

ADULT FOSTER CARE FACILITY LICENSING

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5505 (proposed H-1 substitute)
Sponsor: Rep. Frank Liberati

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5506 (proposed H-1 substitute)
Sponsor: Rep. Daire Rendon

Committee: Families, Children, and Seniors
Complete to 9-26-18

SUMMARY:

The bills, taken together, would amend the Adult Foster Care Licensing Act to revise various provisions concerning definitions, licensure, renewal procedures, fees, inspection, and contested cases and administrative review of appeals, as well as removing outdated provisions and making technical or editorial changes. Each bill would take effect 90 days after enactment. The bills are tie-barred to each other, meaning that neither could take effect unless the other were also enacted. A detailed summary of the bills follows.

House Bill 5505

Under the act, a person, partnership, corporation, association, department or agency of the state or municipality may not establish or maintain an adult foster care facility unless licensed by the Department of Licensing and Regulatory Affairs (LARA). Before issuing or renewing a license, LARA must, among other things, investigate the activities and standards of care of the applicant and make on-site evaluation of the facility.

Definitions and Applicability

The bill would stipulate that an adult foster care facility does not include a private residence with the capacity to receive at least one but not more than four 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.

The bill would also specify that providing room under a landlord and tenant arrangement does not, by itself, exclude a person from the licensure requirements of the act.

Adult Foster Care Inspections

The act currently allows on-site inspections without prior notice to applicant for licensure as an adult foster care facility. The bill would add that on-site inspections conducted for renewing a license could be conducted within 12 months before the current license expires.

Good Moral Character

At present, before issuing a license, LARA must be satisfied as to the good moral character of the person responsible for the daily operations of the facility and all employees of the

facility. The bill would revise this to refer to the good moral character of the licensee or licensee designee, owner, partner, director, and person responsible for the daily operations of the facility.

License Transferability

Under the act, a license issued to a specific person for a facility at a specific location is not transferable. However, an exception applies to homes closed because of eminent domain. The bill would remove that exception.

Previous Application Denial

The act allows LARA to refuse to issue or renew the license of a person for five years after the person's license was revoked, suspended, or not renewed. The bill would add to this provision a person whose license application was denied.

Written Consent to Conduct Criminal History Check

Currently, an applicant must give consent at the time of original license application for the state police to conduct a criminal history check and a criminal records check through the FBI. The bill would also require the owner, partner, or director of the applicant who has regular direct access to residents or has on-site operational responsibilities to give such consent. Also, under the bill, any of these individuals would be exempt from this requirement if he or she had already submitted consent and was continuously affiliated with a licensed adult foster care facility as an applicant, owner, partner, or director.

Adult Foster Family Care/Adult Foster Group Home

Under the bill, an adult foster family care home or an adult foster care group home could not be concurrently licensed as a group child care home or a family child care home.

Application Fees

The bill would increase application fees for a temporary or renewal license for a person licensed or seeking licensure under the act, as well as revising some of the criteria for the type of home being licensed. Current fees, and those proposed by the bill, are as follows:

Type of Home and Number of Residents	Current Fee	Type of Home and Number of Residents under the Bill	Proposed Fee
Family Home	\$ 65	Family Home (3-6)	\$ 100
Small Group Home (1-6)	\$ 105	Small Group Home (3-6)	\$ 150
Small Group Home (7-12)	\$ 135	Small Group Home (7-12)	\$ 200
Large Group Home	\$ 170	Large Group Home	\$ 500
Congregate Facility	\$ 220	Congregate Facility (Renewal Only)	\$ 500
Camp	\$ 40	Camp	\$ 200

(The bill removes a subsection of the act that provides that the fees are to be credited to the general fund and appropriated to LARA for its enforcement of the act.)

Deny, Suspend, Revoke, or Modify Application for Licensure

Currently, LARA may deny, suspend, revoke or modify an applicant for licensure or a license of a licensee if it determines that the applicant or licensee has a relationship with a former licensee whose license has been suspended, revoked, denied, or refused renewal within the previous 10 years. Under the bill, it could also do so if the applicant or licensee has a relationship with a former applicant whose application under the act was denied within the previous 10 years.

The bill would also provide that LARA could deny an application based on a prior settlement agreement that prohibits a person from providing adult foster care.

Provisional Licensure

Under the bill, an application for licensure could not be denied, a license could not be revoked, a renewal could not be refused, and a regular license could not be modified to a provisional license unless LARA gave the applicant or licensee written notice of the grounds for the proposed denial, revocation, refusal to renew, or modification.

The applicant or licensee would have 30 days after receiving the written notice in which to appeal the proposed action in writing to the director of LARA, or the director's designee. If the proposed action is not appealed within that time, the LARA would carry out the action regarding the license or application.

Upon receipt of a written request for appeal, the director or the director's designee would have to conduct a contested case hearing under the Administrative Procedures Act. Notice of the hearing would be given to the applicant or licensee by personal service or delivery to the proper address by registered mail at least two weeks before the date of the hearing. The decision of the director or his or her designee would be issued as soon as practicable after the hearing and forwarded to the protesting party by registered mail. The formal notice and hearing requirement would not apply if the licensee and LARA complied with the procedures for immediate action on a license or application, described below.

Emergency License

The act currently allows, under certain conditions, LARA to issue a 90-day emergency license in cases involving a license revocation, suspension, or nonrenewal. The bill would eliminate these provisions.

Immediate Suspension, Revocation, Modification, Refusal or Denial of an Application

Under the bill, LARA could 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 license or applicant 30 days to appeal if the licensee or applicant agreed in writing to do all of the following:

- Waive the requirement that LARA provide written notice of the grounds for the proposed action.
- Waive the 30-day time frame in which to submit a written appeal to the proposed action.

- Waive the right to a contested case hearing under the Administrative Procedures Act.

Summary Suspension Order

Under the bill, when LARA 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, LARA would have to do the following:

- 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.
- Determine whether a representative of LARA 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.
- Determine if the appointment of a temporary administrative advisor or a temporary clinical advisor, or both, is necessary, with authority and duties specified by LARA to assist the facility management and staff to oversee the orderly closure of the facility. The licensee would be required to pay the expense of the person appointed.

House Bill 5506

Administrative Review

Currently, in general, a person who believes that the act or a rule under the act may have been violated may request an investigation of an adult foster care facility. After receipt of the complaint, LARA must determine whether the act or rule has been, is, or is in danger of being violated and inform the complainant of its findings within 30 days. A complainant who is dissatisfied with a department determination or investigation may submit a written request for a hearing to the director.

Under the bill, instead of a hearing, the dissatisfied complainant could request an administrative review by LARA. The administrative review would have to be conducted based on pertinent documentation or a verifiable statement submitted in writing by the complainant. LARA would send the results of the review to the complainant. If the review resulted in reconsideration of a complaint against the adult foster care facility, LARA would have to reopen the complaint investigation.

Criminal History Check Fee

Under the act currently, LARA pays or reimburses any fee charged by the state police or the FBI for conducting a criminal history check. The facility, the staffing agency, or the individual who is the subject of the check may not be charged for such a fee, and the facility or staffing agency is prohibited from seeking reimbursement from the individual. The bill would provide that any such fee would be paid by the adult foster care facility, the staffing agency, or the individual, and not by LARA, remove the prohibition against the facility's or agency's seeking reimbursement from the individual.

Denial of Employment Based on Criminal History Report

Currently, an individual who was denied or disqualified from employment based on a criminal history report may appeal to LARA if he or she believes that report is inaccurate, and LARA is required to conduct the appeal as a contested case under the Administrative Procedures Act. The bill would instead require LARA to conduct an administrative review. If the individual had been denied or disqualified based on a conviction that may be expunged or set aside, he or she can file an appeal within 15 days after a court grants the expunction. The bill would require the director or his or her designee to review the appeal, along with the pertinent documentation, and to issue a written decision as soon as practicable. (Currently, the director has 30 business days after receiving such an appeal to issue the decision.)

Repealer

Finally, the bill would repeal section 23 of the act, which contains procedures for a complaint filed by the legislative body of a city, village, or township to have a facility's license denied or revoked.

MCL 400.703 et al.

FISCAL IMPACT:

House Bill 5505 would have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). The bill would increase fees for Adult Foster Care (AFC) licenses, with increases for both temporary licenses (the license issued to facilities during the first six months of operation) and renewal licenses (which are valid for a two year period). The following tables display current licensure fees, revised licensure fees under the bill, and what the resulting revenue increases would be (per license revenue increase for temporary licenses and total revenue increase for renewal licenses over the two-year licensure cycle). An estimated revenue increase for temporary licenses is not available, since the number temporary licenses issued from year to year is variable.

Temporary License Fees

Entity Type	Current Fee	Bill Fee	Revenue Increase (Per License)
Family Home	\$65	\$100	\$35
Small Group Home (3-6)	\$105	\$150	\$45
Small Group Home (7-12)	\$135	\$200	\$65
Large Group Home	\$170	\$500	\$330
Camp	\$40	\$200	\$160

Renewal License Fees

Entity Type	Current Licensees	Current Fee	Bill Fee	Revenue Increase (Total)
Family Home	802	\$25	\$100	\$60,150
Small Group Home (3-6)	2,376	\$25	\$150	\$297,000
Small Group Home (7-12)	483	\$60	\$200	\$67,620
Large Group Home	563	\$100	\$500	\$225,200
Congregate Facility	9	\$150	\$500	\$3,150
Camp	N/A	\$25	\$200	N/A
Total				\$653,120

* License count data provided by LARA, no count was provided for camps

LARA has indicated that it currently collects approximately \$83,000 in AFC licensing fees annually, and House Bill 5505 would increase that amount to approximately \$410,000 annually. The Department also indicated that total expenses for the AFC program total approximately \$11.0 million annually and are largely supported with GF/GP.

House Bill 5506 would have a significant impact on expenditures made by LARA related to AFC regulation. Under existing statute, LARA is responsible for covering the costs of criminal history checks conducted by the Michigan State Police for employees and independent contractors of AFC facilities. LARA indicated that costs for fingerprinting totaled \$1.1 million in Fiscal Year 2016-17 (primarily GF/GP). Under the bill, these costs would no longer be paid by LARA; rather, they would be paid by the AFC facility, staffing agency, or individual.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.