

Licensing Standards for Adult Assisted Living – Workgroup Findings Report

(FY2016 Appropriation Bill - Public Act 84 of 2015)

November 1, 2015

Sec. 315. (1) The department, in conjunction with organizations representing disabled and elderly adults, representatives of assisted living facilities, and the legislature, shall conduct a workgroup that explores licensing standards and practices and performance measures for facilities providing adult assisted living services in order to ensure safe, adequately supervised, and protective environments for those individuals and families seeking assisted living services.

(2) By November 1, 2015, the department shall provide to the senate and house appropriations subcommittees on the department budget, the senate and house fiscal agencies, the senate and house policy offices, and the state budget office a report on the findings of the workgroup that is described in subsection (1).



**Michigan Department of
Health & Human Services**

**RICK SHYDER, GOVERNOR
NICK LYON, DIRECTOR**

Assisted Living Services Report

(Pursuant to Public Act 84 of 2015)

October 30, 2015

Prepared by

Bureau of Community and Health Systems



RICK SNYDER
GOVERNOR



MIKE ZIMMER
DIRECTOR

REPORT AUTHORITY

Public Act 84 of 2015

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EXECUTIVE ORDER

Executive Order No. 2015 – 4 transferred the Office of Child and Adult Licensing (OCAL) from the former Michigan Department of Human Services (DHS) to the Michigan Department of Licensing and Regulatory Affairs (LARA). LARA effectively took over day-to-day operations of OCAL in the 3rd quarter of 2015. For purposes of this report, the “department” means the Department of Licensing and Regulatory Affairs.

DEPARTMENT OVERVIEW

LARA is composed of agencies and commissions that promote business growth and job creation through streamlined, simple, fair, and efficient regulation, while at the same time protect the health and safety of Michigan's citizens.

Formed July 6, 2015, the Bureau of Community and Health Systems (BCHS) serves to protect and assure safe, effective, efficient and accessible community and health care services delivered by state licensed and federally certified providers in Michigan.

The Bureau is responsible for state licensing of facilities, agencies and programs under the Public Health Code, Mental Health Code, Adult Foster Care Facility Licensing Act, and Child Care Organizations Act. The Bureau is also the State Agency responsible for conducting certification activities on behalf of the Centers for Medicare and Medicaid Services (CMS) to assure that covered health providers and suppliers meet federal conditions to participate in the Medicare and Medicaid programs.

In general, the majority of state licensing activities involve the issuance and renewal of licenses to qualified facilities, agencies, and programs; conducting initial, routine and revisit inspections to determine compliance with state and federal requirements; and investigating complaints against state licensed and federally certified providers.

The following table shows the types and numbers of facilities, agencies and programs that are required to be state licensed as well as those eligible for federal certification to participate in the Medicare and Medicaid program as of April 2015.

Facilities, Agencies and Programs	No. of Providers	State Licensure	Federal Certification
Acute Care Hospitals	169	Yes	Yes
Adult Foster Care Homes	4,291	Yes	No
Child Care Homes and Centers	10,058	Yes	No
Child Care/Adult Foster Care Camps	1,031	Yes	No
Clinical Laboratories	8,348	Yes	Yes
Community Mental Health Centers (CMHC)	3	No	Yes
Comprehensive Outpatient Rehab (CORF)	6	No	Yes
End-Stage Renal Dialysis (ESRD)	197	No	Yes
Federally Qualified Health Centers (FQHC)	196	No	Yes
Home Health Agencies	646	No	Yes
Hospice Agencies	131	Yes	Yes
Hospice Residences	18	Yes	Yes
Freestanding Surgical Outpatient Facilities (FSOF)	133	Yes	Yes
Long-Term Care Facilities	452	Yes	Yes
Organ Procurement Organizations (OPO)	1	No	Yes
Outpatient Physical Therapy (OPT)/Speech	162	No	Yes
Portable X-Ray Providers	9	No	Yes
Psychiatric Hospitals/Units	59	Yes	Yes
Rural Health Clinics	160	No	Yes
Substance Abuse Programs	1,284	Yes	No

REPORT OVERVIEW

The department in conjunction with organizations representing disabled and elderly adults and representatives of assisted living facilities met to explore the charge of licensing standards and practices and performance measures for facilities providing adult assisted living services in order to ensure safe, adequately supervised, and protective environments for those individuals and families seeking assisted living services. A representative from the legislature was sought but not able to attend.

The workgroup reviewed and discussed the charge and determined that “assisted living” is not defined by state law, and only “adult foster care facilities” and “homes for the aged” are defined as reflected in this report.

MCL 400.703 (4) "Adult foster care facility" means a governmental or nongovernmental establishment 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 disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care.

MCL 333.20106 (3) "Home for the aged" means a supervised personal care facility, other than a hotel, adult foster care facility, hospital, nursing home, or county medical care facility that provides room, board, and supervised personal care to 21 or more unrelated, nontransient, individuals 60 years of age or older. Home for the aged includes a supervised personal care facility for 20 or fewer individuals 60 years of age or older if the facility is operated in conjunction with and as a distinct part of a licensed nursing home.

The workgroup also concluded that license standards, practices and performance measures for the approximately 4,300 licensed adult foster care (AFC) facilities should not be part of the group's review since that role is the responsibility of the Adult Foster Care Advisory Council pursuant to MCL 400.708.

MCL 400.708 (3)..."The council shall advise the department on the content of rules and their enforcement."

The workgroup did identify two primary issues related to the charge. The first issue revolved around AFC residents that have a violent history and/or complex behavioral issues. While members of the workgroup have heard some providers voice the need for a locked AFC homes/units, the workgroup believes this concept would be in direct conflict with the AFC philosophy that attempts to integrate residents into the community and homelike, non-institutional settings for the residents to live in.

In addition, the workgroup reviewed and discussed the issue of unlicensed facilities, which includes locations commonly referred as "assisted living" facilities. Numerous facilities are providing all the elements of AFC or Home for the Aged services without a state license. Many of these unlicensed providers believe they do not need to be licensed because the provider themselves do not *directly offer* [emphasis added] all the core required services at the unlicensed site. More and more providers are under the belief that licensure is an option and not a requirement as long as they do not directly offer all the services requiring licensure as an AFC home or Homes for the Aged. This matter of unlicensed sites where all the core services of an AFC or Homes for the Aged are being provided by various parties is under review by the department in conjunction with the Office of the Attorney General. Therefore the workgroup decided to defer this issue until final guidance is provided by the department in 2016.

The workgroup also researched the intent of the charge to gain a better understanding of the task requested. Based on this research, the group concluded that it had addressed the primary issues related to the charge.

REPORT SUMMARY

In summary, the workgroup reports the following findings:

- “Assisted living services” is not defined in either the Public Health Code (Act 368 of 1978 as amended) or the Adult Foster Care Facility Licensing Act (Act No. 218 of 1979 as amended). Therefore, there are no state licensing standards that exist to evaluate by the workgroup.
- Based on the Adult Foster Care Facility Licensing Act, the workgroup concluded that the designated authority under state law to explore the above charge for the existing adult foster care facility requirements is the Adult Foster Care Advisory Council.
- As for locked facilities, and issue identify by the workgroup in its deliberation, the workgroup concluded that such a model is counter to the AFC philosophy and again would be better addressed by the Adult Foster Care Advisory Council or by the Legislature in development of a new license type such as residential psychiatric care within the Mental Health Code.
- As for unlicensed sites, sometimes commonly referred to as “assisted living” facilities, the workgroup felt that many would qualify for licensure as either an AFC facility or homes for the aged as many of these sites offer all the core services of these two license types. The workgroup felt that this issue was being adequately addressed at this time by the department since the Executive Order and in conjunction with the Office of the Attorney General.

WORKGROUP PARTICIPANTS

- Kathie Lentz, Kalamazoo Community Mental Health
- Laura Funsch, Leading Age
- Brenda Roberts, Michigan Assisted Living Association (MALA)
- Linda Lawther, Michigan Center for Assisted Living (MCAL)
- Bob Davis, Home for the Aged Facility
- Dan Kosmowski, Adult Foster Care Resident
- Daniella Trifan, Nurse Care Manager
- Jay Calewarts, Michigan Department of Licensing and Regulatory Affairs
- Betsy Montgomery, Michigan Department of Licensing and Regulatory Affairs
- Jerry Hendrick, Michigan Department of Licensing and Regulatory Affairs
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- Jeremy Boyd, Michigan Department of Health and Human Services

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