

**PUBLIC HEALTH CODE (EXCERPT)**  
**Act 368 of 1978**

**333.21311a Existing facility or facility under construction; exemption.**

Sec. 21311a. (1) Beginning on the effective date of the amendatory act that added this section, an exemption from licensure as a home for the aged under this article shall be given to an existing facility or a facility under construction if the requirements of subsection (3) are met and 1 of the following applies:

(a) The person that offers board is not related to the person that provides room or supervised personal care, or both.

(b) The person that provides supervised personal care, whether or not related to the person that provides room or board, or both, has had a supervised personal care arrangement in effect for at least 2 consecutive years before the date of the attestation required under subsection (3) and residents at the facility have the option to select any supervised personal care provider of their choice.

(2) An exemption from licensure as a home for the aged under this article shall be given to a facility or a facility under construction if the requirements of subsection (3) are met and 1 of the following applies:

(a) The person that provides room and the person that provides supervised personal care are related and the facility is registered as a continuing care community under the continuing care community disclosure act, 2014 PA 448, MCL 554.901 to 554.993, and includes a licensed nursing home as part of the continuing care community.

(b) The person that provides room and the person that provides supervised personal care are not related and residents at the facility have the option to select any supervised personal care from a person of their choice.

(3) The department shall make a determination that a facility is exempt from licensure as a home for the aged under this article if the owner, operator, or governing body of the facility submits an attestation to the department that certifies that all of the requirements under subsection (1)(a) or (b) or (2)(a) or (b) are met, is signed by the owner, operator, or governing body for the facility, and includes an acknowledgment that the penalty for submitting a false or inaccurate attestation is an administrative fine of \$5,000.00.

(4) An exemption granted under this section continues to exist for a successor owner, operator, or governing body if the successor files the attestation required under subsection (3). An exemption under subsection (1)(a) or (b) shall not be granted under this section after December 31, 2019, except to a successor owner, operator, or governing body as provided in this subsection. An exemption under subsection (2)(a) or (b) is not limited to an existing facility or a facility under construction on or before the effective date of the amendatory act that added this section as long as the requirements of this section are met.

(5) The department shall act on an application for exemption requested under this section as soon as practicable but no later than 60 days after receipt of the application for the exemption.

(6) A denial of an application for exemption, an issuance of a fine, or a revocation of an exemption is, upon the applicant providing further information, subject to a review by the department or an appeal as provided in section 1205, or both.

(7) An exemption granted under this section may be revoked if the department determines 1 of the following:

(a) That the false or inaccurate information provided in the attestation was material to granting the exemption.

(b) The person receiving the exemption is found to be negligent, which negligence results in serious physical injury, death of a resident, or serious mental anguish, and there continues to be a risk to the health and safety of the residents at that facility.

(c) The person receiving the exemption does not cooperate in the department's investigation to make a determination for subsection (3).

(8) As used in this section:

(a) "Board" means food service provided at a facility.

(b) "Related" means any of the following personal relationships by marriage, blood, or adoption: spouse, child, parent, brother, sister, grandparent, grandchild, aunt, uncle, stepparent, stepbrother, stepsister, or cousin. Related also means an entity owns or is owned by a person that has a direct or indirect ownership interest in another entity that provides a component of operations or service under subsections (1) and (2).

(c) "Serious mental anguish" means damage suffered by a resident that a physician, physician assistant, or nurse practitioner determines caused or could have caused extreme emotional distress that resulted in hospitalization, psychiatric treatment, or death of a resident.

(d) "Serious physical injury" means damage suffered by a resident that a physician, physician assistant, or nurse practitioner determines caused or could have caused death of a resident, caused the impairment of his or her bodily function, or caused the permanent disfigurement of a resident.

**History:** Add. 2017, Act 167, Eff. Feb. 11, 2018.

**Popular name:** Act 368