

Last December several legislative bills were signed into law which will change the Adult Foster Care Facility Licensing Act. Below is a summary of each bill, which were assigned Public Act 388, 557 and 558 when signed into law. In addition, Public Act 513 will modify the Zoning Enabling Act. While this change does not apply directly to AFC homes, it may be of interest to some AFC providers. The effective date that each Public act will take effect is also provided below. If you would like to read the Public Act in its entirety, each Public Act below is a link which will bring you to the actual Public Act.

Summary of [Public Act 388 of 2018 \(SB 962\)](#), Effective March 19, 2019

400.703 (4)(h): Revises the definition of adult foster care facility to allow a facility to be dually licensed as an AFC and Substance Use Disorder (SUD) program if the facility is approved as a co-occurring enhanced crisis residential program by DHHS.

400.704 (1): Adds a definition for a “co-occurring enhanced crisis residential program”. A co-occurring enhanced crisis residential program means a program approved by the Department of Health and Human Services for providing short-term intensive mental health and substance use disorder services that is able to address the mental health needs, substance use disorder needs, or both of an individual through enhances programming and staffing patterns that are reviewed and approved by the Department of Health and Human Services.

Summary of [Public Act 557 of 2018 \(HB 5505\)](#), Effective March 28, 2019

400.703 (4)(k): This is a new subsection which states that an Adult Foster Care License is not required for a private residence with a capacity of not more than 4 adults who **all** receive benefits from a community mental health services program and the local community mental health services program monitors the services being delivered in that residential setting. Note: If the home has a capacity of 3 or 4 and there is one resident that is not CMH, then an AFC license would be required.

400.703 (5): Revises the definition of an Adult Foster Care Family Home capacity to at least 3 but not more than 6 residents. After March 28, 2019, we can no longer accept new applications with a capacity of 1 or 2 residents. Note: Existing homes previously approved for 1 or 2 can be renewed.

400.703 (7): Revises the definition of an Adult Foster Care Small Group Home capacity to at least 3 but not more than 12 residents. After March 28, 2019, we can no longer accept new applications with a capacity of 1 or 2 residents. Note: Existing homes previously approved for 1 or 2 can be renewed. This change does **not** allow applicants to admit 1 or 2 residents while their application is being processed as the applicant’s intention is to have a capacity of more than 2 residents.

400.705 (4): Revises the definition of the licensee designee to clarify the licensee designee must meet all the qualification requirements of the licensee throughout the act and rules promulgated under the act.

400.713 (3): Additional language was added to allow licensing to conduct a renewal inspection within 12 months before the expiration of the current license without impact on the license

renewal date or the license fee. This language was added so that licensing staff can more efficiently complete renewal inspections, possibly conduct to renewals in the same town on the same day to decrease travel time. A courtesy contact to the licensee up to 24 hours before the renewal inspection will be attempted by licensing staff.

400.713 (10): Additional language to include denying an application of a license where the department may refuse to issue a license for a period of 5 years (like when the department has revoked, suspended or refused to renew). This language was added to help prevent someone from immediately reapplying for a license after their application was denied.

400.713a (1): Adjusts fees which have not been modified since 1992.

Beginning January 1, 2020 applications and renewal fees will be changed as follows:

- Family Home (3-6) \$85.00
- Small Group Home (3-6) \$130.00
- Small Group Home (7-12) (AM) \$170.00
- Large Group Home (13-20) \$320.00
- Congregate Facility (renewal Only) \$360.00
- Camp \$120.00

Beginning January 1, 2022 applications and renewal fees will be changed as follows:

- Family Home (3-6) \$100.00
- Small Group Home (3-6) \$150.00
- Small Group Home (7-12) (AM) \$200.00
- Large Group Home (13-20) \$500.00
- Congregate Facility (renewal Only) \$500.00
- Camp \$200.00

400.722 (3): New language that allows the department to deny an application for licensure based on a prior settlement agreement.

400.722a: New language that allows the department to settle a case without notice of intent and 30-day appeal right if the licensee agrees to the proposed action.

400.722c: New language that allows the department to appoint a temporary administrative advisor and/or a temporary clinical advisor to assist and oversee the facility during a summary suspension for a more orderly closure. Previously all the residents would have to be moved the same day the summary suspension order was issued causing residents, their family and guardians a lot of unnecessary stress to find a new placement on short notice. Note it is rare that the department would issue a summary suspension and would likely only be used a couple time a year (if at all).

Summary of [Public Act 558 of 2018 \(HB 5506\)](#), Effective March 28, 2019

400.724: Revised language that changes process for review of a complainant's disagreement with the initial findings of a department investigation from a hearing in front of the Michigan Administrative Hearing System to a department administrative review. The administrative review will be based on pertinent documentation or a verifiable statement submitted in writing

by the complainant and not the complainant stating that they are dissatisfied with the results of the investigation. This change conserve resources for conducting a review and expedites the process for the complainant. A complainant is not a party to licensure action.

400.725: Revised language. The licensee can continue to appeal Department Director's decision following a contested case hearing to circuit court. The standard of review for circuit court has been changed to a judicial review (meaning that circuit court will review the contestant case file from the Michigan Administrative Hearings System instead of retrying the case). This standardizes the appeal of a contested case hearing result to the administrative procedure act requirements, and potentially reduces court litigation costs for all parties.

400.734b (4): Revised language. Starting July 1, 2020 this change requires adult foster care facility, the staffing agency or the individual employee to pay for the AFC employees or independent contractors (who regularly have direct access to AFC residents) applicable background check. These background checks are currently paid by the department. This change aligns AFC providers with all other provider types that are required to pay for their own background checks.

400.734b (11): This subsection was revised to allow an employee that has a criminal history check, was continuously working at an AFC and resided in Michigan for the previous 12 months to be able to use that criminal history check at other AFC homes for a period of up to 24 months. Currently you could only use a previous criminal history check for up to 12 months.

400.734c: Revised language which changes background check appeal by an individual to an administrative review by the department with a final decision by the director.

Summary of [Public Act 513 of 2018 \(HB 6400\)](#), Effective March 28, 2019

125.3206(1): An addition to the Zoning Enabling Act was made to require local zoning authorities to classify homes with 4 or less residents which are all receiving CMH benefits as defined in MCL 400.703(4)(k) and are not licensed by the State of Michigan to be zoned as residential. This type of setting would be zoned residential just like a licensed AFC with a capacity of 6 or less residents.