

# Legislative Analysis



## ADULT FOSTER CARE FACILITY LICENSING

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

**House Bill 5505 (H-3) as reported**  
**Sponsor: Rep. Frank Liberati**

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

**House Bill 5506 (H-2) as reported**  
**Sponsor: Rep. Daire Rendon**

**House Bill 6400 as reported**  
**Sponsor: Rep. Jeffrey R. Noble**

**Committee: Families, Children, and Seniors**  
**Complete to 11-27-18**

### BRIEF SUMMARY:

House Bills 5505 and 5506, taken together, would amend the Adult Foster Care Facility Licensing Act to revise various provisions concerning 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renewal procedures, fees, inspection, and contested cases and administrative review of appeals, as well as removing outdated provisions and making technical or editorial changes.

House Bill 6400 would amend the Michigan Zoning Enabling Act to specify that a private residence housing up to four adults who receive benefits from a community mental health services program is a residential use of property if certain conditions are met.

House Bills 5505 and 5506 are tie-barred to each other, meaning that neither can take effect unless the other is also enacted. House Bill 6400 is tie-barred to House Bill 5505, which means that it cannot take effect unless HB 5505 is enacted. Each bill would take effect 90 days after enactment.

### DETAILED SUMMARY:

#### House Bill 5505

Under the Adult Foster Care Facility Licensing Act, a person 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 applicant's activities and standards of care and make an on-site evaluation of the facility.

#### Definitions and Applicability

The bill would revise the definitions of *adult foster care family home* and *adult foster care small group home* to require that each of these facility types must have the approved capacity to receive at least three adults to be provided with foster care. (The act does not currently specify a minimum capacity for either facility type.)

The bill would stipulate that an *adult foster care facility* does not include a private residence with the capacity to receive up to four adults who all receive benefits from a community mental health services program if the services being delivered in the residential setting are monitored by the local community mental health services program.

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.

#### Inspections

The act currently allows LARA to conduct, without prior notice, on-site inspections of an applicant for licensure as an adult foster care facility.

The bill would add that on-site inspections of an applicant for renewal could be conducted within 12 months before the current license expires without having an impact on the license renewal date or license fee.

#### Good Moral Character

Currently, 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.

#### Consent to 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.

However, 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.

#### Concurrent Licensure

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

#### Application Fees

The bill would increase application fees for temporary and renewal licenses in two stages, with an initial increase beginning January 1, 2020 and another increase beginning January 1, 2022. The bill would also eliminate the difference between fees for temporary and renewal licenses;

beginning January 1, 2020, each license type would be subject to the same fee. Current fees, and those proposed by the bill, are as follows:

**Proposed Adult Foster Care Facility License Fee Increases**

<b>Facility Type</b>	<b>Current Temporary License Fee</b>	<b>Current Renewal Fee</b>	<b>Proposed Fee Beginning 2020</b>	<b>Proposed Fee Beginning 2022</b>
Family Home	\$ 65	\$ 25	\$ 85	\$ 100
Small Group Home (up to 6 residents)	\$ 105	\$ 25	\$ 130	\$ 150
Small Group Home (7 to 12 residents)	\$ 135	\$ 60	\$ 170	\$ 200
Large Group Home	\$ 170	\$ 100	\$ 320	\$ 500
Congregate Facility	\$ 220	\$150	\$ 360*	\$ 500*
Camp	\$ 40	\$ 25	\$ 120	\$ 200

\*Renewal licenses only

Relationship with Former Licensee or Former Applicant

Currently, LARA may deny, suspend, revoke, or modify a license or an application for licensure if it determines that the licensee or applicant 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 licensee or applicant 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.

Notice and Appeal of License/Application Actions

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 was not appealed within that time, 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 conduct a contested case hearing under the Administrative Procedures Act. Notice of the hearing would be given to the applicant or licensee at least two weeks before the date of the hearing. The decision of the director or designee would be issued as soon as practicable after the hearing and forwarded to the protesting party by registered mail.

However, LARA could immediately deny an application or suspend, revoke, modify, or refuse to renew a license without providing written notice of the grounds for the action or giving the licensee or applicant 30 days to appeal if the licensee or applicant agreed in writing to waive all of the following:

- The requirement that LARA provide written notice of the grounds for the proposed action.
- The 30-day time frame in which to submit a written appeal to the proposed action.
- The right to a contested case hearing under the Administrative Procedures Act.

#### 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.

#### 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 whether the appointment of a temporary administrative or clinical advisor, with authority and duties specified by LARA, is necessary 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 appointment.

### **House Bill 5506**

#### Review of Determinations Regarding Complaints

Currently, in general, a person who believes that the act or a rule under the act has 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 was violated, or is currently being violated or 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 to the director a written request for a hearing.

Under the bill, instead of a hearing, the dissatisfied complainant could request an administrative review by LARA. The administrative review would 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, LARA must pay or reimburse 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.

Under the bill, beginning January 1, 2020, the adult foster care facility, staffing agency, or individual would pay any fee charged by the state police or the FBI for conducting the criminal history check.

#### 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 the report is inaccurate, and LARA must conduct the appeal as a contested case under the Administrative Procedures Act.

The bill would instead require LARA to conduct an administrative review. An individual who had been denied or disqualified based on a conviction that may be expunged or set aside could file an appeal within 15 days after a court granted 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.

### **House Bill 6400**

House Bill 6400 would amend the Michigan Zoning Enabling Act. The act currently specifies that a state-licensed residential facility is a residential use of property for the purpose of zoning, is a permitted use in all residential zones, and is not subject to any permits or procedures other than those required for other dwellings of similar density in the same zone. Under the bill, these provisions would also apply to a private residence with the capacity to receive up to four adults who all receive benefits from a community mental health services program if the services being delivered in the residential setting are monitored by the local community mental health services program.

MCL 125.3206

### **FISCAL IMPACT:**

**House Bill 5505** would have a significant fiscal impact on 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 and the amount of the revised licensure fees that would begin on January 1, 2022, when the bill's fee increases would be fully implemented, as well as the current number of renewal licensees.

### Temporary License Fees

Entity Type	Current Fee	Bill Fee (Beginning January 1, 2022)	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 (Beginning January 1, 2022)	Revenue Increase (Per License)
Family Home	802	\$25	\$100	\$75
Small Group Home (3-6)	2,376	\$25	\$150	\$125
Small Group Home (7-12)	483	\$60	\$200	\$140
Large Group Home	563	\$100	\$500	\$400
Congregate Facility	9	\$150	\$500	\$350
Camp	N/A	\$25	\$200	\$175

\* 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 that, beginning January 1, 2022, when the proposed fee increases are fully implemented, House Bill 5505 would increase the amount of revenue from temporary and renewal license fees by approximately \$410,000 annually. Of that amount, an estimated

\$325,000 would come from the two-year renewal license fees each year. 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, beginning January 1, 2020, these costs would no longer be paid by LARA; rather, they would be paid by the AFC facility, staffing agency, or individual.

**House Bill 6400** would not have an impact on state or local expenditures or revenues.

## POSITIONS:

Representatives of the Department of Licensing and Regulatory Affairs (LARA) testified in support of House Bills 5505 and 5506. (11-8-18)

The Michigan Center for Assisted Living indicated support for House Bills 5505 and 5506. (11-8-18)

A representative of the Michigan Townships Association testified with concerns on House Bill 5506. (11-8-18)

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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.