

Office of the Auditor General  
Performance Audit Report

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**Adult Foster Care and Homes for the Aged  
Licensing Division**

Michigan Department of Health and Human Services

May 2015

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**The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.**

*Article IV, Section 53 of the Michigan Constitution*

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### Performance Audit

### Adult Foster Care (AFC) and Homes for the Aged Licensing Division

### Michigan Department of Health and Human Services (MDHHS)

**Report Number:**  
431-5115-14

**Released:**  
May 2015

The Division licenses and regulates AFC family, group, and congregate homes and county infirmaries (facilities) and homes for the aged (homes). The Division conducts on-site inspections to determine compliance with State law and licensing rules and policy. In addition, the Division conducts complaint, abuse, and neglect investigations of facilities and homes and pursues disciplinary action on licensees when appropriate. The Division had 71 employees as of November 2013 and expended \$7.8 million during fiscal year 2013.

Executive Order No. 2015-4 transferred the Division to the Department of Licensing and Regulatory Affairs (LARA) effective April 10, 2015. LARA provided the agency preliminary response for this report.

Audit Objective			Conclusion
Objective #1: To assess the effectiveness of MDHHS's efforts to license and regulate facilities and homes.			Moderately effective
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
The Division did not sufficiently document on-site licensing inspection review procedures and conclusions to assist MDHHS with ensuring proper oversight of facility and home licensees. Inspectors were not required to document their assessments, reviews, verifications, key inspection procedures, and pertinent facility and home information as noted in Exhibits 2 through 4 ( <a href="#">Finding #1</a> ).	X		Agrees
The Division should maintain documentation of its follow-up of licensees' corrective action plans (CAPs) to verify that licensees corrected rule violations. In over half of the sampled inspections and investigations, the Division did not document follow-up reviews ( <a href="#">Finding #2</a> ).		X	Agrees
The Division did not timely conduct required annual on-site licensing inspections of homes. Inspections occurred an average of 3 months late for 85% of sampled homes ( <a href="#">Finding #3</a> ).		X	Agrees

<b>Findings Related to This Audit Objective (Continued)</b>	<b>Material Condition</b>	<b>Reportable Condition</b>	<b>Agency Preliminary Response</b>
The Division did not always enforce, and had not sufficiently developed, incident reporting rules and policies to help protect facility and home residents' health and safety ( <u>Finding #4</u> ).		X	Agrees
The Division should improve its monitoring of facility and home employee background checks. Sampled facilities and homes did not always perform background checks on all employees or did not always conduct them timely. One employee with a disqualifying offense worked in a facility for over two years ( <u>Finding#5</u> ).		X	Agrees
MDHHS did not submit statutorily required reports containing AFC licensing information to the Legislature for fiscal years 2011 through 2013 ( <u>Finding #6</u> ).		X	Agrees
<b>Observation Related to This Audit Objective</b>	<b>Material Condition</b>	<b>Reportable Condition</b>	<b>Agency Preliminary Response</b>
Michigan's facility and home licensing fees are significantly lower than other states. MDHHS should consider a periodic evaluation of fees and the corresponding costs to administer its licensing and regulation program ( <u>Observation #1</u> ).	Not applicable	Not applicable	Not applicable

<b>Audit Objective</b>			<b>Conclusion</b>
Objective #2: To assess the effectiveness of MDHHS's efforts to appropriately investigate and resolve complaints of alleged administrative rule or State statute violations by facility and home licensees.			Moderately effective
<b>Findings Related to This Audit Objective</b>	<b>Material Condition</b>	<b>Reportable Condition</b>	<b>Agency Preliminary Response</b>
The Division did not consistently notify MDHHS's Adult Protective Services (APS) when it received complaints alleging abuse, neglect, and/or exploitation of facility and/or home residents. No notification occurred in 12 (25%) of 48 sampled complaints ( <u>Finding #7</u> ).	X		Agrees
The Division did not always complete complaint investigations timely to help ensure that it promptly assessed and addressed potential licensing rule violations. Twenty-five (33%) of 76 sampled complaint investigations were not completed within the required time frames ( <u>Finding #8</u> ).		X	Agrees

<b>Findings Related to This Audit Objective (Continued)</b>	<b>Material Condition</b>	<b>Reportable Condition</b>	<b>Agency Preliminary Response</b>
The Division did not always timely conduct, or fully document, investigations of unlicensed facilities and homes. Twenty-three (56%) of 41 sampled investigations of unlicensed facilities were not completed within the required time frames ( <u>Finding #9</u> ).		X	Agrees
The Division did not properly maintain critical coding information of facility and home complaint investigations. Code sheets would allow MDHHS to identify key individuals contained in special investigation reports and protect the confidentiality of residents, resident relatives, and complainants. Code sheets were not properly maintained for 13 (17%) of 76 sampled complaint investigations ( <u>Finding #10</u> ).		X	Agrees

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: <http://audgen.michigan.gov>

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**Doug A. Ringler, CPA, CIA**  
Auditor General

May 19, 2015

Mr. Nick Lyon, Director  
Michigan Department of Health and Human Services  
Grand Tower  
Lansing, Michigan  
and  
Mr. Mike Zimmer, Director  
Department of Licensing and Regulatory Affairs  
Ottawa Building  
Lansing Michigan

Dear Mr. Lyon and Mr. Zimmer:

I am pleased to provide this performance audit report on the Adult Foster Care and Homes for the Aged Licensing Division, Michigan Department of Health and Human Services.

We organized the background, findings, recommendations, and observation by audit objective. Your agency provided preliminary responses to the recommendations at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days of the date above to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

A handwritten signature in black ink that reads "Doug Ringler". The signature is written in a cursive, flowing style.

Doug Ringler  
Auditor General



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BACKGROUND, FINDINGS,  
RECOMMENDATIONS, AND  
OBSERVATION

# LICENSING AND REGULATING FACILITIES AND HOMES

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## BACKGROUND

During our audit period, the Adult Foster Care (AFC) and Homes for the Aged Licensing Division was a unit within the Bureau of Children and Adult Licensing (BCAL), Department of Human Services (DHS). Executive Order No. 2015-4 created the Michigan Department of Health and Human Services (MDHHS), combining the former DHS and the Department of Community Health into one principal department effective April 10, 2015. This Executive Order also transferred the Division to the Department of Licensing and Regulatory Affairs (LARA).

The Division is responsible for licensing and regulating AFC facilities (facilities) and homes for the aged\* (homes). The Division's mission\* is to ensure protection to vulnerable adults who are receiving care from licensed facilities and homes. These adults require supervised personal care\* on an ongoing basis but do not require continuous nursing care. The Division licensed and regulated 4,563 facilities and homes throughout the State as of April 30, 2014 (see Exhibit 1).

## AUDIT OBJECTIVE

To assess the effectiveness\* of MDHHS's efforts to license and regulate facilities and homes.

## CONCLUSION

Moderately effective.

## FACTORS IMPACTING CONCLUSION

- Timely issuance of 89% of all original licenses and 96% of renewal licenses during fiscal years 2011 through 2013.
- Completion of an original or renewal license inspection and its appropriate assessment of licensing fees at all 102 sampled facilities and homes.
- Use of a risk-based approach for regulatory activity, which prioritizes investigations\* of alleged rule violations over other regulatory activity.
- Consistent processes and timely decisions related to disciplinary actions that resulted in a facility or home revocation of a license, nonrenewal of a license, or nonissuance of a license.
- Material condition\* related to MDHHS's insufficient documentation of inspection procedures, including Exhibits 2 through 4.

\* See glossary at end of report for definition.

- Reportable conditions\* related to:
  - Maintenance of documentation to support verification of facility and home licensees'\* completion of corrective action plans\* (CAPs).
  - Untimely annual inspections of homes.
  - Inconsistent enforcement and insufficient development of incident reporting rules.
  - Improved monitoring of facility and home background checks for job applicants and employees.
  - Nonsubmission of required legislative reports.

\* See glossary at end of report for definition.

## FINDING #1

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### Improved inspection documentation is needed to enhance licensee oversight.

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The Division did not sufficiently document on-site licensing inspection review procedures and conclusions to assist MDHHS with ensuring proper oversight of facility and home licensees.

MDHHS licensing policy states that the Division's objective\* related to on-site licensing inspections is to thoroughly gather and evaluate information necessary to determine licensees' compliance with the applicable statute and administrative rules and to consider all relevant information gathered when evaluating compliance or noncompliance. In addition, licensing policy states that the facts obtained by the Division in an on-site licensing inspection must support the licensing recommendation. Sound regulatory inspection practice provides for a written record of all on-site observations and tests that the regulator considered to determine compliance. We noted:

- a. The Division did not always document inspection assessments, reviews, or verifications to support its conclusions regarding licensees' compliance with licensing requirements.

We randomly selected and reviewed documentation for 102 inspections of facilities and homes that the Division conducted during the period October 1, 2010 through February 12, 2014. See Exhibits 2 through 4 to review the shortcomings that we noted.

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Inspectors were not required to document their assessments, reviews, and verifications when licensees complied with requirements.

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The Division informed us that it did not require inspectors to maintain documentation that supported their assessments, reviews, and verifications in the licensing field files\* or the licensing study report\* (LSR) when inspectors concluded that the licensee complied with all applicable licensing requirements.

Maintaining this documentation would help MDHHS demonstrate and ensure that inspectors appropriately and thoroughly assessed, reviewed, and verified all applicable areas during inspections.

- b. The Division did not fully document in the LSR the scope of the procedures that inspectors conducted during inspections. Inspectors omitted documentation of key inspection procedures and pertinent facility and home information, such as:
  - Number of residents that had left the facility or home since the last inspection and number of records the inspector reviewed for these residents.

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Key inspection procedures and pertinent facility and home information were omitted from inspection documentation.

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\* See glossary at end of report for definition.

- Number of employees that currently work at the facility or home and number of records the inspector reviewed for these employees.
- A listing of individuals, by title, that the inspector interviewed during the inspection.
- A listing of records that the Division required the licensee to have on file and available for the inspector to review during the inspection, including a checklist documenting the licensee's compliance or noncompliance.

In contrast, we noted that MDHHS's Child Care and Child Welfare Licensing Divisions included documentation in their LSRs of the key inspection procedures that staff conducted and related pertinent facility information.

The Division informed us that it did not require inspectors to document these key inspection procedures in the LSR because report users have never requested this information and it is not necessary to demonstrate licensee status and compliance with regulations.

- c. The Division sometimes documented contradictory information in its LSRs regarding licensees' compliance with requirements for the handling and accounting of resident funds and valuables. During fiscal years 2012 and 2013, the Division conducted 444 on-site licensing inspections that resulted in a rule violation related to handling and accounting of resident funds and valuables.

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In over one-third of the sampled LSRs, contradictory conclusions existed regarding licensee compliance for handling and accounting of resident funds and valuables.

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We randomly selected and reviewed 20 LSRs for these 444 inspections and noted that 7 (35%) of the 20 LSR reports contained contradictory information. These LSRs reported both a finding of noncompliance and a statement indicating the licensee was in compliance with the rule.

The Division informed us that inspectors did not always have the capability to modify the LSR wording in the electronic template, resulting in inaccurate LSRs. MDHHS licensing policy requires inspectors to document findings using licensing database template reports. Licensing policy also guides inspectors to modify the licensing database template report to accurately reflect inspection results. The LSR is one of the licensing database template reports.

**RECOMMENDATION**

We recommend that the Division sufficiently document on-site licensing inspection review procedures and conclusions to assist MDHHS with ensuring proper oversight of facility and home licensees.

**AGENCY  
PRELIMINARY  
RESPONSE**

LARA provided us with the following response:

*LARA agrees with the recommendation and revised its LSR template in June 2014 to include relevant information regarding the procedures used to conduct the inspections. LARA will implement an Inspection Record by April 30, 2015, to document licensing staff inspection activities. This record will affirmatively identify the rules assessed and the records reviewed. This record will not be included as a part of the official LSR issued and, instead, will be retained in the facility license file with the LSR. The facility license file will not retain staff inspection notes following issuance of the LSR and completion of the Inspection Record.*

*LARA will continue to ensure that the LSR report format includes information needed by the licensee to document compliance and by the public who need to know the license status and compliance with regulations. LARA does not believe that the inclusion of the information noted by the Office of the Auditor General in part b. is consistent with those needs.*

*The references to AFC resident funds and valuables have been deleted from the LSR report format. Instead, assessment of compliance with administrative rules related to resident funds and valuables, which is required at each renewal on-site inspection as a key indicator, will be documented on the Inspection Record.*

## FINDING #2

**CAP follow-up should be documented to help ensure resident safety.**

In over half of the sampled inspections and investigations with previous violations, the Division did not document follow-up reviews.

The Division should maintain documentation of its follow-up of licensees' corrective action plans (CAPs) to verify that licensees corrected rule violations and to strengthen MDHHS's assurance that residents were protected from harmful or unsafe situations.

MDHHS licensing policy requires the Division to follow up licensee CAPs to verify that corrective action has occurred. Licensing policy also requires the Division to document completion or noncompletion of corrective action in writing to the licensee and within the Division's Bureau Information Tracking System\* (BITS).

We randomly selected 102 on-site licensing inspections and 76 complaint\* investigations that the Division conducted during the period October 1, 2010 through February 12, 2014. We identified 82 instances in which the Division cited the licensee for a rule violation(s) requiring a CAP. In almost all instances, the licensees developed a CAP. However, the Division's records did not contain verification that corrective action was completed for 43 (52%) of the 82 inspections and investigations. The Division also did not document within BITS the licensees' completion or noncompletion of corrective action. The rule violations that we reviewed included some critical and life-threatening situations for residents, such as inadequate level of protection, supervision, assistance, and personal care\*; insufficient medication control; and noncompliance with a resident's assessment plan.

Inconsistent documentation of CAP follow-up may have occurred because Division policies and procedures did not specify a time frame for staff to determine and document whether a licensee performed corrective actions. The Division informed us that if staff did not cite a licensee for the same violation during the licensee's next regularly scheduled inspection, the Division accepted this as sufficient documentation of the licensee's correction of known licensing violations.

## RECOMMENDATION

We recommend that the Division maintain documentation of its follow-up of licensees' CAPs to verify that licensees corrected rule violations and to strengthen MDHHS's assurance that residents are protected from harmful or unsafe situations.

## AGENCY PRELIMINARY RESPONSE

LARA provided us with the following response:

*LARA agrees with the recommendation and revised Licensing Policy Manual Item 510 to require that the written approval of the CAP includes the regulatory staff's plan to verify the*

\* See glossary at end of report for definition.

*licensee's compliance with the approved CAP. The CAP approval letter template has been revised to include the plan. The Inspection Record will be used to document in the facility license file when compliance with the CAP has been verified on site at the facility. A new BITS event has been established called "Verification of Corrective Action" which is line-referenced to the CAP approval event. The comment section of this event will record the method of verification.*

### **FINDING #3**

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**More timely annual home licensing inspections are required to comply with State law.**

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Inspections occurred an average of 3 months late for 85% of the sampled homes.

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The Division did not timely conduct required annual on-site licensing inspections of homes. Annual inspections are necessary to comply with State law and to provide assurances to MDHHS and residents of safe and secure living environments for vulnerable adults.

Section 333.20155 of the *Michigan Compiled Laws* requires MDHHS to make annual and other visits to each home licensed under the Public Health Code for the purposes of survey, evaluation, and consultation.

Annual inspections for 17 (85%) of 20 randomly selected homes occurred an average of 3 months late. The Division had inspected all of the selected homes at least once during the period October 1, 2010 through February 12, 2014.

The Division informed us that annual inspections may not have occurred timely because conducting complaint investigations and original licensing inspections were higher priorities.

### **RECOMMENDATION**

We recommend that the Division timely conduct required annual on-site licensing inspections of homes.

### **AGENCY PRELIMINARY RESPONSE**

LARA provided us with the following response:

*LARA agrees with the recommendation and revised Licensing Policy Manual Item 230 to require that on-site annual inspections and LSRs be completed before the license application expiration date. Licensing Policy Manual Item 100, Prioritization of Workload, was revised to reflect that the inspection and report, as opposed to the issuance of the renewal license, is the priority. Also, timely annual inspections of homes has been made an annual employee performance objective and will remain so until the cumulative performance for the program is 90% or better for two consecutive years.*

## FINDING #4

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**Incident reporting rules and policies need consistent enforcement and to be more sufficiently developed.**

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Rule violations were not always issued to licensees when the licensees did not timely submit incident reports.

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Differing incident report retention practices existed among BCAL field offices, staff, and area managers.

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The Division did not always enforce, and had not sufficiently developed, incident reporting rules and policies to help protect the health and safety of facility and home residents.

We randomly selected and reviewed 99 incident reports that licensees submitted to the Division, including related documentation in the Division's licensing field files. Also, we interviewed 6 Division staff and 3 Division area managers to discuss incident report retention practices and noted:

- a. Rule violations not issued to 17 (17%) licensees, in either a renewal LSR or a notice of finding\*, when the licensees did not submit required reports of incidents and/or accidents within 48 hours.

*Michigan Administrative Code R 400.14311, R 400.15311, and R 325.1924 require the appropriate facility and home to report each incident or accident that involves a resident, staff member, or visitor and to notify the Division within 48 hours. Licensees were untimely in reporting 12 incidents and/or accidents by a range of 1 to 4 days and 5 incidents and/or accidents by a range of 10 to 60 days. Some of these 17 incidents and/or accidents required immediate action.*

MDHHS informed us that the Division may not issue rule violations to licensees for late incident reporting in order to maintain good lines of communication with licensees and encourage incident reporting. MDHHS also informed us that some licensees submit incident reports via United States Postal Service mail, which may impact the receipt date; however, we considered the impact that mail would have on the receipt date in our review.

- b. Inconsistent retention practices for incident report documentation.

MDHHS licensing policy requires MDHHS to retain incident reports until MDHHS issues the subsequent renewal license. We observed differing retention practices among 12 BCAL field offices, 6 staff, and 3 area managers, such as:

- One staff person immediately discarded incident reports if the incident did not result in a special investigation\*.
- One BCAL field office retained and filed incident reports outside of the licensing field files.

\* See glossary at end of report for definition.

- One staff person requested licensees to e-mail incident reports and retained the incident reports on the staff person's computer hard drive.
- One BCAL field office discarded all incident reports after a special investigation whether or not the special investigation occurred prior to a subsequent renewal.

MDHHS informed us that these inconsistencies likely occurred because it had not developed a policy dedicated to incident report controls. Retaining incident reports would allow MDHHS to identify indicators of physical plant and resident care deficiencies that may indicate potential license violations.

- c. The lack of a record retention policy for critical incident notification reports to demonstrate that staff appropriately identified critical incidents and reported critical incidents timely to Division area managers and the Division director.

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No record retention policy existed for critical incident notification reports.

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MDHHS licensing policy defines incidents that MDHHS considers critical and requires Division staff to notify the Division area manager and the Division director when a licensee reports a critical incident. Licensing policy also requires staff to document a critical incident notification report and submit it to the Division area manager and the Division director within one business day. No documentation existed in the licensing field files for 23 critical incident notification reports that we reviewed to demonstrate that staff notified the applicable Division area manager and the Division director of the critical incidents. Division staff indicated that they submit the reports via e-mail. In addition, MDHHS informed us that if no legislative or media inquiries occurred regarding a critical incident within a couple of months of the incident, the Division director deleted the e-mail notification from the staff.

- d. The need for a rule to make consistent reporting requirements for AFC group home, homes for the aged, and AFC family home\* licensees. AFC group home and homes for the aged licensees must report incidents involving accidents or illnesses that require hospitalization, displays of serious hostility, attempts at self-inflicted harm or harm to others, instances of destruction to property, and the arrest or conviction of a resident. However, MDHHS only requires AFC family home licensees to prepare and submit incident

\* See glossary at end of report for definition.

reports for situations when a resident is absent without notice. As a result, MDHHS may not be aware of serious incidents occurring in AFC family home facilities.

**RECOMMENDATION**

We recommend that the Division consistently enforce and develop sufficient incident reporting rules and policies to help strengthen processes intended to protect the health and safety of facility and home residents.

**AGENCY  
PRELIMINARY  
RESPONSE**

LARA provided us with the following response:

*LARA agrees with the recommendation and has developed a new policy manual item for incident reporting. Licensing policy now includes criteria for determining when a late or incomplete incident report is or is not to be cited for noncompliance. LARA also revised the AFC incident report form to include space for licensing consultants to document the actions taken in response to receipt of the incident report. Staff will be required to document this same action information on BITS. LARA revised Licensing Policy Manual Items 230 and 300 and Appendix 100 to require that incident reports be kept in the facility license file, or in an electronic folder on the S: drive with a notation in the facility license file indicating the location of the incident reports on the S: drive, until follow-up occurs at the next on-site inspection or investigation.*

*The revised policy and improved documentation requirements will allow LARA to better demonstrate when regulatory staff consider risks to the residents and exercise appropriate professional judgment when deciding whether or not to issue rule violations.*

*All critical incident reports are now printed and kept in a binder in Central Office by the Program Analyst. An electronic copy of the critical incident report is also maintained by the Program Analyst. These will be maintained at Central Office for five years.*

*LARA supports the recommendation to strengthen the family home administrative rules related to incident reporting. However, LARA does not promulgate administrative rules unilaterally. LARA will propose a family home rule requiring incident reporting consistent with the group home requirements for incident reporting when new family home rules are next promulgated in fiscal year 2016.*

\* See glossary at end of report for definition.

## FINDING #5

**Improved monitoring of facility and home employee background checks could help improve resident safety.**

The Division should improve its monitoring of facility and home employee background checks to help ensure that licensees conduct the required checks consistently and timely and that licensees do not allow individuals with unsuitable backgrounds to have direct access to or provide direct services for residents.

Sections 400.734b and 333.20173a of the *Michigan Compiled Laws* provide that a facility or home, respectively, shall not employ an individual who regularly has direct access to or provides direct services to residents after April 1, 2006 if the individual lacks good moral character\* and/or has been convicted of select crimes. MDHHS licensing policy indicates that staff are responsible for ensuring licensees' compliance with background check requirements for job applicants and employees. In addition, licensing policy establishes procedures for staff to evaluate the background of licensee employees, determine licensees' compliance with conducting required background checks, and establish an appeal process for individuals with disqualifying offenses found within their backgrounds.

Our review of employee records for 44 randomly selected facility and home licensees that employed 1,574 employees disclosed that the Division did not detect that:

**Sampled facilities and homes did not always conduct required employee background checks or did not always conduct them timely.**

- a. Six facility and home licensees did not conduct the required background checks for 12 employees. One of these employees had a conviction for a disqualifying offense that occurred prior to the employee's date of hire. The licensee had employed this individual for over two years. On May 24, 2014, we notified MDHHS and it informed the facility and the individual on July 3, 2014 that the individual was not eligible for employment at the facility and informed the individual of the right to appeal.
- b. Four facility and home licensees did not conduct employee background checks timely for 5 employees. On average, the checks occurred 217 days after the employees' hire date. None of these employees had a disqualifying offense that would require employment termination.

The Division informed us that, during routine on-site inspections, staff might review a judgmental sample of the employee records, which could include background check documentation. However, the sampling of employee records was not a standard and required inspection practice. If staff did not consider employee records a risk or if MDHHS did not select an individual from the employee records for review during the on-site inspection, the Division may not have discovered that a licensee had not conducted the

required background checks for the employee. In addition, the Division's routine on-site facility inspections did not include procedures to determine that the licensee employee records included all employees.

**RECOMMENDATION**

We recommend that the Division improve its monitoring of facility and home employee background checks to help ensure that licensees conduct the required checks consistently and timely and that licensees do not allow individuals with unsuitable backgrounds to have direct access to or provide direct services for residents.

**AGENCY  
PRELIMINARY  
RESPONSE**

LARA provided us with the following response:

*LARA agrees with the recommendation and has revised Licensing Policy Manual Item 230 to additionally require regulatory staff to randomly select one employee file for verification of criminal background check during 10% of renewal or annual on-site inspections. In addition, LARA revised Licensing Policy Manual Item 516 to require staff to contact licensees immediately upon receipt of notice of employee disqualification to ensure licensee understanding that the employee can no longer work in the facility. Staff will follow up on employee disqualifications when next on site.*

## FINDING #6

**Required AFC licensing information was not reported to the Legislature.**

MDHHS did not submit statutorily required reports containing AFC licensing information to the Legislature for fiscal years 2011 through 2013.

Section 400.713(18) of the *Michigan Compiled Laws* requires the MDHHS director to submit a report with AFC license application and issuance information to the standing committees and appropriations subcommittees of the Senate and House of Representatives concerned with human services issues by December 1 of each year. The reports should have contained:

- Number of AFC original and renewal license applications that MDHHS received and completed within six months.
- Number of AFC license applications that required a request for additional information.
- Number of AFC license applications that were rejected.
- Number of AFC licenses that MDHHS did not issue within the six-month period.
- Average processing time for AFC original and renewal licenses that were granted after the six-month period.

MDHHS prepared, but neglected to submit, the reports.

Section 400.713(14) of the *Michigan Compiled Laws* requires MDHHS to issue an AFC original or renewal license no later than six months after the applicant files a completed application.

MDHHS informed us that it prepared the reports but neglected to submit them to the appropriate legislative committees. Instead, MDHHS only shared the reports internally and did not have a policy requiring legislative submission.

## RECOMMENDATION

We recommend that MDHHS submit statutorily required reports containing AFC licensing information to the Legislature.

## AGENCY PRELIMINARY RESPONSE

LARA provided us with the following response:

*LARA agrees and now has a process to send the report, the cover letter, and the signature letter to the Children's Services Administration by November 10 of each year. LARA will retain a hard copy and an electronic copy of these documents. In addition, LARA has added the report to its MiPromises Tracking System.*

## OBSERVATION #1

**Michigan's facility and home licensing fees are significantly lower than other states.**

Michigan's facility and home licensing fees are significantly lower than several other states that we reviewed. MDHHS should consider a periodic evaluation of fees and the corresponding costs to administer its licensing and regulation program.

Section 400.713a(2) of the *Michigan Compiled Laws* requires facility licensing fees collected to be credited to the State's General Fund and appropriated by the Legislature to MDHHS for the enforcement of the Adult Foster Care Facility Licensing Act. Section 333.20161(9) of the *Michigan Compiled Laws* requires the cost of home licensure activities to be supported by home licensing fees.

Michigan's facility and home licensing fees have remained constant since the fees were initially established in 1992 and 1978, respectively. Michigan's licensing fee revenues do not support the cost of facility and home licensing and regulating activities. MDHHS collected licensing fees of approximately \$172,000 and \$156,000 during fiscal years 2012 and 2013, respectively. MDHHS's expenditures for facility and home licensing and regulating activities totaled approximately \$7.6 million and \$7.8 million, respectively, during these fiscal years.

The following details Michigan's facility and home licensing fees:

License Type	Fee for Original License	Fee for Renewal License (1)
AFC family home	\$ 65	\$ 25
AFC group home:		
Capacity: 1 - 6	\$105	\$ 25
7 - 12	\$135	\$ 60
13 - 20	\$170	\$100
21 or more	\$220	\$150
Home for the aged (2)	\$3.135/bed	\$6.27/bed

(1) Facility renewal license fees are assessed every two years. Homes for the aged renewal license fees are assessed annually.

(2) Homes for the aged original license fees are half of the fees assessed for renewal licenses because homes for the aged original licenses are six-month temporary licenses whereas renewal licenses are annual.

**Michigan's licensing fee revenues have not significantly changed in 9 years; however, licensing and regulating costs have increased by more than 50%.**

Other observations include:

- Michigan's licensing fee revenues have remained significantly the same each year for a nine-year period from fiscal year 2005 through fiscal year 2013; however, expenditures related to licensing and regulating activities increased by approximately 55% from \$5.0 million to \$7.8 million during the same time period.

- Michigan's facility licensing fees differ significantly from the fees assessed by other states for similar licenses:

Facility Original License Fees for Michigan and Select States

Number of Residents	Michigan	Wisconsin	Kansas	North Carolina	Ohio	Nebraska
3	\$105	\$ 171	\$190	\$315	\$320	\$ 950
6	\$105	\$ 691	\$280	\$315	\$320	\$ 950
7	\$135	\$ 741	\$310	\$483	\$320	\$ 950
12	\$135	\$ 992	\$460	\$570	\$320	\$1,450
13	\$170	\$1,042	\$490	\$588	\$320	\$1,450
20	\$170	\$1,394	\$700	\$710	\$320	\$1,450

Facility Renewal License Fees for Michigan and Select States

Number of Residents	Michigan	Wisconsin	Kansas	North Carolina	Ohio	Nebraska
3	\$ 25	\$171	\$190	\$315	\$320	\$ 950
6	\$ 25	\$389	\$280	\$315	\$320	\$ 950
7	\$ 60	\$389	\$310	\$483	\$320	\$ 950
12	\$ 60	\$389	\$460	\$570	\$320	\$1,450
13	\$100	\$389	\$490	\$588	\$320	\$1,450
20	\$100	\$389	\$700	\$710	\$320	\$1,450

- Michigan assesses facility licensing fees on a biennial basis, whereas other states generally assess fees annually.
- Michigan does not assess fees, fines, and/or penalties for licensing violations. MDHHS noted at least one licensing violation in 53% of original and renewal license inspections and 19% of special investigations during fiscal years 2012 and 2013. MDHHS requires all licensees to provide an acceptable CAP for each violation.

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Fees, fines, and/or penalties were not assessed for licensing violations or late facility renewals, although common in other states.

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Wisconsin assessed a \$200 fee for a follow-up inspection related to corrective action. North Carolina assessed fines for significant violations and for violations that were not corrected by a facility within a reasonable amount of time. In addition, the Assisted Living Federation of America, a national professional membership organization serving companies that

operate professionally managed senior living communities, supports fines, closures, and other sanctions for facilities that are in serious violation of state regulations and endanger the health, safety, and welfare of residents.

- Michigan does not assess fees for late facility renewal applications. MDHHS issued 1,908 notification letters to licensees that had not submitted a renewal application within 30 days of license expiration during fiscal years 2012 and 2013. Ohio assessed a fee of \$100 per week to licensees for late license renewal applications.

# INVESTIGATING AND RESOLVING COMPLAINTS OF ALLEGED RULE OR STATE STATUTE VIOLATIONS

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## BACKGROUND

The Division is responsible for ensuring that facilities and homes follow licensing rules and State laws. The Division regulates facilities and homes through initial licensure, good moral character assessments of licensees and facility employees, renewal inspections, complaint investigations, approval and follow-up of CAPs, and disciplinary action as needed to protect individuals served. The Division may take a variety of disciplinary actions if the licensee does not correct violations. The most serious disciplinary actions are a summary suspension\* and closure or a revocation of the facility's or home's license to operate in the State. The Division has central office administrative operations and field operations located in MDHHS's BCAL field offices throughout the State.

## AUDIT OBJECTIVE

To assess the effectiveness of MDHHS's efforts to appropriately investigate and resolve complaints of alleged administrative rule or State statute violations by facility and home licensees.

## CONCLUSION

Moderately effective.

## FACTORS IMPACTING CONCLUSION

- Completion and retention of special investigation reports\* (SIRs) for all sampled complaint investigations.
- Processes to ensure that facility and home licensees submitted acceptable CAPs for all rule violations noted during a complaint investigation for nearly all sampled investigations.
- The issues we reported in Finding #2.
- Material condition related to the Division's inconsistent notifications to MDHHS's Adult Protective Services (APS) for complaints that it received alleging abuse\*, neglect\*, and/or exploitation\* of facility and/or home residents.
- Reportable conditions related to the:
  - More timely completion of complaint investigations.
  - More timely completion and documentation of unlicensed facility and home investigations.
  - Improper maintenance of SIR code sheets within the licensing field files.

\* See glossary at end of report for definition.

## **FINDING #7**

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**Improvements needed to ensure that APS consistently receives complaints from the Division against facilities and homes.**

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Division staff did not notify APS of alleged abuse, neglect, and/or exploitation in 12 (25%) of 48 sampled complaint investigations.

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The Division did not consistently notify MDHHS's APS when it received complaints alleging abuse, neglect, and/or exploitation of facility and/or home residents to help MDHHS ensure that it takes the appropriate actions to protect the health and safety of residents.

Section 400.11a of the *Michigan Compiled Laws* requires Division staff, who suspect or have reasonable cause to believe a violation occurred, to report an allegation to APS. In addition, MDHHS licensing policy requires Division staff to report all allegations to APS. The Adult Services Manual requires APS to conduct an independent investigation for any allegations involving residents of facilities and homes.

We randomly selected 48 complaint investigations conducted by the Division for the period October 1, 2010 through February 12, 2014 that alleged abuse, neglect, and/or exploitation. Division staff did not notify APS of the allegations in 12 (25%) of the complaint investigations.

Although licensing policy requires staff to report all allegations of abuse, neglect, and/or exploitation to APS, the Division stated that staff did not consistently follow this policy because they believed that they should establish reasonable cause before making referrals to APS and that staff had varying interpretations of the factors that should warrant referral to APS.

## **RECOMMENDATION**

We recommend that the Division notify APS when it receives complaints alleging abuse, neglect, and/or exploitation of facility and/or home residents to help MDHHS ensure that it takes the appropriate actions to protect the health and safety of residents.

## **AGENCY PRELIMINARY RESPONSE**

LARA provided us with the following response:

*LARA agrees with the recommendation and has revised its Licensing Policy Manual to clarify the definitions and circumstances of abuse, neglect, and exploitation investigated by the MDHHS APS program and which are referred to APS. LARA created a new BITS event, and policy requires staff to document APS referrals on BITS.*

## **FINDING #8**

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**More timely completion of complaint investigations is necessary to ensure proper licensee oversight.**

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**One-third of sampled complaint investigations were not completed timely.**

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The Division did not always complete complaint investigations timely to help ensure that it promptly assessed and addressed potential licensing rule violations.

Sections 400.724 and 333.20176 of the *Michigan Compiled Laws* require MDHHS to conduct investigations of complaints received against facilities and homes, respectively. MDHHS licensing policy requires staff to complete complaint investigations within 30 days if the complainant's address is known. The policy allows 60 days for certain situations. Licensing policy indicates that a complaint investigation is complete once a SIR has been approved by the area manager, sent to the licensee, and entered in BITS. Licensing policy also indicates that complaint investigations are the highest priority for staff based on the degree of risk to residents.

We selected 76 complaint investigations that the Division commenced during the period October 1, 2010 through February 12, 2014. The Division did not complete 25 (33%) complaint investigations within the required time frames. Completion occurred an average of 21 days after the required 30- or 60-day completion times, with a range of 3 to 66 days late. We determined that 4 of the 25 late investigations resulted in license violations, including fictitious medication logs, improper facility heating source, and improper medication dispensing.

MDHHS informed us that some delays may have occurred because of higher priority complaint investigations; however, none of the Division's case file documentation for the 25 late investigations indicated that the investigation was delayed because of higher priority complaint investigations.

## **RECOMMENDATION**

We recommend that the Division complete complaint investigations timely to help ensure that it promptly assesses and addresses potential licensing rule violations that could impact the health and safety of facility and home residents.

## **AGENCY PRELIMINARY RESPONSE**

LARA provided us with the following response:

*LARA agrees and has revised Licensing Policy Manual Item 100 to differentiate the prioritization of complaint investigations versus completion of complaint investigation reports. When complaint investigations do not substantiate licensing violations, or when the licensing violations substantiated do not pose a risk to the quality of resident care, completion of the report is of a lessor priority than other high-risk circumstances.*

*LARA also revised Appendix 115 of the Licensing Policy Manual to require that area managers conduct monthly caseload consultations with regulatory staff which include proactive discussions of compliance with standards of promptness for licensing actions.*

## FINDING #9

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### Processes to conduct and document investigations of unlicensed facilities and homes need improvements.

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The Division did not always timely conduct, or fully document, investigations of unlicensed facilities and homes to help MDHHS ensure that vulnerable adults do not reside in facilities and homes that laws require to be licensed and regulated.

Section 400.713(1) of the *Michigan Compiled Laws* requires a person, partnership, corporation, association, or a department or agency of the State, county, city, or other political subdivision to not establish or maintain a facility unless licensed by MDHHS. Section 333.21311 of the *Michigan Compiled Laws* requires a home to be licensed by MDHHS. MDHHS licensing policy requires the Division to conduct a special investigation upon receipt of a complaint of an unlicensed facility or when an unlicensed facility is otherwise brought to its attention. Licensing policy also requires staff to complete a SIR within specified time frames and specifies the documentation requirements and procedures for unlicensed facility investigations.

We randomly selected 41 unlicensed facility and home special investigations that the Division initiated during the period October 1, 2010 through August 31, 2013 and noted:

- a. Twenty-three (56%) of 41 investigations not completed within licensing policy time frames of 30 or 60 days, depending on complaint type.

The 23 investigations were overdue by a range of 7 to 401 days, with an average of 72 days.

- b. No documentation that the Division reviewed the time frames for when a facility offered or provided services for 5 (29%) of 17 investigations to support its determination that the facility was providing AFC services.

This documentation is a key element in determining if an unlicensed facility requires licensure. Licensing policy requires a facility to obtain an AFC license if the facility offers or provides supervision, personal care, and protection, in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation.

- c. No documentation that the Division reviewed the prior unlicensed investigation reports for 5 (56%) of 9 investigations that had at least one previous investigation conducted at the same address. The Division also did not document in the SIR the resolution of prior investigations at the same address for 6 (67%) of these 9 investigations.

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Unlicensed establishment investigations often were not completed timely or relevant documents were not maintained.

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The Division previously investigated one facility six times; however, staff did not reference any of these previous investigations in the applicable SIR.

Licensing policy requires staff to determine if the Division conducted any previous unlicensed facility investigations at the same address. If so, staff are required to review the SIRs from the previous investigations before conducting a current on-site investigation. Licensing policy also requires staff to document the resolution of previous investigations of the same location in the current SIR.

The Division informed us that staff did not complete unlicensed facility and home investigations timely because these investigations typically required more than normal investigation procedures, such as several contacts to obtain permission to inspect the facility or home. MDHHS informed us that it did not require staff to maintain documentation to support their conclusions regarding licensure as long as the staff considered the unlicensed facility or home owner/operator in compliance.

## **RECOMMENDATION**

We recommend that the Division timely conduct, and fully document, investigations of unlicensed facilities and homes to help MDHHS ensure that vulnerable adults do not reside in facilities and homes that laws require to be licensed and regulated.

## **AGENCY PRELIMINARY RESPONSE**

LARA provided us with the following response:

*LARA agrees with the recommendation and has revised Licensing Policy Manual Item 100 to include that unlicensed facility investigations are considered high-risk for the purpose of prioritization of workload activities.*

*In addition, LARA will revise Licensing Policy Manual Items 300 and 360 to establish a separate standard of promptness for completion of unlicensed facility investigations that reflects the more complex nature of these investigations and BCAL's dependency upon the voluntary cooperation of the operation being investigated.*

*LARA will also substantially rewrite Licensing Policy Manual Item 360 to reflect the investigation information and documentation needed to determine if the operation requires licensure. This revision will be based on BCAL's enforcement experience in suing for injunctive relief for unlicensed operations and will be developed jointly with staff from the Department of Attorney General. Staff training will be conducted to ensure staff understanding and competence in implementing the new investigation policy and procedures.*

## FINDING #10

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### Improvements needed in maintaining information of parties involved in complaint allegations.

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Code sheets were not properly maintained for 17% of sampled complaint investigations.

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The Division did not properly maintain critical coding information of facility and home complaint investigations to allow MDHHS to identify key individuals contained in SIRs and to protect the confidentiality of residents, resident relatives, and complainants.

MDHHS licensing policy requires that the names of facility residents, resident relatives, and complainants remain confidential and does not permit the Division to include those names within the SIR. Licensing policy also requires the Division to retain a SIR code sheet only within the licensing field file to identify the individuals addressed in SIRs, apart from other investigation file information retained in electronic files. The Division creates the SIR code sheet to preserve a record of the names of the individuals associated with the investigation and to provide a historical crosswalk from the SIR to the investigation information.

We sampled and reviewed 76 complaint investigations that MDHHS commenced between October 1, 2010 and February 12, 2014. The Division did not maintain a SIR code sheet in the licensing field file as required for 13 (17%) of the 76 complaint investigations. A SIR code sheet would assist the Division if a subsequent investigation of a licensee for a similar complaint should occur. Also, if the Division must conduct corrective action follow-up resulting from a complaint investigation, staff could identify the subjects of the complaint investigation necessary to determine compliance. In addition, if the Division maintains SIR code sheets outside of the licensing field files, the confidentiality of facility residents, resident relatives, and complainants could be at risk.

Subsequent to our review, the Division informed us that it located 9 of the 13 SIR code sheets.

## RECOMMENDATION

We recommend that the Division properly maintain coding information containing the identity of individuals who are the subject of facility and home complaint investigation to allow MDHHS to identify key individuals contained in SIRs and to protect the confidentiality of residents, resident relatives, and complainants.

## AGENCY PRELIMINARY RESPONSE

LARA provided us with the following response:

*LARA agrees with the recommendation and has revised policy to require regulatory staff to include the code sheet with the draft SIR or LSR submitted to the area manager for review and approval. This will ensure that code sheets have been completed when required.*

*LARA was able to locate 9 of the missing code sheets subsequent to the auditor's review. These code sheets either had not been filed within the facility license file or had been misfiled at the time of the auditor's review.*

## SUPPLEMENTAL INFORMATION

UNAUDITED  
Exhibit 1

ADULT FOSTER CARE (AFC) AND HOMES FOR THE AGED LICENSING DIVISION  
Michigan Department of Health and Human Services

Number and Capacity of Licensed Facilities and Homes by Type  
As of April 30, 2014

<u>Type of Facility or Home</u>	<u>Number of Facilities and Homes</u>	<u>Percentage</u>	<u>Capacity</u>	<u>Percentage</u>
AFC family homes	980	21.5%	4,735	9.5%
AFC small group homes*	2,328	51.0%	13,277	26.7%
AFC medium group homes*	507	11.1%	5,571	11.2%
AFC large group homes*	525	11.5%	9,848	19.8%
AFC congregate homes*	10	0.2%	353	0.7%
AFC county infirmaries*	2	0.0%	96	0.2%
Homes for the aged	<u>211</u>	4.6%	<u>15,812</u>	31.8%
Total	<u>4,563</u>		<u>49,692</u>	

Source: The Office of the Auditor General prepared this exhibit.

\* See glossary at end of report for definition.

**ADULT FOSTER CARE AND HOMES FOR THE AGED LICENSING DIVISION**  
**Michigan Department of Health and Human Services (MDHHS)**

**Results of Inspection File Documentation for 82 Sampled Facility Inspections  
 Conducted During the Period October 1, 2010 Through February 12, 2014**

Required Procedure for MDHHS to Issue or Renew a Facility License	Applicable Michigan Compiled Laws Section, Michigan Administrative Code Rule, or Adult Foster Care and Homes for the Aged Licensing Manual Item	Number of Applicable Facility On-Site Licensing Inspection Files Reviewed	Number of Facility On-Site Licensing Inspection Files That Did Not Document MDHHS's Assessment, Review, or Verification	Percentage
Assessment of financial stability.	Section 400.713(3)(a)	82	70	85%
Assessment of compliance with laws.	Section 400.713(3)(b)	82	61	74%
Fire safety review of family homes and small group homes.	Item 535	63	46	73%
Verification that applicable employees and/or contractors have received criminal background checks.	Section 400.734(b)	69	67	97%
Verification that the licensee annually reviewed health status of administrator, direct care staff, other employees, and members of the household.	R 400.1405(2) R 400.14205(6) R 400.15205(6)	68	48	71%
Verification that tuberculosis tests were current (conducted within last 3 years).	R 400.1405(3) R 400.14205(5) R 400.15205(5)	80	46	58%
Verification that annual licensee and administrator training requirements were completed.	R 400.1413(2) R 400.14203 R 400.15203	80	61	76%
Verification of completeness of direct care staff and employee records and work schedules.	R 400.14208 R 400.15208	50	50	100%
Verification of compliance with menu, meal, and food record requirements.	R 400.1419 R 400.14313 R 400.15313	68	66	97%
Verification that the licensee had all required personnel policies.	R 400.14207 R 400.15207	62	42	68%
Verification of the 15 interview and observation process requirements (renewals only).	Item 265	70	70	100%

Source: The Office of the Auditor General prepared this exhibit based on information obtained from Division inspection files.

ADULT FOSTER CARE AND HOMES FOR THE AGED LICENSING DIVISION  
Michigan Department of Health and Human Services (MDHHS)

Results of Inspection File Documentation for 20 Sampled Home Inspections  
Conducted During the Period October 1, 2010 Through February 12, 2014

Required Procedure for MDHHS to Issue or Renew a Home License	Applicable Michigan Compiled Laws Section, Michigan Administrative Code Rule, or Adult Foster Care and Homes for the Aged Licensing Manual Item	Number of Applicable Homes On-Site Licensing Inspection Files Reviewed	Number of Home On-Site Licensing Inspection Files That Did Not Document MDHHS's Assessment, Review, or Verification	Percentage
Verification that the licensee bond amount was a minimum of 1.25 times the average balance of the resident funds held.	Section 333.21321	14	14	100%
Verification that the home had an adequate backup generator.	Section 333.21335	20	14	70%
Verification that all employees had annual tuberculosis tests.	R 325.1923	16	16	100%
Verification that the home had staff training program.	R 325.1931	20	16	80%
Verification of completeness of employee records and work schedules.	R 325.1944	16	16	100%
Verification of compliance with menu, meal, and food record requirements.	R 325.1953 - 325.1954	16	15	94%
Verification that no convicted sex offenders reside at the home address.	Item 230	20	15	75%
Verification of the 15 interview and observation process requirements (renewals only).	Item 265	16	16	100%

Source: The Office of the Auditor General prepared this exhibit based on information obtained from Division inspection files.

ADULT FOSTER CARE AND HOMES FOR THE AGED LICENSING DIVISION  
Michigan Department of Health and Human Services

Interview and Observation Inspection Process

The Division implemented an interview and observation process in fiscal year 2013 as its primary method for conducting on-site license renewal inspections for facilities and homes. The interview and observation method increased the Division's use of interview and observation techniques and decreased the amount of documentation that staff review to determine compliance with the *Michigan Compiled Laws*, the *Michigan Administrative Code*, and policies and procedures. The Division's interview and observation inspection process requires staff to:

1. Use key indicator reference sheets specific to the type of facility being inspected.
2. Make observations of residents, licensee staff and supplemental caregivers, and interactions between residents, staff, supplemental caregivers, and members of the household; make note of any care, dignity, or right issues.
3. Observe staff performing their jobs and ask related questions.
4. Include queries of licensee staff and residents regarding resident assessments/service plans, crisis intervention, and the giving and taking of medications.
5. Ensure medications are secure and examine the medication records and medications of at least one resident.
6. Observe a medication pass or simulated medication pass for at least one resident. Interview sufficient residents, licensee staff, supplemental caregivers, relatives, or guardians to meet the needs of the inspection, but each inspection must include interviews with at least one resident and one staff person. Interviews should be based on key indicators and observations made during the general inspection of the facility. If the residents are not capable of being interviewed, the expectation is that the licensing consultants speak with someone, other than the licensee and staff, who interacts with the resident.
7. Observe the cleanliness and safety of the home's environment, randomly check water temperatures, and inspect for safe use of any associative device.
8. Examine facility resident's funds and associated documents for at least one resident.
9. Observe a meal being prepared and/or served in the facility if possible. A meal being prepared and/or served must be observed for homes. Include related questions during interviews.
10. Review fire drill records for all facilities.
11. Observe fire safety equipment and practices for all facilities.

12. Conduct full fire safety inspections for facilities licensed for six or fewer.
13. Review E-scores for facilities that are certified.
14. Expand the inspection to include examination of additional information as needed during the inspection process to determine compliance.

Source: Adult Foster Care and Homes for the Aged Licensing Manual.

## AGENCY DESCRIPTION

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The Division licenses and regulates, in accordance with Sections 400.701 - 400.737 and Sections 333.21301 - 333.21335 of the *Michigan Compiled Laws*, the following types of facilities and homes (see Exhibit 1):

- AFC family homes
- AFC small group homes\*
- AFC medium group homes\*
- AFC large group homes\*
- AFC congregate homes\*
- AFC county infirmaries\*
- Homes for the aged

The Division's licensing and regulating activities are funded with State General Fund/general purpose appropriations, federal financial assistance, and licensing fees. As of November 1, 2013, MDHHS had 71 employees assigned to the Division, with expenditures of \$7.8 million for fiscal year 2013.

Executive Order No. 2015-4 transferred the Division to the Department of Licensing and Regulatory Affairs (LARA) effective April 10, 2015. LARA provided the agency preliminary response for this report.

The Executive Order also created MDHHS, combining the former Department of Human Services and the Department of Community Health into one principal department.

\* See glossary at end of report for definition.

## AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

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### AUDIT SCOPE

To examine the records and processes related to MDHHS's Adult Foster Care and Homes for the Aged Licensing Division's efforts to license, regulate, investigate, and resolve complaints of facilities and homes. We conducted this performance audit\* in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered the period October 1, 2010 through April 30, 2014.

### METHODOLOGY

We conducted a preliminary survey of the Division to formulate a basis for defining our audit objectives and methodology. To obtain an understanding of the Division's operations, activities, and internal control\*, we:

- Interviewed Division management and BCAL central office staff.
- Reviewed applicable *Michigan Compiled Laws* and *Michigan Administrative Code* requirements.
- Examined MDHHS policies and procedures.
- Observed Division on-site inspections of a facility and a home.
- Analyzed available Division records, data, and statistics.
- Obtained an understanding of the Division's:
  - Processes to license, monitor, and regulate facilities and homes, including the on-site inspection and incident reporting processes.
  - Monitoring of licensing and regulation activities related to facilities and homes.
  - Entry of certain licensing events into BITS and how the Division uses this information to monitor and manage facility and home licensees.

\* See glossary at end of report for definition.

- Processes to investigate and resolve complaints of alleged *Michigan Compiled Laws* and *Michigan Administrative Code* violations by facility and home licensees.
- Processes to monitor special investigation and disciplinary action activities related to facilities and homes.

**OBJECTIVE #1**

To assess the effectiveness of MDHHS's efforts to license and regulate facilities and homes.

To accomplish our first audit objective, we:

- Randomly selected and tested 102 of 5,074 active facility and home licensing field files to determine if the Division:
  - Retained required applicant/licensee documents in the licensing field files.
  - Applied appropriate licensing fees.
  - Issued licenses timely.
  - Documented compliance with applicable State statutes and MDHHS policies appropriately in the licensing field files.
  - Recorded licensing initial application and renewal milestone events appropriately in BITS.
  - Verified that licensees appropriately documented CAPs resulting from rule violations noted by staff during original or renewal on-site inspections.
  - Verified that staff appropriately approved and documented implementation of licensee CAPs.
- Selected and reviewed a random sample of 99 incident reports contained in the licensing field files of the 102 randomly selected facilities and homes to determine if the Division:
  - Issued licenses for a rule violation if licensees did not properly submit or document incident reports.
  - Properly classified and processed reported incidents as critical, when appropriate.
- Randomly selected and tested 44 of 3,915 facilities (AFC group homes) and homes to assess the effectiveness of

the Division's monitoring of the facility and home background checks conducted on employees. The 44 selected facilities and homes employed 1,574 employees.

- Reviewed the Division's LSRs to determine if the LSRs sufficiently disclosed licensee compliance with State statutes and policies.
- Reviewed BITS information to determine if the Division appropriately:
  - Applied licensing start and stop events for original and renewal applications.
  - Refunded licensee application fees, if appropriate.
  - Inspected facilities and renewed the related licenses biennially.
- Randomly selected and tested 20 of 225 homes to determine if the Division conducted required annual inspections.
- Reviewed MDHHS license issuance summary reports to determine if MDHHS appropriately reported license standards of promptness information to the Legislature in accordance with Section 400.713(18) of the *Michigan Compiled Laws*.
- Reviewed disciplinary actions that resulted in a facility or home revocation of a license, nonrenewal of a license, or nonissuance of a license to determine if the Division's decision was appropriate and timely.
- Reviewed reports that the Division used to monitor its licensing and regulation activities.

## **OBJECTIVE #2**

To assess the effectiveness of MDHHS's efforts to appropriately investigate and resolve complaints of alleged administrative rule or State statute violations by facility and home licensees.

To accomplish our second audit objective, we:

- Randomly selected and reviewed documentation for 76 of 120 complaint investigations applicable to the 102 randomly selected facilities and homes to determine if the Division:
  - Retained required investigation documents in the licensing field files.

- Completed and approved SIRs timely.
  - Communicated to APS all allegations of abuse, neglect, and/or exploitation that were first reported to the Division.
  - Verified that licensees appropriately prepared CAPs resulting from rule violations noted during complaint investigations.
  - Approved and documented implementation of the licensees' CAPs.
- Reviewed documentation for all 69 APS complaint referrals to the Division during our audit period to determine if the Division appropriately investigated the complaint.
  - Randomly selected and tested documentation for 41 of 404 complaint investigations of unlicensed facilities and homes that the Division conducted during the audit period to determine if the Division:
    - Retained investigation reports and supporting documentation.
    - Documented compliance with applicable *Michigan Compiled Laws*, *Michigan Administrative Code*, and MDHHS policy and procedure requirements in the licensing field files.
    - Completed investigations timely.
    - Conducted an on-site inspection during the investigation.
  - Reviewed reports that the Division used to monitor its special investigation and disciplinary action activities.

## CONCLUSIONS

We based our conclusions on the audit efforts as described in the preceding paragraphs and the resulting material conditions and reportable conditions noted in the background, findings, recommendations, and observation section. The material conditions are more severe than a reportable condition and could impair management's ability to operate effectively or could adversely affect the judgment of an interested person concerning the effectiveness of the Division. The reportable conditions are less severe than a material condition but represent deficiencies in internal control or opportunities for improvement.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve State government operations. Consequently, we prepare our performance audit reports on an exception basis.

**AGENCY  
RESPONSES**

Our audit report contains 10 findings and 10 corresponding recommendations. LARA's preliminary response indicates that it agrees with all 10 recommendations.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

**PRIOR AUDIT  
FOLLOW-UP**

We followed up 8 of 20 recommendations from our April 2001 performance audit of the Regulation of Nursing Homes, Adult Foster Care Homes, and Homes for the Aged, Department of Consumer and Industry Services (63-451-99). The 8 recommendations we followed up related to only facilities and homes and not nursing homes. MDHHS complied with 2 of the 8 prior audit recommendations, and we rewrote 6 of the 8 recommendations for inclusion in Findings 1, 3, 5, 8 and 10 of this report.

**SUPPLEMENTAL  
INFORMATION**

Our audit report includes supplemental information presented as Exhibits 1 through 4. Our audit was not directed toward expressing a conclusion on Exhibits 1 and 4.

## GLOSSARY OF ABBREVIATIONS AND TERMS

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abuse	Defined by Section 400.11(a) of the <i>Michigan Compiled Laws</i> as harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes, but is not limited to, nonaccidental physical or mental injury, sexual abuse, or maltreatment.
AFC	adult foster care.
AFC congregate homes	Facilities with the approved capacity to receive more than 20 adults to be provided with foster care. Current facilities that hold this type of license may continue but the issuance of a new license for this type of facility is prohibited according to Section 400.715 of the <i>Michigan Compiled Laws</i> .
AFC county infirmaries	Facilities that provide assisted living care under the supervision of a licensed nurse to medically complex, elderly, mentally ill, and developmentally delayed individuals.
AFC family homes	Private residences with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks. The AFC family home licensee shall be a member of the household and an occupant of the residence.
AFC large group homes	Facilities with the approved capacity to receive at least 13 but no more than 20 adults to be provided with foster care.
AFC medium group homes	Facilities with the approved capacity to receive at least 7 but no more than 12 adults to be provided with foster care.
AFC small group homes	Facilities with the approved capacity to receive 6 or fewer adults to be provided with foster care.
APS	Adult Protective Services.
BCAL	Bureau of Children and Adult Licensing.
Bureau Information Tracking System (BITS)	BCAL's licensing and complaint investigation information database.

complaint	A communication, either written or verbal, containing single or multiple allegations of noncompliance with the applicable statute, administrative rules, or terms of the license.
corrective action plan (CAP)	A written document, prepared and signed by the licensee, that indicates how and when temporary noncompliance with licensing requirements will be corrected.
DHS	Department of Human Services.
effectiveness	Success in achieving mission and goals.
exploitation	Defined by Section 400.11(c) of the <i>Michigan Compiled Laws</i> as an action that involves the misuse of an adult's funds, property, or personal dignity by another person.
facilities	AFC facilities.
foster care	The provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation.
good moral character	The propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.
homes for the aged (homes)	Supervised personal care domiciles, other than a hotel, AFC facility, hospital, nursing home, or county medical care facility, that provide room, board, and supervised personal care to 21 or more unrelated, nontransient individuals 60 years of age or older.
internal control	The plan, policies, methods, and procedures adopted by management to meet its mission, goals, and objectives. Internal control includes the processes for planning, organizing, directing, and controlling program operations. It also includes the systems for measuring, reporting, and monitoring program performance. Internal control serves as a defense in safeguarding assets and in preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grant agreements; or abuse.
investigation	A systematic and objective examination to determine compliance with the applicable statute and administrative rules or terms of the license.

LARA	Department of Licensing and Regulatory Affairs.
licensee	An agency, association, corporation, organization, person, or department or agency of the state, county, city, or other political subdivision that has been issued a license or permit.
licensing field file	Compilation of documents for each facility that support licensing actions and are kept in the field by licensing consultants.
licensing study report (LSR)	An official document that describes and documents findings of a licensing investigation, including areas of compliance and violations, and recommends the licensing action to be taken by MDHHS.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
MDHHS	Michigan Department of Health and Human Services.
mission	The main purpose of a program or an entity or the reason that the program or the entity was established.
neglect	Defined by Section 400.11(d) of the <i>Michigan Compiled Laws</i> as harm to an adult's health or welfare caused by the inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult's health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter, or medical care.
notice of finding	A written document prepared by licensing staff that identifies a minor or an isolated incident of noncompliance that does not result in more than minimal harm to residents, does not have the potential for more than minimal harm to residents, does not indicate a breakdown in a facility system, and does not indicate a lack of administrative capability.
objective	Specific outcome(s) that a program or an entity seeks to achieve its goals.

observation	A commentary that highlights certain details or events that may be of interest to users of the report. An observation differs from an audit finding in that it may not include the attributes (condition, effect, criteria, cause, and recommendation) that are presented in an audit finding.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.
personal care	Personal assistance provided by a licensee or an agent or employee of a 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.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the audit objectives; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.
special investigation	An investigation resulting from the receipt of a complaint; synonymous with complaint investigation.
special investigation report (SIR)	An official document that details the findings of a completed special investigation and recommends the action to be taken regarding the status of the license or special certification.
summary suspension	Immediate suspension of an AFC facility or home for the aged license and relocation of residents when MDHHS has determined that a facility or home has licensing rule violations that are placing residents in immediate risk of harm.

supervised personal care

Guidance of a resident in the activities of daily living that include dressing, personal hygiene, grooming, maintenance of a medication schedule as directed and supervised by the resident's physician, reminding of important activities to be carried out, assistance in keeping appointments, being aware of a resident's general whereabouts, or the development of those personal and social skills required to live in the least restrictive environment.



