

SENATE BILL NO. 885

April 24, 2020, Introduced by Senator MACGREGOR and referred to the Committee on Government Operations.

A bill to amend 1973 PA 116, entitled

"An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts,"

by amending sections 5m and 7a (MCL 722.115m and 722.117a), as added by 2017 PA 258.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5m. (1) This section and sections 5n to 5s apply only to

1 a child care center, group child care home, or family child care
2 home.

3 (2) ~~A~~**Except as provided in subsection (13)**, a person,
4 partnership, firm, corporation, association, nongovernmental
5 organization, or governmental organization shall not establish or
6 maintain a child care center, group child care home, or family
7 child care home unless licensed by the department. Application for
8 a child care center, group child care home, or family child care
9 home license shall be made on forms provided, and in the manner
10 prescribed, by the department, including the fees required under
11 subsection (10). Before issuing or renewing a child care center,
12 group child care home, or family child care home license, the
13 department shall investigate the applicant's activities and
14 proposed standards of care and shall make an on-site visit of the
15 proposed or established child care center, group child care home,
16 or family child care home. Except as otherwise provided in this
17 subsection and sections 5q and 5r, if the department is satisfied
18 as to the need for a child care center, group child care home, or
19 family child care home, as to its financial stability, and that the
20 service, facility, applicant, licensee, child care staff member, or
21 member of the household is conducive to the welfare of the
22 children, the department shall issue or renew the child care
23 center, group child care home, or family child care home license.
24 If the department determines that a service, facility, applicant,
25 licensee, child care staff member, or member of the household is
26 not conducive to the welfare of the children, the department shall
27 deny that application or revoke that licensee's license according
28 to section 11.

29 (3) To assess whether the service, facility, applicant,

1 licensee, child care staff member, or member of the household is
2 conducive to the welfare of the children, the department may
3 utilize available information, including, but not limited to, any
4 of the following:

5 (a) Investigative report, such as a law enforcement report and
6 a children's protective services report.

7 (b) Medical report.

8 (c) Public record.

9 (d) Child care center, group child care home, or family child
10 care home record.

11 (e) Inspection of the child care center, group child care
12 home, or family child care home.

13 (4) The department may use information obtained under section
14 5k to obtain reports prepared independently for police, law
15 enforcement, or other purposes to make a determination under this
16 section.

17 (5) The department shall issue a group child care home or
18 family child care home license to a person who has successfully
19 completed an orientation session offered by the department and who
20 meets the requirements of this act. The department shall make
21 available to group child care home or family child care home
22 applicants for licensure an orientation session regarding this act,
23 the rules promulgated under this act, and the needs of children in
24 child care before issuing a group child care home or family child
25 care home license.

26 (6) Except as provided in subsection (2), the department shall
27 issue an original or renewal license under this act for a child
28 care center, group child care home, or family child care home not
29 later than 6 months after the applicant files a completed

1 application. Receipt of the application is considered the date the
2 application is received by the department. If the application is
3 considered incomplete by the department, the department shall
4 notify the applicant in writing or make notice electronically
5 available within 30 days after receipt of the incomplete
6 application, describing the deficiency and requesting additional
7 information. If the department identifies a deficiency or requires
8 the fulfillment of a corrective action plan, the 6-month period is
9 tolled until either of the following occurs:

10 (a) Upon notification by the department of a deficiency, until
11 the date the requested information is received by the department.

12 (b) Upon notification by the department that a corrective
13 action plan is required, until the date the department determines
14 the requirements of the corrective action plan have been met.

15 (7) The determination of the completeness of an application is
16 not an approval of the application for the license and does not
17 confer eligibility on an applicant determined otherwise ineligible
18 for issuance of a license.

19 (8) Except as provided in subsection (2), if the department
20 fails to issue, deny, or refuse to renew a license to a child care
21 center, group child care home, or family child care home within the
22 time required by this section, the department shall return the
23 application fee required under subsection (10) and shall reduce the
24 application fee for the applicant's next renewal application, if
25 any, by 15%. Failure to issue, deny, or refuse to renew a license
26 to a child care center, group child care home, or family child care
27 home within the time period required under this section does not
28 allow the department to otherwise delay the processing of the
29 application. A completed application shall be placed in sequence

1 with other completed applications received at that same time. The
2 department shall not discriminate against an applicant in
3 processing of an application based on the fact that the application
4 fee was refunded or discounted under this subsection.

5 (9) If, on a continual basis, inspections performed by a local
6 health department delay the department in issuing or denying a
7 license for a child care center, group child care home, or family
8 child care home under this act within the 6-month period, the
9 department may use department staff to complete the inspection
10 instead of the local health department causing the delays.

11 (10) The department shall assess fees as provided in the
12 following schedule:

13 (a) Family child care home license, \$50.00 for an original
14 license application and \$25.00 for renewal.

15 (b) Group child care home license, \$100.00 for an original
16 license application and \$50.00 for renewal.

17 (c) Child care center license with a capacity of 1 to 20,
18 \$150.00 for an original license application and \$75.00 for renewal.

19 (d) Child care center license with a capacity of 21 to 50,
20 \$200.00 for an original license application and \$100.00 for
21 renewal.

22 (e) Child care center license with a capacity of 51 to 100,
23 \$250.00 for an original license application and \$125.00 for
24 renewal.

25 (f) Child care center license with a capacity of over 100,
26 \$300.00 for an original license application and \$150.00 for
27 renewal.

28 (11) The department shall use the fees collected under this
29 section only to fund the program licensing child care centers,

1 group child care homes, and family child care homes. Funds
2 remaining at the end of the fiscal year shall not lapse to the
3 general fund but shall remain available to fund the program in
4 subsequent years.

5 (12) Fees described in this section are payable to the
6 department at the time an application is submitted for original
7 issuance or renewal. If a license is denied, revoked, or refused
8 renewal, or an application is rejected as provided in section
9 15(4), the department shall not refund fees paid to the department.

10 (13) The following provisions of Executive Order No. 2020-51
11 apply until June 1, 2020 or until the end of the states of
12 emergency and disaster related to COVID-19, whichever occurs later:

13 (a) An employer may establish and maintain a disaster relief
14 child care center without a license from the department.

15 (b) A school district or a nonpublic school may establish and
16 maintain a disaster relief child care center in a school building
17 without a license from the department.

18 (c) The department must promulgate rules governing disaster
19 relief child care centers.

20 (d) A disaster relief child care center must comply with the
21 requirements imposed by department rules and orders governing
22 disaster relief child care centers.

23 (e) The department rules or orders must, at a minimum, require
24 that a disaster relief child care center do all of the following:

25 (i) Follow the safe sleep guidelines, including, but not
26 limited to, following appropriate sleeping equipment for children
27 under 12 months of age.

28 (ii) Follow applicable guidelines for diapering, handwashing,
29 and sanitizing.

1 (iii) Provide porta-cribs, cots, or mats for children older than
2 12 months to sleep or rest.

3 (iv) Solicit information about, and communicate with parents
4 and guardians regarding, a child's medicine, allergies, including
5 food allergies, and other special needs.

6 (f) Disaster relief child care centers may operate in a school
7 facility operated by a school district or nonpublic school that is
8 closed and is approved for student use. Early childhood staff,
9 student teachers, teachers, and individuals who provide before and
10 after care may provide child care in these settings. The department
11 of education may credit the hours that student teachers work toward
12 teacher preparation graduation requirements and department of
13 education licensure requirements.

14 (g) Subrule (5) of R 400.8110 of the Michigan Administrative
15 Code is suspended for disaster relief child care centers until June
16 1, 2020 or when the states of emergency and disaster related to
17 COVID-19 end. Notice of any change in capacity and age groups must
18 be provided to the department.

19 (h) A disaster relief child care center operated by a school
20 district in accordance with this subsection, including its
21 employees, is designated as disaster relief forces as defined in
22 section 2 of the emergency management act, 1976 PA 390, MCL 30.402,
23 and is entitled to the immunities set forth in section 11(1) to (3)
24 of the emergency management act, 1976 PA 390, MCL 30.411.

25 (i) A disaster relief child care center operated by a school
26 district is a pilot program under 1947 PA 336, MCL 423.201 to
27 423.217, and may charge for reasonable and customary services.

28 (j) A school district or nonpublic school shall first identify
29 employees who voluntarily elect to become a disaster relief child

1 care center participant before reassigning other employees to work
2 in a disaster relief child care center, to the extent authorized
3 under applicable contracts and laws. A school district or nonpublic
4 school may not require an employee to work in a disaster relief
5 child care center if any of the following apply:

6 (i) The employee has a confirmed diagnosis of COVID-19.

7 (ii) The employee is displaying the symptoms of COVID-19.

8 (iii) The employee is 60 years of age or older.

9 (iv) The employee has an underlying condition that places the
10 employee at an elevated risk of serious illness from COVID-19.

11 (v) The employee has been in contact with someone with a
12 confirmed diagnosis of COVID-19 in the last 14 days.

13 (k) A disaster relief child care center must perform a health
14 evaluation of all individuals who enter the center each time the
15 individual seeks to enter the center, and must deny entry to those
16 individuals who do not meet the evaluation criteria. The evaluation
17 criteria must include both of the following:

18 (i) Symptoms of a respiratory infection, such as fever, cough,
19 or shortness of breath.

20 (ii) Contact in the last 14 days with someone with a confirmed
21 diagnosis of COVID-19.

22 (l) A disaster relief child care center must give priority for
23 its services to the essential workforce but may also provide child
24 care services to the general public as space and governing rules or
25 orders permit.

26 (14) ~~(13)~~ As used in this section:

27 (a) "Completed application" means an application complete on
28 its face and submitted with any applicable fees as well as any
29 other information, records, approval, security, or similar item

1 required by law or rule from a local unit of government, a federal
2 agency, a state department or agency of another state, or a private
3 entity but not from another department or agency of this state. A
4 completed application does not include a health inspection
5 performed by a local health department.

6 (b) "Conducive to the welfare of the children" means:

7 (i) The service and facility comply with this act and the
8 administrative rules promulgated under this act.

9 (ii) The disposition, temperament, condition, and action of the
10 applicant, licensee, licensee designee, program director, child
11 care staff member, and member of the household promote the safety
12 and well-being of the children served.

13 (c) **"Critical infrastructure" includes utilities,**
14 **manufacturing, mass transit, and groceries or other essential**
15 **supplies, goods, or equipment.**

16 (d) **"Disaster relief child care center" means a child care**
17 **center offering child care as provided in subsection (13).**

18 (e) **"Essential workforce" includes health care workers, home**
19 **health workers, direct care workers, emergency medical service**
20 **providers, first responders, law enforcement personnel, sanitation**
21 **workers, child care workers, including employees acting as child**
22 **care workers in disaster relief child care centers, personnel**
23 **providing correctional services, postal workers, public health**
24 **employees, key government employees, court personnel, and others**
25 **providing critical infrastructure to the people of this state,**
26 **including individuals performing, remotely or in person, critical**
27 **infrastructure work, necessary government activities, or minimum**
28 **basic operations under Executive Order No. 2020-42 or any order**
29 **that may follow from it.**

1 (f) "Key government employees" includes child protective
 2 services workers, child welfare workers, foster care workers,
 3 including workers from contracted agencies, recipient rights
 4 workers, employees of the office of the governor, cabinet officers
 5 and their designees, department of health and human services field
 6 office staff, unemployment insurance agency employees, and other
 7 employees identified by the department of technology, management,
 8 and budget.

9 Sec. 7a. (1) A provisional license may be issued to a child
 10 care organization that is temporarily unable to conform to the
 11 rules. ~~The issuance of~~ **Except as provided in subsection (3),**
 12 **issuing** a provisional license ~~shall be~~ **is** contingent upon ~~the~~
 13 ~~submission on~~ **submitting** to the department ~~of~~ an acceptable plan to
 14 overcome the deficiency present in the child care organization
 15 within the time limitations of the provisional licensing period.

16 (2) A provisional license expires 6 months after the date of
 17 issuance and may be issued not more than 3 times. The renewal of a
 18 provisional license shall be contingent upon the submission of a
 19 new application and approval by the appropriate department. At the
 20 end of the 6 months, the department shall either issue a regular
 21 license, refuse to renew the license as provided in section 11, or
 22 modify to a provisional license as provided in this section.

23 (3) **Until June 1, 2020 or the end of the states of emergency**
 24 **and disaster related to COVID-19, a provisional license may be**
 25 **issued to a child care organization without submission of an**
 26 **acceptable plan to overcome the deficiency present in the child**
 27 **care organization to the department within the time limitations of**
 28 **the provisional licensing period. A provisional license issued**
 29 **under this subsection may be issued with an expiration date no**

1 earlier than 1 month after the date of issuance and no later than 6
2 months after the date of issuance, and may be renewed at the
3 discretion of the department until the end of the declared states
4 of emergency and disaster relating to COVID-19.

5 (4) ~~(3)~~—The department may modify the license of a child care
6 organization to a provisional license when the licensee willfully
7 and substantially violates this act, the rules promulgated under
8 this act, or the terms of the license. A license cannot be modified
9 unless the licensee is given written notice of the grounds of the
10 proposed modification. If the proposed modification is not
11 appealed, the license will be modified. The proposed modification
12 must be appealed within 30 days after receipt by writing the
13 director or director's designee. Upon receipt of the appeal, the
14 director or director's designee must initiate the provisions of
15 chapters 4 and 5 of the administrative procedures act of 1969, 1969
16 PA 306, MCL 24.271 to 24.292. Notice of a hearing must be given to
17 the licensee by personal service or delivery to the proper address
18 by certified mail not less than 2 weeks before the date of the
19 hearing. The decision of the director must be made as soon as
20 practicable after the hearing and forwarded to the licensee by
21 certified mail not more than 10 days after that. The formal notice
22 and hearing requirement in this subsection does not apply if the
23 licensee and the department comply with subsection ~~(4)~~-(5).

24 (5) ~~(4)~~—The department may immediately modify a license
25 without providing written notice of the grounds of the proposed
26 action or giving the licensee 30 days to appeal if the licensee, in
27 writing, does the following:

28 (a) Waives the requirement that the department provide written
29 notice of the grounds for the proposed action.

1 (b) Waives the 30-day time frame in which to submit a written
2 appeal to the proposed action.

3 (c) Waives the right to implement the provisions of chapters 4
4 and 5 of the administrative procedures act of 1969, 1969 PA 306,
5 MCL 24.271 to 24.292.

6 (6) ~~(5)~~—As used in this section:

7 (a) "Substantially violates" means repeated violations or
8 noncompliance of this act, a rule promulgated under this act, or
9 the terms of a license that jeopardizes the health, safety, care,
10 treatment, maintenance, or supervision of individuals receiving
11 services or, in the case of an applicant, individuals who may
12 receive services.

13 (b) "Willfully violates" means, after receiving a copy of the
14 act, the rules promulgated under the act and, for a license, a copy
15 of the terms of a license, or a previous citation for a violation
16 of this act or a rule promulgated under this act, a licensee or an
17 applicant knew or had reason to know that his or her conduct was a
18 violation of the act, rules promulgated under the act, or the terms
19 of a license.