



Senate Bill 885 (as introduced 4-24-20)
Sponsor: Senator Peter MacGregor
Committee: Health Policy and Human Services

Date Completed: 5-19-20

CONTENT

The bill would amend Public Act 116 of 1973, the child care licensing Act, to do the following:

- Until June 1, 2020, or until the end of the states of emergency and disaster related to COVID-19, whichever occurred later, allow an employer, a school district, or a nonpublic school to establish and maintain a disaster relief child care center without a license from the Department of Licensing and Regulatory Affairs (LARA).**
- Require LARA to promulgate rules governing disaster relief child care centers.**
- Specify that a disaster relief child care center would have to give priority for its services to the essential workforce but could also provide child care services to the general public as space and governing rules or orders permitted.**
- Require a disaster relief child care center to perform a health evaluation of all individuals who entered the center each time the individual sought to do so.**
- Under the same timeframe as described above, allow a provisional license to be issued to a child care organization without submission of an acceptable plan to overcome the deficiency present in the child care organization to LARA.**

Disaster Relief Child Care Center

The Act prohibits a person, partnership, corporation, association, nongovernmental organization, or governmental organization from establishing or maintaining a child care center, group child care home, or family child care home unless licensed by LARA. The bill specifies that this would not apply to the bill's provisions below, and that these provisions of Executive Order No. 2020-51 would apply until June 1, 2020, or until the end of the states of emergency and disaster related to COVID-19, whichever occurred later. (Executive Order No. 2020-51 is substantively similar to the provisions proposed by the bill. The order was rescinded by Executive Order No. 2020-83, which extended its provisions without substantive change.)

Under the bill, an employer could establish and maintain a disaster relief child care center without a license from LARA. A school district or nonpublic school also could establish and maintain a disaster relief child care center in a school building without a license from LARA

The Department would have to promulgate rules governing disaster relief child care centers, and a disaster relief child care center would have to comply with them. At a minimum, the rules or orders would have to require that a disaster relief child care center do the following:

- Follow the safe sleep guidelines, including following appropriate sleeping equipment for children under 12 months of age.
- Follow applicable guidelines for diapering, handwashing, and sanitizing.
- Provide porta-cribs, cots, or mats for children older than 12 months to sleep or rest.
- Solicit information about, and communicate with parents and guardians regarding, a child's medicine, allergies, including food allergies, and other special needs.

Under the bill, R 400.8110(5) of the Michigan Administrative Code would be suspended for disaster relief child care centers until June 1, 2020, or when the states of emergency and disaster related to COVID-19 end. Notice of any change in capacity and age groups would have to be provided by LARA. (Subrule 5 specifies that the actual number and ages of children in care at any time must never exceed the number and ages of children for which the center is licensed.)

The bill provides that disaster relief child care centers could operate in a school facility operated by a school district or nonpublic school that was closed and was approved for student use. Early childhood staff, student teachers, teachers, and individuals who provide before and after care could provide child care in these settings. The Department of Education (DOE) could credit the hours that student teachers work toward teacher preparation graduation requirements and DOE licensing requirements.

A school district or nonpublic school first would have to identify employees who voluntarily elect to become a disaster relief child care center participant before reassigning other employees to work in a disaster relief child care center, to the extent authorized under applicable contracts and laws. A school district or nonpublic school could not require an employee to work in a disaster relief child care center if any of the following applied:

- The employee had a confirmed diagnosis of COVID-19.
- The employee was displaying the symptoms of COVID-19.
- The employee was 60 years of age or older.
- The employee had an underlying condition that placed the employee at elevated risk of serious illness from COVID-19.
- The employee had been in contact with someone with a confirmed case of COVID-19 in the last 14 days.

A disaster relief child care center would have to give priority for its services to the essential workforce but also could provide child care services to the general public as space and governing rules or orders permitted.

Under the bill, "essential workforce" would include health care workers, home health workers, direct care workers, emergency medical service providers, first responders, law enforcement personnel, sanitation workers, child care workers, including employees acting as child care workers in disaster relief child care centers, personnel providing correctional services, postal workers, public health employees, key governmental employees, court personnel, and others providing critical infrastructure to the people of the State, including individuals performing remotely or in person, critical infrastructure work, necessary government activities, or minimum basic operations under Executive Order No. 2020-42 or any order that may follow from it.

(Executive Order No. 2020-42 provides the scope of work considered critical infrastructure. The executive order has been rescinded and replaced most recently by Executive Order 2020-70.)

"Key governmental employees" would include child protective services workers, child welfare workers, foster care workers, including workers from contracted agencies, recipient rights workers, employees of the office of the governor, cabinet officers and their designees, Department of Health and Human Services field office staff, unemployment insurance agency employees, and other employees identified by the Department of Technology, Management and Budget. "Critical infrastructure" would include utilities, manufacturing, mass transit, and groceries or other essential supplies, goods, or equipment.

The bill would require a disaster relief child care center to perform a health evaluation of all individuals who entered the center each time he or she sought to enter the center. The disaster relief child care center would have to deny entry to those individuals who did not meet the evaluation criteria. The evaluation criteria would have to include symptoms of a respiratory infection, such as fever, cough, or shortness of breath, and contact in the last 14 days with someone with a confirmed diagnosis of COVID-19.

A disaster relief child care center operated by a school district in accordance with the bill, including its employees, would be designated as disaster relief forces as defined in Section 2 of the Emergency Management Act and would be entitled to immunities set for in Section 11(1) to (3) of the Act.

(The Emergency Manager Act defines "disaster relief forces" as all agencies of State, county, and municipal government, private and volunteer personnel, public officers and employees, and all other persons or groups of persons having duties or responsibilities under the Act or pursuant to a lawful order or directive authorized by the Act.

For personnel, the entitled immunities include those incidental to their employment if they are employees of the State or employees of a political subdivision of the State, and those immunities provided to employees of the State if they are not employees of the State or a political subdivision. In addition, the Act specifies that the State and any political subdivision thereunder, including employees, agents, and representatives, are not liable for personal injury or property damage sustained by any person appointed or acting as a member of disaster relief forces. The State and any political subdivision thereunder also are not liable for the death of or injury to a person or person as a result of engagement in disaster relief activity, and employees, agents, or representatives are immune from tort liability to the extent provided in law.)

A disaster relief child care center operated by a school district would be a pilot program under Public Act 336 of 1947, and could charge for reasonable and customary services. (Public Act 336 of 1947 prohibits the inclusion of decisions concerning use and staffing of pilot programs in collective bargaining between a public school employer and a bargaining representative of its employees.)

Child Care Provisional License

Under the Act, a provisional license may be issued to a child care organization that is temporarily unable to conform to the rules. A provisional license is contingent on submitting to LARA an acceptable plan to overcome the deficiency present in the child care organization within the time limitations of the provisional licensing period. The bill specifies that this would not apply to the bill's provisions below.

Under the bill, until June 1, 2020, or the end of states of emergency and disaster related to COVID-19, a provisional license could be issued to a child care organization without submission of an acceptable plan to overcome the deficiency present in the child care organization to LARA within the time limitation of the provisional licensing period. A

provisional license issued under the bill could be issued with an expiration date no earlier than one month after the date of issuance and no later than six months after the date of issuance, and could be renewed at the discretion of LARA until the end of the declared states of emergency and disaster related to COVID-19.

MCL 722.115m & 722.117a

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have an indeterminate but likely negative fiscal impact on the Department of Licensing and Regulatory Affairs. The exact cost of administering provisional child care organization licenses is unknown, but it is likely that existing appropriations and staffing levels would be sufficient to cover the costs of this activity. Although the new provisions would suspend licensure requirements, it is unlikely that this would result in any long-term significant revenue loss. Centers with provisional licenses would have to satisfy all of the requirements in the future. The promulgation of rules regarding disaster relief child care centers would be covered by existing appropriations.

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.