ASB 2020-004

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#### LEGAL STATUTE

#### Adult Foster Care

Adult foster care family homes, small group homes, large group homes and congregate facilities are licensed by the Department of Licensing and Regulatory Affairs (LARA) Bureau of Community and Health Systems (BCHS) under Act No. 218 of the Public Acts of 1979. These facilities provide:

- Room and Board.
- Supervision 24/7.
- Protection.
- Personal care to adults 18 and over who are frail, developmentally disabled, mentally ill, or intellectually or physically disabled.

The individuals that would need supervision on an ongoing basis but not the services of continuous nursing care are the best candidates for Adult Community Placement facilities.

#### **1979 Public Act 218** Licensing of facilities

The Michigan Do-Not-Resuscitate Procedure Act (Act No. 193 of the Public Acts of 1996) and MCL 333.20192 and MCL 333.20919, part of the Public Health Code, MCL 333.1101 *et seq.*, amended pursuant to 1996 PA 192, also apply to AFC home licensing.

1979 PA 218 states that a regular license is valid for two years unless it is revoked or modified.

There are administrative rules that are required to be met prior to the issuance of an Adult Foster Care home license. These are: Michigan Administrative Code R 400.1151-1153, R400.1401-1442, R400.2201-2376, R400.2401-.2475, R400.14101-14601, R400.15101-15411, and R400.16001.

The information in the following sections will provide the adult services worker with a general knowledge of licensing rules. Discuss any specific interpretations of 1979 PA 218 as amended, or the administrative rules with the Adult Foster Care Licensing Consultant. ASM 050

#### ACP AFC LEGAL STATUTE, DEFINITIONS, AND RULES VARIANCES

#### Definitions in 1979 PA 218

1979 PA 218 defines both the adult foster care facility and the term adult.

## Adult Foster Care Facility - MCL 400.703 (4).

Adult foster care facility is a home or facility that provides foster care to adults. Adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care.

## Adult - MCL 400.703 (1) (a) and (b).

Adult means:

- A person 18 years of age or older.
- A person who is placed in an adult foster care family home or an adult foster care small group home pursuant to section 5(6) or (8) of Act No. 116 of the Public Acts of 1973, as amended, being section 722.115 of the Michigan Compiled laws.

Four Types of Facilities

Act 218 defines four types of AFC facilities.

## ADULT FOSTER CARE FAMILY HOME - MCL 400.703 (5)

Adult foster care family home means a private residence with the approved capacity to receive at least three but not more than six adults to be provided foster care The adult foster care licensee must be a member of the household and an occupant of the residence.

# ADULT FOSTER CARE SMALL GROUP HOME - MCL 400.703 (7).

Adult foster care small group home means an adult foster care facility with the approved capacity to receive at least three but not more than 12 adults who shall be provided foster care.

**Note:** A six-bed home can be licensed as either a family or small group home depending on whether the licensee is an occupant of the residence and a member of the household.

# ADULT FOSTER CARE LARGE GROUP HOME - MCL 400.703 (6).

Adult foster care large group home means an adult foster care facility with the approved capacity to receive at least 13 but not more than 20 adults who shall be provided foster care.

## ADULT FOSTER CARE CONGREGATE FACILITY - MCL 400.703 (3).

Adult foster care congregate facility means an adult foster care facility with the approved capacity to receive more than 20 adults to be provided with foster care. Section 15 of 1979 PA 218 **prohibits the licensure of new adult foster care congregate facilities**. There are only nine remaining congregate facilities in the state and those have been grandfathered in. The list of congregate homes is located on the adult services home page.

**Note:** The DHS-3422, Adult Foster Care Agreement for Congregate Facilities, is a written agreement that identifies the responsibilities of the licensee and the responsible agency. It is required **only** in congregate adult foster care homes. It should be signed by the local office director or designee and the AFC licensee or designee. This form is not required in AFC family or group facilities. The DHS-3422 is available in the MDHHS Forms Library.

## Additional Definitions

There are several other definitions that are likewise important in understanding the AFC licensing perspectives.

### Foster Care - MCL 400.704 (8).

Foster care means provision to **non-related adults** 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.

### Supervision - MCL 400.707 (7).

Supervision means guidance of a resident in the activities of daily living including one or more of the following:

• Reminding a resident to maintain his or her medication schedule as directed by the resident's physician.

- Reminding a resident of important activities to be carried out.
- Assisting a resident in keeping appointments.
- Being aware of a resident's general whereabouts even though the resident may travel independently about the community.

#### Personal Care - MCL 400.706 (1).

Personal care means personal assistance provided by a licensee or an agent or employee of the licensee to a resident who requires assistance with:

- Dressing.
- Personal hygiene.
- Grooming.
- Maintenance of a medication schedule as directed and supervised by the resident's physician or;
- The development of those personal and social skills required to live in the least restrictive environment.

### Protection - MCL 400.706 (5).

Protection, subject to section 26a(2) of the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, means the continual responsibility of the licensee to take reasonable action to insure the health, safety, and well-being of a resident; including protection from physical harm, humiliation, intimidation, and social, moral, financial, and personal exploitation while on the premises, while under the supervision of the licensee or an agent or employee of the licensee, or when the residents' assessment plan states that the resident needs continuous supervision.

#### Licensed hospice program - MCL 400.705(2).

Licensed hospice program means a health care program that provides a coordinated set of services rendered at home or in an outpatient or institutional setting for individuals suffering from a disease or condition with a terminal prognosis and that is licensed under article 17 of the public health code, 1978 PA 368, 333.201201 to 333.22260 of the Michigan Compiled Laws.

#### Do-not-resuscitate order - MCL 400.704 (7).

Do-not-resuscitate (DNR) order means a document executed pursuant to section 3 of the Michigan Do-Not-Resuscitate Procedure Act directing that, in the event a resident suffers cessation of both spontaneous respiration and circulation, no resuscitation will be initiated.

In the case of an accident or sudden severe adverse change in a resident's physical or medical status, such as respiratory or cardiac arrest or life-threatening injury, the licensee and/or his/her employees are required to call emergency medical services to the home. The adult foster care licensee and/or his/her employees are not required to resuscitate a resident whose heart and breathing have stopped and who has executed a valid DNR order pursuant to the Michigan Do-Not-Resuscitate Procedure Act (Acts No. 193 of the Public Acts of 1996).

If the resident has a valid DNR order and emergency medical services are called to the home, the licensee must provide the written DNR order to the emergency medical services personnel. Under the provisions of the Michigan Do-Not-Resuscitate Procedure Act, emergency medical services personnel are not required to resuscitate a resident if shown a legally valid DNR order.

In the event that a resident, who is enrolled in a licensed hospice program (and has a DNR order in his/her assessment plan) suffers a cessation of both spontaneous respiration and circulation, the adult foster care facility is allowed to immediately contact the resident's licensed hospice service provider instead of emergency medical services. The licensed hospice provider can then determine the appropriate course of action.

AFC Administrative Rule Variances

> Upon written request of an AFC licensee or applicant, the Department of Licensing and Regulatory Affairs (LARA) may grant a variance or exemption from an administrative rule for family, small or large group homes, if there is clear and convincing evidence that the alternative to the rule complies with the intent of the administrative rule from which the variance is sought.

Any variance from administrative rules would be requested by the licensee to the AFC Licensing Consultant. If approved, the variance is to be noted on the plan of care citing the specific rule and circumstances related to the variance granted. The licensee will have a copy of the approval letter in the resident's file.

The following is an example of a situation where an administrative rule variance may be applied:

**Example:** Small Group Home Rule, Michigan Administrative Code R400.14305 and Large Group Home Rule R400.15305, states that all work performed by a resident must be in accordance with the resident's written assessment plan. A plan may allow for work other than expected tidiness of one's personal belongings. The tasks must be goal-oriented such as participate in meal preparation to aid in a resident's ability to be self-sufficient as assessed with independent living.

## COUNTY INFIRMARIES

LARA monitors rule compliance for county infirmaries which were formerly county poor farms. Only two county infirmaries remain in Michigan:

Pinecrest Farms 413 N. Homer Road Midland, Michigan

Fairview County Infirmary 3604 S. Custer Road Monroe, Michigan

County infirmaries are not considered adult foster care facilities but are coded in Bridges as AFC providers for the purpose of the Medicaid personal care supplement.

## HOMES FOR THE AGED (HFA)

Homes for the Aged are licensed facilities that provide room, board, and supervised personal care to individuals 55 years of age or older. Residents receive assistance with activities of daily living (ADL) and medication administration similar to an adult foster care home. They are licensed under the Department of Licensing and Regulatory Affairs (LARA) Bureau of Community and Health

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Systems (BCHS) under Act No. 363 of the Public Acts of 1978, as amended.

Licensure as a home for the aged is restricted to freestanding facilities of 21 or more beds or facilities of any bed size when operated in conjunction with and as a distinct part of a nursing care facility. Some homes have specialized dementia care programs.

Prior to accepting individuals for admission, the home must assure that they are able to care for them. The home cannot admit someone who has a mental condition that may be disturbing to the other residents or personnel of that facility.

Before persons can be admitted to an HFA, the following must be completed:

- A chest X-ray.
- Physical examination report with diagnosis and special needs defined.
- Doctor certification indicating that the individual has no communicable diseases.

The adult services worker completes an assessment and develops a plan of care for the HFA resident following the same guidelines as those completed for AFC residents. HFA providers are entitled to the personal care supplement for residents on Medicaid.

#### Age Waiver

The Public Health Code allows for an age waiver for persons under 55 years of age if the individual, individual's guardian or legal representative (if applicable), physician and designated representative from the facility all agree that the following conditions are met:

- The home for the aged can meet the individual's medical, social, and other needs as determined in the individual's plan of care.
- The individual will be compatible with the other residents of the home for the aged.
- The placement in the home for the aged is in the best interest of the individual.

The owner, operator and governing body of the HFA shall submit, with its request for a waiver, documentation to LARA that supports each of the points of interest listed above.

Generally, decisions are made within one week of submission. All required documentation should be forwarded to:

LARA/Bureau of Community and Health Systems AFC & Camp Licensing Division 611 W Ottawa St - Central Office PO Box 30664 Lansing, MI 48909

Homes for the Aged Licensure Exemption

Section 21311a of the Public Health Code, 1978 PA 368, allows for exemption from licensure as a Home for the Aged under certain circumstances [MCL 333021311a (1) and (2)].

Beginning March 28, 2019, 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 for subsection (3) are met and one of the following applies:

- 1. The person that offers board is not related to the person that provides room or supervised personal care, or both.
- 2. The person that provides supervised personal care, whether related to the person that provides room or board, or both, has had a supervised personal care arrangement in effect for at least two consecutive years before the date of the attestation and residents at the facility have the option to select any supervised personal care provider of their choice.
- 3. 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 <u>Continuing Care Disclosure Act</u> and includes a licensed nursing home as part of the continuing care community.
- 4. 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.

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Click <u>here</u> to view an excerpt of the Public Health Code that references homes for the aged.

Revocation of HFA Licensure Exemption

An exemption granted under 333.21311a may be revoked if LARA determines one of the following:

- False or inaccurate information provided in the attestation was material to granting the exemption.
- 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 in the facility.
- The person receiving the exemption does not cooperate in LARA's investigation to make a determination of subsection (3).

Adult Protective Services would be responsible for conducting investigations in these settings. APS would refer any incidents of death, serious mental anguish and/or serious physical injury to licensing. LARA will determine if there is continued risk to the health and safety of residents in the facility.

The Department of Licensing and Regulatory Affairs publishes a list of facilities exempt from the Homes for the Aged Licensure quarterly. The list can be found on the michigan.gov/lara website under resources.

Impact on Residents in Facilities with an HFA Licensure Exemption

> Individuals who reside in a setting where HFA licensure is exempt should be informed of the following:

> • The Medicaid personal care supplement cannot be approved for clients residing in an unlicensed setting.

- The Supplemental Security Income (SSI) rate in these settings is lower than if they were residing in a licensed setting.
- State Disability Assistance (SDA) will not cover room and board in an unlicensed setting.
- Home Help would be allowed in this unlicensed setting.
- Complaints investigated by LARA in a licensed setting would not be investigated in an unlicensed setting.

**Example:** If a resident is unhappy with the meals, LARA would not investigate as the facility is exempted from the HFA licensure.

#### FACILITY LICENSE NUMBERS

When a facility receives licensure, the applicant or licensee is assigned a license number. The first two letters of the license number identify the type of facility.

- AF Family Home (3-6 capacity).
- AS Small Group Home (3-6 capacity).
- AM Medium Group Home (7-12 capacity).
- AL Large Group Home (13-20 capacity).
- AG Congregate Home (20 or more).
- AI County Infirmary.
- AH Homes for the Aged (21 or more).