

Legislative Analysis



CHILD CARE LICENSING ACT AMENDMENTS

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Senate Bills 241 (Substitute H-1)
Senate Bills 242 and 243 as passed by the Senate
Sponsor: Sen. Gilda Z. Jacobs
House Committee: Families and Children's Services
Senate Committee: Families and Human Services

First Analysis (12-10-07)

BRIEF SUMMARY: Senate Bill 241 would amend the Child Care Licensing Act (MCL 722.11, et al.) to, among other things define the term "children's therapeutic group home," put in statute requirements for operating such homes, and prohibit certain restraints or seclusion otherwise permitted under licensing rules from being used in such a home. The bill also would modify criminal history check requirements for adults residing in family day care home and group day care home, and revise definitions, including revisions to conform to new federal regulations. Senate Bill 242 would amend the Michigan Zoning Enabling Act to refer to a "family child care home" and a "group child care home," rather than a family day care home and a group day care home. Senate Bill 243 would amend the Code of Criminal Procedures to replace current references in the sentencing guidelines to family day care homes and group day care homes with "family child care home: and "group child care home." Senate Bills 242 and 243 are tie-barred to Senate Bill 241.

FISCAL IMPACT: Senate Bill 241 would have no net impact on state costs. However, the bill could assist children's therapeutic group homes in achieving Medicaid eligibility for services. This could increase federal support for these services and reduce state General Fund-supported costs. Senate Bills 242 and 243 would have no fiscal impact.

THE APPARENT PROBLEM:

In 2001, the U.S. Department of Health and Human Services issued federal regulations restricting the use of seclusion and restraint in facilities providing psychiatric services for individuals under the age of 21. Under the regulations, seclusion and restraint may not be used as a means of coercion or discipline. Those measures are allowed only in an emergency safety situation, as ordered by a licensed practitioner. Other restrictions and training and reporting requirements also apply. (See Background Information for a more detailed description of the federal regulations.)

In Michigan, Public Act 531 of 2004 amended the Child Care Licensing Act to bring requirements governing licensed facilities into compliance with the new regulations. In general, the language of that act closely follows the federal requirements. Despite those changes, the Department of Community Health (DCH) has said that certain group homes for emotionally disturbed or developmentally disabled children (which are considered child caring institutions under the act) are ineligible for Medicaid reimbursement for

services provided, because the child care licensing act permits restraint and seclusion in some circumstances. Instead, the services are paid for with General Fund dollars from the DCH budget. To enable these homes to qualify for Medicaid reimbursement, it has been suggested that the statute provide for a separate category of children's group homes in which restraint or seclusion of residents would be prohibited. In addition, a number of other changes have been proposed to update and modify the language in the act. Legislation has been introduced to address these issues.

THE CONTENT OF THE BILL:

Senate Bill 241 would amend the Child Care Licensing Act (MCL 722.11, et al.) to do all of the following:

** Define the term "children's therapeutic group home," put in statute requirements for operating such homes, and prohibit certain restraints or seclusion otherwise permitted under licensing rules from being used in such a home. The bill would also include in the definition of child care organization, children's campsites and children's therapeutic group homes.

(This kind of group home would be a child caring institution receiving up to six minor children diagnosed with a developmental disability or a serious emotional disturbance and would have to (1) provide care, maintenance, and supervision, usually on a 24-hour basis; (2) comply with the rules for child caring institutions, except that behavior management rooms, personal restraint, mechanical restraint, or seclusion allowed under certain circumstances under licensing rules would be prohibited; (3) not be a private home; and (4) not be located on a campus with other licensed facilities.)

** Require each individual over the age of 18 residing in a family day care home or group day care home to undergo a criminal history check with the Department of State Police, rather than a check using the State Police's Internet Criminal History Access Tool (ICHAT), as currently required.

** Set a beginning date of October 1, 2007, for requirements that a renewal certificate of registration be issued within six months of application.

** Include in the definition of "children's camp" an outdoor campsite located where the children's camp is operated.

** Replace references to "group day care home" or "family day care home" with "group child care home" or "family child care home."

** Add a definition of "legal custodian" (meaning an individual at least 18 years of age in whose care a minor child remains or is placed by a court after a finding under a section of the Probate Code related to children abused by persons residing in their homes). The term is used in the bill in addition to "parent" and "legal guardian."

** Redefine "related" to refer to a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great aunt, great uncle, or stepgrandparent related by marriage, blood, or adoption.

** Revise the definitions of "foster family home" and "foster family group home."

Senate Bill 242 would amend the Michigan Zoning Enabling Act (MCL 125.3102 et al.) to refer to a "family child care home" and a "group child care home," rather than a family day care home and a group day care home. Senate Bill 243 would amend the Code of Criminal Procedure (MCL 777.15g) to replace references in the sentencing guidelines to family day care homes and group day care homes with "family child care homes" and "group child care homes." Senate Bills Senate Bills 242 and 243 are tie-barred to Senate Bill 241 which means neither of them could take effect unless Senate Bill 241 is enacted.

BACKGROUND INFORMATION:

Information in this section, and in some other parts of the analysis, is derived from the Senate Fiscal Agency analysis dated 6-26-07.

Current federal regulations (42 CFR 483) impose procedural, reporting, and training requirements regarding the use of restraint and seclusion in nonhospital psychiatric facilities serving people younger than 21. The regulations provide that each resident has the right to be free from restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation; prohibits the simultaneous use of restraint and seclusion; and prohibits an order for restraint or seclusion from being written as a standing order or on an as-needed basis. Upon admittance, incoming residents and their parents must be notified of the facility's policy regarding the use of restraint and seclusion.

Restraint or seclusion may be used only to ensure the safety of a resident or others during an emergency safety situation. Restraint or seclusion must not result in harm to the patient or continue beyond the end of the emergency safety situation.

Restraint and seclusion may be ordered only by a physician or other authorized licensed practitioner trained in the use of emergency safety interventions. The physician or licensed practitioner must order the least restrictive emergency safety intervention that is likely to be effective in resolving the emergency safety situation.

An order for restraint or seclusion must be limited to the duration of the emergency safety situation, and may not exceed four hours for residents from ages 18 to 21, two hours for residents ages nine to 17, or one hour for residents under the age of nine. Within one hour of the initiation of an intervention, the physician or other practitioner must conduct a face-to-face assessment of the resident.

The regulations also require every serious occurrence (i.e., a resident's death, serious injury, or suicide attempt) to be reported to the state Medicaid agency (the DCH in

Michigan), and, unless prohibited by state law, the state-designated protection and advocacy system.

The regulations require facility staff to have ongoing education, training, and demonstrated knowledge in identification of factors that may trigger emergency safety situations, the use of nonphysical intervention skills, and the safe use of restraint and seclusion. Additionally, staff must be certified in the use of cardiopulmonary resuscitation.

ARGUMENTS:

For:

Providing a definition of "children's therapeutic group home" and prohibiting the use of seclusion or restraint in those small group homes will allow them to qualify for Medicaid reimbursement and free up dollars in the General Fund for other local mental health programs. (The issue is described in the Apparent Problem section.)

The addition of the term "legal custodian" in the statute is said to allow a child to be placed with an individual unrelated to the child but who is not licensed as a foster care provider. This could be, for example, a friend of the family willing to care for a child but unwilling to be a foster care provider. There are cases where such an arrangement could be in the best interest of a child.

The bill also gives the Department of Community Health more leeway in the manner in which it conducts criminal history checks.

POSITIONS:

Department of Human Services supports the bills. (11-28-07)

Michigan Association of Community Mental Health Boards supports the bills. (11-28-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.