



STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
BUREAU OF CHILDREN AND ADULT LICENSING



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January 13, 2011

To: Homes for the Aged Licensing Licensees

From: James S. Sinnamon, Director
Adult Foster Care & Home for the Aged Licensing

RE: Recent amendment to 1978 PA 368

The legislature recently passed several amendments to 1978 PA 368, the statute governing the regulation of homes for the aged (HFA) facilities. Highlights of the legislation are noted below.

- Criminal history checks (Michigan check) and criminal records checks (FBI check) will be required for all HFA applicants and authorized representatives at the time of original application [MCL 333.21313 (5)].
- Criminal history checks and criminal records checks will be required for an owner, operator, or member of the governing body of an HFA applicant who has regular direct access to residents, or who has on-site facility operational responsibilities [MCL 333.21313 (6)].
- Fees for fingerprinting will be established by the Michigan State Police and will be the responsibility of the person being fingerprinted. [MCL 333.21313 (8)].
- The Michigan State Police will maintain the fingerprints in a database that provides the department with automatic notification of subsequent criminal arrests and convictions. [MCL 333.21313 (9)].
- All owners, operators and members of the governing body of a home for the aged who have regular direct access to residents, or who have on-site facility operational responsibilities must submit fingerprints to the department by 12/21/2011. [MCL 333.21313 (7)].
- An owner, operator, member of the governing body, or authorized representative of a home for the aged will not be permitted to be present in a home for the aged if he or she has been convicted of adult abuse, neglect, or financial exploitation; or listed offenses as defined in section 2 of the sex offenders registration act, 1943 PA 295, MCL 28.722. [MCL 333.21313 (10)].
- The owner, operator, member of the governing body, or authorized representative of a home for the aged must be of good moral character (as defined in section 1 of 1974 PA 381, MCL 338.41). [MCL 333.21313 (3)].
- Offenses specified under chapter XXA of the Michigan Penal Code, and misdemeanors involving abuse, neglect assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult will result in the denial of issuance of a license or the revocation of an existing license.

- Includes staffing agencies as an entity that may conduct background checks. [MCL 333.20173a (2)].
 - On or before 4/1/2011 employees previously exempt from a criminal history check through the Workforce Background Check program must complete a fingerprint criminal history check. [MCL 333.20173a (2)(a)].
 - For employment applicants who have previously been fingerprinted under this statute, licensees may rely on the criminal history record information provided by the department instead of requesting another criminal history if **all** of the following requirements are met:
 - The criminal history check was conducted in the past 12 months.
 - The applicant has been continuously employed by the staffing agency, a covered facility or adult foster care facility since the check was conducted, or meets the continuous employment requirement.
 - The applicant can provide evidence that he or she has been a Michigan resident for the immediately preceding 12 months. [MCL 333.20173a (10)].
 - If an individual meets all of the criteria noted above, the licensee must request the criminal history record information from the department and request the department to conduct a check on the applicant of all relevant registries. [MCL 333.20173a (3)].
 - A staffing agency must submit information regarding the criminal history check for an individual conducted by the staffing agency to the covered facility that has made a good faith offer of independent contract to that individual. [MCL 333.20173a (3)].
 - An individual who is conditionally employed may not work unsupervised if they have regular direct access to or provide direct services to residents until:
 - The facility, at its own expense, conducts an ICHAT and no exclusionary convictions are found.
 - The individual signs a statement in writing that he or she has resided in Michigan without interruption for the immediately preceding 12 months.
 - If applicable, the individual is fingerprinted on or before the expiration of 10 business days following the date the individual was conditionally employed. [MCL 333.20173a (5)(c)].
- Note:** If the above requirements are not met, the individual may not work unsupervised until the licensee/facility receives a notice stating there are no exclusionary findings.
- Added the following definitions to PA 368 [MCL 333.20173a (15)]:
 - “Convicted” - For a crime that is not a relevant crime, a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilty for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime. For a relevant crime described under 42 USC 1320a-7(a), convicted means that term as defined in 42 USC 1320a-7.
 - “Covered health facility” means a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged or home health agency licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

- “Staffing agency” means an entity that recruits candidates and provides temporary and permanent qualified staffing for adult foster care facilities, including independent contractors.
- “Under the facility’s control” means an individual employed by or under independent contract with a covered facility for whom the covered facility does both of the following:
 - Determines whether the individual who has access to residents may provide care, treatment, or other similar support service functions to residents served by the adult foster care facility.
 - Directs or oversees 1 or more of the following:
 - The policy or procedures the individual must follow in performing his or her duties.
 - The tasks performed by the individual.
 - The individual’s work schedule.
 - The supervision or evaluation of the individual’s work or job performance, including imposing discipline or granting performance awards.
 - The compensation the individual receives for performing his or her duties.
 - The conditions under which the individual performs his or her duties.

Copies of the new legislation are posted on our website at www.michigan.gov/afchfa in the “Alerts” section.

While the legislation was passed with “immediate effect,” there will be a delay in implementation of fingerprinting licensees as we coordinate with the Michigan State Police and the Department of Technology, Management and Budget to develop new procedures and policy. Information will be shared with you as it becomes available.

Please contact your licensing staff if you have additional questions about this legislation.