

Act No. 59
Public Acts of 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Woronchak, Nofs, Zelenko, Murphy, Tabor, Vagnozzi, DeRossett, Amos, Bieda, Byrum, Caul, Ward, Hager, Vander Veen, Voorhees, Minore, Huizenga, Stahl and Palmer

ENROLLED HOUSE BILL No. 5184

AN ACT to amend 1979 PA 218, entitled "An act to provide for the licensing and regulation of adult foster care facilities; to provide for the establishment of standards of care for adult foster care facilities; to prescribe powers and duties of the department of social services and other departments; to prescribe certain fees; to prescribe penalties; and to repeal certain acts and parts of acts," by amending sections 13, 22, and 36 (MCL 400.713, 400.722, and 400.736), sections 13 and 22 as amended by 1994 PA 150 and section 36 as added by 1984 PA 140, and by adding section 34a.

The People of the State of Michigan enact:

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. Subject to subsections (9), (10), and (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 person responsible for the daily operations of the facility and all employees of the facility. The applicant shall be 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, shall be nontransferable, and shall remain the property of the department. The prohibition against transfer of a license to another location does not apply if a licensee's adult foster care facility or home is closed as a result of eminent domain proceedings, if the facility or home, as relocated, otherwise meets the requirements of this act and the rules promulgated under this act.

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

(10) If the department has revoked, suspended, or refused to renew a person's 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.

(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 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.

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 suspend, revoke, or modify a 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 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 nonrenewal of the former licensee's license or the denial of the convicted person's license. As used in 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.

(3) 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 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.

(4) 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.

(5) 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.

(6) In the case of facilities that are operated under lease with a state department or a community mental health services board, the department may issue an emergency license for a 90-day period to avoid relocation of residents following the revocation, suspension, or nonrenewal of a license, if all of the following requirements are met:

(a) The leased physical plant is in substantial compliance with all licensing requirements.

(b) The applicant for the emergency license is a licensee who is in compliance with all applicable regulations under this act and under contract with a state department or a community mental health services board to operate the leased physical plant temporarily.

(c) The former licensee's access to the facility according to a lease, sublease, or contract has been lawfully terminated by the owner or lessee of the facility.

Sec. 34a. (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 provides direct services to residents of the adult foster care facility after the effective date of the amendatory act that added this section if the individual has been convicted of 1 or more of the following:

(a) A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of application for employment or the date of the execution of the independent contract.

(b) 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 date of application for employment or the date of the execution of the contract.

(c) An offense listed under R 400.1152 of the Michigan administrative code.

(2) Except as otherwise provided in this subsection and subsection (7), an adult foster care facility shall not employ or independently contract with an individual who regularly provides direct services to residents after the effective date of the amendatory act that added this section until the adult foster care facility complies with subsection (4), (5), or (6). 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 the effective date of the amendatory act that added this subsection.

(3) An individual who applies for employment either as an employee or as an independent contractor with an adult foster care facility and has received a good faith offer of employment or independent contract from the adult foster care facility 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 department of state police or equivalent state agency under subsection (6) has conducted a criminal history check on the individual within the 24 months immediately preceding the date of application and the individual provides written consent for release of information for the purposes of this section, the adult foster care facility may use a copy of that criminal history check instead of obtaining written consent and requesting a new criminal history check under this section. If the individual is using a prior criminal history check as described in this subsection, the adult foster care facility shall accept the copy of the results of the criminal history check only from the adult foster care facility or health facility or agency that previously employed or independently contracted with the individual.

(4) Upon receipt of the written consent and identification required under subsection (3), if the individual has resided in this state for 3 or more years preceding the good faith offer of employment or independent contract, the adult foster care facility that has made a good faith offer of employment or independent contract shall make a request to the department of state police to conduct a criminal history check on the individual. The request shall be made in a manner

prescribed by the department of state police. The adult foster care facility shall make the written consent and identification available to the department of state police. If there is a charge for conducting the criminal history check, the adult foster care facility requesting the criminal history check shall pay the cost of the charge. The adult foster care facility shall not seek reimbursement for the charge from the individual who is the subject of the criminal history check. 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 adult foster care facility with a written report of the criminal history check. The report shall contain any criminal history record information on the individual maintained by the department of state police. As a condition of employment, an individual shall sign a written statement that he or she has been a resident of this state for 3 or more years preceding the good faith offer of employment or independent contract.

(5) Upon receipt of the written consent 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 licensed for more than 6 persons and has resided in this state for less than 3 years preceding the good faith offer of employment or independent contract, the adult foster care facility 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 2 sets 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) to the adult foster care facility and the results of the federal bureau of investigation determination to the department of consumer and industry services within 30 days after the request is made. If the requesting adult foster care facility is not a state department or agency and if a crime is disclosed on the federal bureau of investigation determination, the department shall notify the adult foster care facility in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime. The charges for fingerprinting or a federal bureau of investigation determination under this subsection shall be paid in the manner required under subsection (4).

(6) Upon receipt of the written consent 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 licensed for 6 persons or less and has resided in this state for less than 3 years preceding the good faith offer of employment or independent contract, the adult foster care facility that has made the good faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police or state agency responsible for maintaining statewide criminal history information of all the states in which the individual resided during the preceding 5 years to conduct a criminal history check on the individual.

(7) 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 required under this section, the adult foster care facility may conditionally employ the individual if both of the following apply:

(a) The adult foster care facility requests the criminal history check 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) and (b) within the applicable time period prescribed by subsection (1)(a) and (b).

(ii) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statement under subparagraph (i), 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. The adult foster care facility shall provide a copy of the results of the criminal history check conducted under this section, to the individual upon request.

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

(8) On the effective date of the amendatory act that added this subsection, the department of consumer and industry services shall develop and distribute a model form for the statement required under subsection (7)(b). The department of consumer and industry services shall make the model form available to adult foster care facilities upon request at no charge.

(9) If an individual is conditionally employed under subsection (7), and the report described in subsection (4), (5), or (6), if applicable, does not confirm the individual's statement under subsection (7)(b)(i), the adult foster care facility shall terminate the individual's employment as required by subsection (1).

(10) An individual who knowingly provides false information regarding a criminal conviction on a statement described in subsection (7)(b)(i) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

(11) An adult foster care facility shall use criminal history record information obtained under subsection (4), (5), or (6) 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 (7) and (9). An adult foster care facility or an employee of the adult

foster care facility 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. Upon written request from another adult foster care facility or health facility or agency that is considering employing or independently contracting with an individual, an adult foster care facility that has obtained criminal history record information under this section on that individual shall share the information with the requesting adult foster care facility or health facility or agency. Except for a knowing or intentional release of false information, an adult foster care facility has no liability in connection with a background check conducted under this section or the release of criminal history record information under this subsection.

(12) As a condition of continued employment, each employee or independent contractor shall agree in writing to report to the adult foster care facility immediately upon being arrested for or convicted of 1 or more of the criminal offenses listed in subsection (1)(a) and (b).

(13) As used in this section:

(a) "Health facility or agency" means a health facility or agency as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(b) "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 an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the adult foster care facility on behalf of the organization or agency.

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.

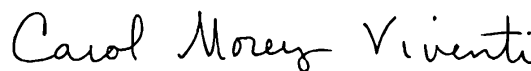
(b) "Foster family group home" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

Enacting section 1. This amendatory act takes effect August 1, 2004.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor