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BILL ANALYSIS



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House Bill 5505 (Substitute H-3 as passed by the House)
House Bill 5506 (Substitute H-2 as passed by the House)
House Bill 6400 (as passed by the House)
Sponsor: Representative Frank Liberati (H.B. 5505)
Representative Daire Rendon (H.B. 5506)
Representative Jeff Noble (H.B. 6400)
House Committee: Families, Children, and Seniors
Senate Committee: Health Policy

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CONTENT

House Bill 5505 (H-3) would amend the Adult Foster Care Facility Licensing Act to do the following:

- **Modify the definition of "adult foster care facility", and certain other definitions.**
- **Increase adult foster care facility license fees, beginning January 1, 2020, and again beginning January 1, 2022.**
- **Exempt from a criminal history check and a criminal record check an owner, partner, or director of an applicant who had regular direct access to residents or who had on-site facility operational responsibilities if he or she already had submitted consent to the checks and were continuously affiliated with a licensed adult foster care facility as an applicant, owner, partner, or director.**
- **Allow an on-site inspection of an adult foster care facility conducted for license renewal to be conducted within 12 months before the expiration date of the current license without impact on the license renewal date or license fee.**
- **Allow the Department of Licensing and Regulatory Affairs (LARA) to refuse to issue or renew a license for a period of five years after the denial of an application for a license.**
- **Require a licensee designee to meet the licensee qualification requirements and rules promulgated under the Act.**
- **Delete a provision allowing LARA to issue a 90-day emergency license to a facility.**
- **Prohibit an application for licensure from being denied, a license from being revoked, a renewal from being refused, and a regular license from being modified unless LARA provided the applicant or licensee written notice of the grounds for the proposed denial, revocation, refusal to renew, or modification.**
- **Allow an applicant or licensee to appeal in writing a proposed denial, revocation, refusal to renew, or modification within 30 days after receiving a notice.**
- **Require LARA to take certain actions if it issued a summary suspension order for closure of an adult foster care facility, or when a facility could not provide adequate resident care.**

House Bill 5506 (H-2) would amend the Adult Foster Care Facility Licensing Act to do the following:

- **Require LARA to conduct an administrative review, instead of a hearing, if a person who believed that the Act or a promulgate rule had been violated.**
- **Delete a provisions that specifies that an adult foster care facility, staffing agency, or a prospective employee covered under the Act may not be charged for the cost of a criminal history check.**
- **Require a fee charged by the Michigan State Police (MSP) or the Federal Bureau of Investigation (FBI) for conducting a criminal history check to be paid by an adult foster care facility, staffing agency, or a prospective employee**

The bill also would repeal Section 23 of the Act, which pertains to when a city, village, or township in which an adult foster care facility is located may file a complaint to have the facility's license denied or revoked.

House Bill 6400 would amend the Michigan Zoning Enabling Act to specify that a private residence with the capacity to receive at least one but not more than four adults who all received benefits from a community mental health services program would be a residential use of property.

House Bill 5505 (H-3)

Adult Foster Care Facility

Definition. Under the Act, a person, partnership, corporation, association, or a State department or agency may not establish or maintain an adult foster care facility unless licensed by LARA. "Adult foster care facility" means a governmental or nongovernmental establishment that provides foster care to adults. Instead of a governmental or nongovernmental entity, under the bill, the term would mean a *home or facility* that provides foster care to adults.

The Act specifies that an 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, and does not include certain facilities specified in the Act.

Under the bill, an adult foster care facility also would not include a private residence with the capacity to receive at least one but not more than four adults who all received benefits from a community mental health services program if the local community mental health services program monitored the services being delivered in the residential setting.

The Act defines "foster care" as the provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, five or more days a week, and for two or more consecutive weeks for compensation. Under the bill, foster care would have to be provided at a single address. Additionally, the bill specifies that providing room under a landlord and tenant arrangement would not, by itself, exclude a person from the Act's licensure requirement.

Application. Under the Act, "completed application" means an application complete on its face 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 State department or agency. The bill also would require a completed application to include all requested information and answers to all questions.

Application Fees. Application fees for an individual partnership, firm, corporation, association, governmental organization, or nongovernmental organization licensed or seeking licensure under this Act are as follows:

- Family home temporary license: \$65.00
- Small group home (1-6) temporary license: \$105.00
- Small group home (7-12) temporary license: \$135.00
- Large group home temporary license: \$170.00
- Congregate facility temporary license: \$220.00
- Camp temporary license: \$40.00

Fees for subsequent licenses are as follows:

- Family home: \$25.00
- Small group home (1-6): \$25.00
- Small group home (7-12): \$60.00
- Large group home: \$100.00
- Congregate facility: \$150.00
- Camp: \$25.00

Under the bill, these application fees would apply until December 31, 2019.

Beginning January 1, 2020, application fees for an individual, partnership, firm, corporation, association, governmental organization, or nongovernmental organization licensed or seeking licensure under the Act for a temporary or renewal license would be as follows:

- Family home (3-6): \$85.00
- Small group home (3-6): \$130.00
- Small group home: (7-12): \$170.00
- Large group home: \$320.00
- Congregate facility (renewal only): \$360.00
- Camp: \$120.00

Beginning January 1, 2022, the application fees would be as follows:

- Family home (3-6): \$100.00
- Small group home (3-6): \$150.00
- Small group home: (7-12): \$200.00
- Large group home: \$500.00
- Congregate facility (renewal only): \$500.00
- Camp: \$200.00

The Act defines "adult foster care family home" as a private residence with the approved capacity to receive six or fewer adults to be provided foster care for five or more days a week and for two or more consecutive weeks. Under the bill, the term would mean a private residence with the approved capacity to receive at least three but not more than six adults to be provided with foster care.

The Act defines "adult foster care small group home" as an adult foster care facility with the approved capacity to receive 12 or fewer adults to be provided with foster care. The bill would require the facility to receive *at least three* but not more than 12 adults.

Criminal History Check. The Act requires an applicant, if an individual, or owner, partner, or director of the applicant who has regular direct access to residents, or who has on-site facility

operational responsibilities to give written consent at the time of original license application, and a licensee designee must give written consent at the time of appointment for the MSP to conduct a criminal history check and a criminal record check through the Federal Bureau of Investigation.

Under the bill, an owner, partner, or director of an applicant who had regular direct access to residents or who had on-site facility operational responsibilities would be exempt from the criminal history and criminal record checks if he or she already had submitted consent and was continuously affiliated with a licensed adult foster care facility as an applicant, owner, partner, or director.

Licensure. Before issuing or renewing a license, the Act requires LARA to investigate the activities and standards of care of an applicant, and also make an on-site evaluation of the facility. The bill would allow on-site inspections conducted for license renewal to be conducted within 12 months before the expiration date of the current license without impact on the license renewal date or license fee.

Under the Act, a license is the property of LARA, and the prohibition against the 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 Act's requirements and the rules promulgated under the Act. The bill would delete these provisions.

The Act allows requires LARA, if it has revoked, suspended, or refused to renew a person's license for an adult foster care facility, to refuse to issue a license to or renew a license of that person for a period of five years after the suspension, revocation, or nonrenewal of the license. The bill also would allow LARA to refuse to issue or renew a license for a period of five years after the denial of an application for a license.

Under the Act, LARA must issue or renew a license if it is satisfied, among other things, as to the good moral character of the person responsible for the daily operations of the facility and all the facility's employees. Under the bill, LARA would have to issue or renew a license if it was satisfied as to the good moral character of the licensee or licensee designee, owner, partner, director, and person responsible for the daily operation of the facility.

The Act defines "licensee designee" as 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 bill also would require a licensee designee to meet the licensee qualification requirements and rules promulgated under the Act.

Temporary License. The Act requires a temporary license to be issued to an adult foster care facility for the first six months of operation if it previously has not been licensed as an adult foster care facility. Under the bill, a temporary license would have to be issued to an adult foster care facility for the first six months of operation.

Concurrent Licensure. The bill would prohibit an adult foster family care home or an adult foster care group home from being concurrently licensed as a group child care home or family child care home.

Emergency License. Under the Act, in the case of facilities that are operated under lease with a State department or a community mental health services board, LARA may issue a 90-day emergency license if certain requirements are met. The bill would delete this provision.

License Denial. Under the Act, LARA may suspend, revoke, or modify an applicant's license if the Department determines that the applicant has a relationship with a former licensee whose license has been suspended, revoked, or refused renewal, or a convicted person to whom a license has been denied. This provision applies for 10 years after the suspension, revocation, or refused renewal of the former licensee's license or the denial of the convicted person's license.

The bill would allow LARA to *deny, suspend, revoke, or modify an application for licensure or a license* if it determined the applicant *or licensee* had a relationship with a former applicant whose application had been denied or a former licensee whose license had been suspended, revoked, or refused renewal. This provision would apply for 10 years after the suspension, revocation, or refused renewal of the former licensee's license, the denial of the form applicant's application for licensure, or the denial of a convicted person's application for licensure.

Additionally, the Department could deny an application for licensure based on a prior settlement agreement that prohibited a person from providing adult foster care.

Written Notice. 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 provided 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 were not appealed within 30 days after receiving it, LARA would have to deny, revoke, refuse to renew, or modify the application or license. The applicant or licensee would have to appeal in writing to the LARA Director, or the Director's designee, a proposed denial, revocation, refusal to renew, or modification within 30 days after receiving the written notice.

After receiving a written request for appeal, the Director or his or her designee would have to conduct a contested case hearing under the Administrative Procedures Act. Notice of the hearing would have to be given to the applicant or licensee by personal service or delivery to the proper address by registered mail not less than two weeks before the date of the hearing.

The decision of the Director or his or her designee would have to be issued as soon as practicable after the hearing and forwarded to the protesting party by registered mail. The formal notice and hearing requirement under this provision would not apply if the licensee and the Department complied with Section 22a (which the bill would enact).

Under proposed Section 22a, the Department 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 licensee or applicant 30 days to appeal if the licensee or applicant agreed in writing to do all of the following:

- Waive the requirement that the Department 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 issued a summary suspension order for closure of an adult foster

care facility, or when a facility could not provide adequate resident care, it would have to do the following:

- Ensure that the Department of Health and Human Services had 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 would have to 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, were 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 would have to pay the expense of the person appointed as a temporary administrative advisor or temporary clinical advisor.

Licensee Designee

The Act specifies that a licensee, licensee designee, owner, partner, or director of the licensee may not be permitted on the premises of an adult foster care facility if he or she has been convicted of adult abuse, neglect, or financial exploitation, or listed offenses as defined in the Sex Offenders Registration Act. Under the bill, those individuals also could not have direct access to residents or resident records.

Other Provisions

The Act defines "related" as any of the following relationships by marriage, blood, or adoption: spouse, child, parent, brother, sister, grandparent, aunt, uncle, stepparent, stepbrother, stepsister, or cousin. The bill would include in this list a grandchild.

Under the bill, "board" would mean food service provided at an adult foster care facility.

House Bill 5506 (H-2)

Administrative Review

Under the Act, a person who believes that the Act or a promulgated rule may have been violated may request an investigation of an adult foster care facility. A complainant who is dissatisfied with the determination or investigation by LARA may request a hearing.

The Act requires that notice of the time and place of a hearing must be sent to a complainant and the adult foster care facility. Generally, a complainant who is dissatisfied with the Director's decision may appeal in the circuit court of the county in which the complainant resides. The bill would delete these provisions. Instead, the bill would require an *administrative review* to be conducted or based on pertinent documentation or a verifiable statement submitted in writing by the complainant. The Department would have to send the results of a 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.

Generally, under the Act, a person aggrieved by the decision of the LARA director following a hearing under Section 22 or 23 may appeal to the circuit court for the county in which the person resides. If the Department prevails, the circuit court must affirm the Department's decision; if the licensee, or applicant prevails, the circuit court must set aside the revocation or order the issuance or renewal of the license. The bill would delete these provisions. Instead,

under the bill, a party aggrieved by the decision of the Director following a contested hearing under Section 22 could seek judicial review in accordance with Chapter 6 (Judicial Review) of the Administrative Procedures Act.

(Section 22 specifies that if a licensee or applicant appeals a denial, revocation, refusal to renew, or modification of a license by filing a written appeal with the Director within 30 days after receiving it, the Director or the Director's designated representative must conduct a hearing at which the licensee or applicant may present testimony and confront witnesses.)

Denial of Employment Appeal

The Act specifies that an individual who has been disqualified from or denied employment by an adult foster care facility based on a criminal history check may appeal to LARA if he or she believes that the criminal history report is inaccurate, and the appeal must be conducted as a contested case hearing conducted pursuant to the Administrative Procedures Act.

Under the bill, instead of a contested case hearing, the Department would have to conduct an administrative review.

Criminal History Check

Under the Act, after receiving consent to conduct a criminal history check, an adult foster care facility or staffing agency that has made a good-faith offer of employment to independent contract to an individual must make a request to the MSP to conduct a criminal history check on the individual.

If the MSP or the Federal Bureau of Investigation charges a fee for conducting a criminal history check, the charge must be paid by or reimbursed by LARA. An adult foster care facility or staffing agency may not seek reimbursement for a charge imposed by the MSP or the FBI from the individual who is the subject of the criminal history check. Under the bill, these provisions would apply until December 31, 2019.

Additionally, under the bill, beginning January 1, 2020, if the MSP or the FBI charged a fee for conducting a criminal history check, the charge would have to be paid by the adult foster care facility, the staffing agency, or the prospective employee.

The Act specifies that an adult foster care facility, staffing agency, or a prospective employee covered under the Act may not be charged for the cost of a criminal history check. The bill would delete this provision.

House Bill 6400

The Act specifies that, except as otherwise provided, a State-licensed residential facility is considered a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings or similar density in the same zone.

Under the bill, a facility described in Section 3(4)(k) of the Adult Foster Care Facility Licensing Act (which House Bill 5505 (H-3) would add) also would be considered a residential use of property for the purposes described above.

(Section 3(4)(k), which House Bill 5505 (H-3) would enact, refers to a private residence with the capacity to receive at least one but not more than four adults who all received benefits

from a community mental health services program if the local community mental health services program monitored the services being delivered in the residential setting.)

MCL 400.703 et al. (H.B. 5505)
400.724 et al. (H.B. 5506)
125.3206 (H.B. 6400)

Legislative Analyst: Stephen Jackson
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FISCAL IMPACT

House Bill 5505 (H-3)

The bill would have a significant positive fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local government units. The affected license fees have not been increased since 1992. The increase would bring fees more in line with current administrative costs. In fiscal year 2017-18, revenue from both temporary and renewal license fees equaled approximately \$140,000. The Department estimates that the fee increases would result in an initial additional \$260,000 in revenue, resulting in approximately \$400,000 in adult foster care license fee revenue overall.

The Department also estimates that fewer than 30 licensees likely would operate as an unlicensed facility because of the bill's changes. As a result, revenue loss from these cases likely would be negligible.

House Bill 5506 (H-2)

The bill would have a significant positive fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) and no fiscal impact on local government units. The Department estimates a savings of between \$1.2 and \$1.5 million per year due to the shifting of criminal history check costs from LARA to facilities, agencies, and individuals. This change would take place on January 1, 2020.

The bill's changes regarding administrative review processes would have a minor but positive fiscal impact on the Department.

House Bill 6400

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.