2004.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

400.737 Concurrently licensing adult foster care small group home as child caring institution; receiving additional children under 18 years of age; limitation on combined licensed capacity; definition.

Sec. 37. (1) An adult foster care small group home may be concurrently licensed as a child caring institution. Additional children under 18 years of age who are not related to a resident of the adult foster care small group home shall not be received in the adult foster care small group home after the filing of an application for a license pursuant to this act. The combined licensed capacity shall not exceed more than a combination of 6 children and adults.

(2) As used in this section, "child caring institution" means that term as defined in section 1 of Act No. 116 of the Public Acts of 1973, being section 722.111 of the Michigan Compiled Laws.

History: Add. 1984, Act 140, Imd. Eff. June 1, 1984.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group

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day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

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