



MEMORANDUM

FROM: Richie Farran, V.P. of Government Services, Health Care Association of Michigan
DATE: July 27, 2023
SUBJECT: House Bill 4841

The Health Care Association of Michigan represents 260 assisted living communities across the state, including Adult Foster Care (AFC) and Homes for the Aged (HFA). HCAM and its members are committed to ensuring quality care for Michigan's vulnerable population being served in these settings.

HCAM appreciates Representative Young for her shared goal of enhancing resident safety. House Bill 4841, however, fails to recognize the role that AFCs play in Michigan's long-term care continuum. The bill fundamentally changes the adult foster care model in Michigan.

The current Adult Foster Care Facility Licensing Act – MCL 400.703 (4) – defines AFCs as follows:

*(A) home or facility that provides foster care to adults. Subject to section 26a (1), 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.** (Emphasis added).*

The act further explicitly prohibits an AFC from utilizing a name or designation which implies, infers, or leads the public to believe that the facility provides nursing care (MCL 400.726 (1)).

Several provisions in the bill run counter to the purpose of the AFC model, and will lead to confusion from the public regarding the services that AFCs provide and the role they play in the current long-term care continuum. AFCs serve a population that does not need 24/7 nursing care – nursing facilities provide these services and are robustly regulated under federal and state rules and laws.

Implementation of this bill would be catastrophic for Michigan's AFCs. In order to comply with the unnecessary regulations of the bill, costs would increase significantly for residents. AFC residents predominantly pay out of pocket, putting excessive burdens on them and their families. Many of them would be unable to afford the higher rates. This will undoubtedly eliminate AFCs as an option for this vulnerable population, and will lead to closures of AFCs across the state.

For these reasons, HCAM is opposed to House Bill 4841.

Below are specific provisions of the bill that create unnecessary, burdensome regulations on AFCs without achieving the goal of protecting the populations they serve.

1. Adding several definitions, including “Abuse”, “Mental Abuse”, “Neglect”, “Physical Abuse”, “Verbal Abuse”, “Sexual Abuse” to the AFC Licensing Act is redundant, as Adult Protective Services (APS) already holds authority to investigate any claims of abuse in AFCs. Upon a finding of abuse, APS reports to LARA or local law enforcement for further action to rectify the situation.
2. Adding definitions such as “Certified nurse assistant”, “Licensed practical nurse”, and “Licensed staff” is unnecessary as AFCs serve populations that do not need continuous nursing care. Adding nurses to the act is also inconsistent with MCL 400.726 (1) which prohibits an AFC from utilizing a name or designation that implies, infers, or leads the public to believe that the facility provides nursing care.
3. The requirement for the department to provide information on an AFC can already be found on the Adult Foster Care Search program located at the Department of Licensing and Regulatory Affairs’ (LARA) website. The following is redundant: Licensee name, address and phone number, AFC facility name, address and telephone number, bed capacity, list of services provided by the AFC, and the number of current violations can be viewed by looking at the inspection reports, and include special investigations.
4. Adding the requirement to report staff-to-resident ratio’s and education and certification requirements for staff is overly burdensome and takes time away from the staff serving the residents. Staffing ratio’s continuously change depending on the needs of the current residents at the time. Staff education is also constantly evolving depending on the needs of the residents, the needs of the staff, and outside influences such as COVID guidance or updates. The burdens created by these requirements will further exacerbate the workforce and financial challenges the sector is currently facing.
5. The requirement for the department staff conducting an investigation to include a registered nurse, a dietician and a licensed social worker is excessive and unnecessary. 14% of the licensed AFC’s have the capacity for up to 6 residents and 58% of licensed AFCs have the capacity for up to 12 residents. The necessity for these three licensed department staff to come into an AFC with barely 12 residents is not only excessive but intrusive into their “home”.
6. Additional renewal requirements that the department must consider when a licensee applies for renewal are unnecessary and cumbersome. While the caveat that the department can waive certain requirements for an owner of one AFC would be helpful, an owner could have two 6 bed facilities and not be eligible and would still suffer a huge financial hardship.
7. The requirement for the department complaint process is also redundant and can be found on LARA’s website and in the Adult Foster Care Facility Licensing Act. LARA’s website has very prominent wording to navigate where to go to file a complaint. Clear and concise instructions on how to file a complaint can be found on the website, in addition to the form used and a telephone number. The AFC Licensing Act also provides detail on the timelines that the department has for complaints. 400.724 (4) states that based on the allegations presented, “the initiation of a complaint investigation shall commence within 15 days after receipt of the written complaint by the department.” 400.724 (5) goes on to state “The department shall inform the complainant of its findings. Within 30 days after the receipt of the complaint, the department shall provide the complainant a copy, if any, of the written determination or a status report indicating when these documents can be expected.” 400.724 (8) “A complainant who is dissatisfied with the determination or investigation by the department may request an administrative review by the department.” Complaint information posting requirements can already be found in the licensing rules for AFC congregate homes because they are larger in size and have the administrative staff to implement these requirements. Posting requirements for all other AFC types is not currently included as the settings are

smaller and they are supposed to be more homelike. Posting the license, and the additional required information presented in HB 4841 Sec 28(b) takes away from the homelike environment.

8. The requirements for notification of resident rights can already be found in the licensing rules for each sized facility. Each set of rules includes a lengthy list of resident rights in addition to other information that needs to be given to residents and/or resident representatives upon admission. A couple of examples from the Licensing Rules for AFC Small Group Homes:
 - a. R 400.14301 (6) (I) “A statement by the licensee that the home is licensed by the department to provide foster care to adults.”
 - b. R 400.14302 (5) (b) (ii) “The resident shall have the right to file a complaint with the department.”
9. Not only are many of the proposed staff training requirements redundant, many are unnecessary for this setting. Examples of the redundancies are training for cardiopulmonary resuscitation, resident rights, and reporting requirements. The additional proposed training requirements will put a large burden on providers that they cannot adhere to for financial and practical reasons.
10. Requiring AFCs to have 24/5 licensed practical nurse coverage is inconsistent with the purpose of AFCs, which by law cannot provide nursing care. Currently the state of Michigan is down 10,000 long-term care workers from pre-pandemic levels. Requiring a nurse in AFCs will unnecessarily further exacerbate the workforce shortages and competition for nurses across settings, and it is very unlikely that many AFCs will be able to meet this requirement. To meet this staffing requirement, AFCs would have to raise their rates substantially in order to cover the costs for a nurse, certified nurse aides and social workers. With the vast majority of AFC residents pay out of pocket for their services, increased rates will inhibit the ability for affordable options.
11. The requirement that medication shall be administered only by licensed staff or, under the direction of the resident or resident’s delegate, or a certified nurse assistant (CNA) is not feasible. The proposed changes reference that the CNA would have to complete a certified medication aide training program, and currently there is not a program in Michigan that exists. The thought that CNA’s would have to get this training out of State in order to provide this service is unlikely. Additionally, this will force AFCs to compete with skilled nursing facilities for workers during a time when shortages are as severe as ever – again making it unlikely for many AFCs to comply with this provision, and to do so would require an increase in rates for residents.
12. The majority of AFCs do not employ a nurses, making it very difficult to meet the requirement that basic medication training for staff assisting with self-administration must be provided by a registered nurse. Again, we are in the midst of sever nursing shortages, and it is unlikely that most AFCs will be able to comply with this provision, and to do so would require an increase in rates for residents.
13. The requirement for records retention for training of employees is currently included in the licensing rules for each AFC setting. The licensing rules for Adult Foster Care Small Group Homes R 400.14208 (1), states the following: *A licensee shall maintain a record for each employee. The record shall contain all of the following employee information: (e) Verification of experience, education, and training.* To require additional documentation such as the source of the course, the instructor’s name, and the instructor’s qualifications is excessive, unnecessary, and burdensome on the setting.
14. Rules and policies in Adult Foster Care settings are not only for protection of the provider but the residents as well. The bill requires a resident or resident’s designee to have 60 days’ notice before a new rule or update to a rule takes effect. If an issue is identified in resident care, it may be necessary to update a rule or policy in order to

maintain resident safety or quality care, and waiting 60 days could put other residents in jeopardy.

15. Requiring AFCs to administer and maintain resident, resident family and staff satisfaction surveys is not necessary in these small environments, and creates extra administrative burden on the small number of staff.
16. Adding financial penalties to the Adult Foster Care communities does not enhance resident services, and potentially places additional financial burdens on facilities. Oftentimes the department will spend more money fighting the penalties through the appeal process than will be recovered through fines.
17. The requirement for a corrective action plan is redundant. When a violation is established at an AFC, an approved action plan is required in order for the AFC to keep their license.

Overall, these proposed changes create significant burdens on Adult Foster Care settings and completely upend the role of AFCs in Michigan's long-term care continuum. AFCs are intended to be homelike environments for adults that require personal care, protection, and supervision, not an institutional facility that provides nursing care. The staff time and oversight required to comply with this bill will inevitably eliminate Adult Foster Care communities across Michigan.

HCAM welcomes alternative policy conversations aimed at ensuring quality services and well-trained staff in Michigan's Adult Foster Care settings.

If you have any questions or concerns regarding HCAM's position on these bills, or would like to discuss policies impacting long-term care, you may contact me at 517-627-1561 or via email at RichFarran@hcam.org.