

QUALIFIED RESIDENTIAL TREATMENT PROGRAMS AND OTHER CHILD WELFARE AMENDMENTS

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Senate Bill 466 (S-1) as reported from House committee
Senate Bill 468 (S-1) as reported from House committee
Senate Bill 539 (H-1) as reported from House committee
Sponsor: Sen. John Bizon, M.D.

Analysis available at
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Senate Bills 467 and 469 as reported from House committee
Sponsor: Sen. Marshall Bullock II

1st House Committee: Families, Children and Seniors
2nd House Committee: Ways and Means
Senate Committee: Families, Seniors, and Veterans
Revised 12-18-19

(Enacted as Public Acts 6 through 10 of 2020)

SUMMARY:

Taken together, the bills would amend the child care licensing act and the juvenile code to revise provisions governing child welfare in Michigan. Among other things, the bills would allow implementation of qualified residential treatment programs, add or modify the definitions of certain terms, provide for certain variances regarding the placement of children, and revise requirements for employee criminal history checks.

Senate Bill 466 would amend 1973 PA 116, the child care licensing act, to add definitions for the terms *child caring institution staff member* and *qualified residential treatment program* and to revise the definitions of *foster family home* and *foster family group home*.

Qualified residential treatment program (QRTP) would mean a program within a *child caring institution* to which all of the following apply:

- It has a trauma-informed treatment model, which at a minimum means that it includes trauma awareness, knowledge, and skills in its culture, practices, and policies.
- It has registered or licensed nursing and other licensed clinical staff on-site or available at all times to provide care within their respective scope of practice as provided in the parts of the Public Health Code that govern the practices of medicine, nursing, counseling, psychology, applied behavior analysis, and social work.
- It integrates families into treatment, including maintaining sibling connections.
- It provides aftercare services for at least six months after discharge.
- It is accredited by the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation, or any other independent, nonprofit accrediting organization approved by the U.S. Secretary of Health and Human Services.
- It does not include a detention facility, forestry camp, training school, or other facility operated primarily for detaining minor children who are determined to be delinquent.

Child caring institution is defined by the act as a child care facility that is organized to receive minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained for that purpose, and that operates throughout the year. It includes a maternity home for unmarried mothers who are minors, an agency group home, and an institution for developmentally disabled or emotionally disturbed minors. It does not include a hospital, a home for the aged, a nursing home, a boarding school, a hospital or facility operated by the state or licensed under the Mental Health Code, an adult foster care family home, or an adult foster care small group home.

Child caring institution staff member would mean an individual who is at least 18 years of age to whom one or more of the following applies:

- He or she is employed by a child caring institution for compensation, regardless of whether he or she works directly with children.
- He or she is a contract employee or self-employed individual with a child caring institution.
- He or she is an intern or other individual who provides specific services under the rules promulgated under the act.

Foster family home would mean the private home of an individual who is licensed to provide 24-hour care for up to four minor children who are placed away from their parent, legal guardian, or legal custodian in foster care. The licensed individual providing care would have to comply with the reasonable and prudent parenting standard defined in the Probate Code.¹

Foster family group home would mean the private home of an individual who is licensed to provide 24-hour care for five or six minor children who are placed away from their parent, legal guardian, or legal custodian in foster care. The licensed individual providing care would have to comply with the reasonable and prudent parenting standard defined in the Probate Code.²

Reasonable and prudent parenting standard is defined in the Probate Code to mean decisions characterized by careful and sensible parental decisions that maintain a child's health, safety, and best interest while encouraging the emotional and developmental growth of the child when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

MCL 722.111

¹ The act currently defines a foster family home as a private home in which up to four minor children, who are not related to an adult member of the household by blood or marriage, who are not placed in the household under the Michigan Adoption Code, or who are not hosted in the private home as provided in the Safe Families for Children Act, are given care and supervision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

² The act currently defines a foster family group home as a private home in which five or six minor children, who are not related to an adult member of the household by blood or marriage, who are not placed in the household under the Michigan Adoption Code, or who are not hosted in the private home as provided in the Safe Families for Children Act, are provided care for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

Senate Bill 467 would amend the child care licensing act to modify the reasons the Department of Health and Human Services (DHHS), under certain circumstances, could grant a variance to one or more licensing rules or statutes regulating foster family homes or foster family group homes. Currently, upon recommendation of a local foster care review board or a child placing agency, DHHS can grant a variance to allow the child and one or more siblings to remain or be placed together. The bill would additionally allow a variance, upon recommendation, for either of the following reasons:

- To allow a child with an established meaningful relationship with the family to remain with the family.
- To allow a family with special training or skills to provide care to a child who has a severe disability.

MCL 722.118b

Senate Bill 468 would amend the child care licensing act to provide regulations for placement of a child in a qualified residential treatment program (QRTP). Under the bill, the following requirements would apply to a child in foster care who is placed in a QRTP:

- The child placing agency responsible for the care and supervision of the child would have to assemble a team consisting of all appropriate biological family members, relatives, other supportive adults, and professionals who are a resource to the child's family, such as teachers, medical or mental health providers, or clergy. The team for a child 14 or older would have to include members of his or her permanency planning team who are selected by the child.
- The child placing agency would have to document in the child's case plan the effort to include individuals on the team, the contact information for the team and other relatives, and other evidence specified in the bill related to the team's meetings and processes, especially those that concern the placement preferences of the child and the placement setting recommended.
- Within 30 days after the placement, a **qualified individual** would have to do all of the following, in conjunction with the team described above:
 - Assess the child's strengths and needs using an assessment tool approved by the U.S. Secretary of Health and Human Services.
 - Determine whether placement in a foster family home or another setting would provide the best level of care for the child in the least restrictive environment and be consistent with the child's long- and short-term goals as specified in his or her permanency plan.
 - Develop a list of long- and short-term mental and behavioral health goals specific to the child.

Qualified individual would mean a trained professional or licensed clinician who is not a DHHS employee and is not connected to or affiliated with any placement setting in which children are placed by DHHS. (DHHS could seek a waiver from the U.S. Secretary of Health and Human Services to allow exceptions from these criteria.)

The qualified individual conducting the assessment would have to specify in writing the reasons for a determination that the child should not be placed in a foster family home, including why the needs of the child cannot be met by the family of the child or in a family foster home and why placement in a QRTP would provide the best level of care for the child.

Within 60 days after the start of a child's placement in a QRTP, the court or an administrative body appointed or approved by the court would have to do all of the following:

- Consider the assessment, determination, and documentation made by the qualified individual.
- Determine whether the child's needs can be met through placement in a family foster home or, if not, whether placement in a QRTP would provide the best level of care for the child.
- Approve or disapprove the QRTP placement.

The written documentation of the determination and approval or disapproval of the court or other body would become part of the child's case plan.

While the child was in a QRTP, DHHS would have to submit, at each dispositional review hearing and permanency planning hearing concerning the child, evidence demonstrating that an ongoing assessment of the child's strengths and needs still supports the determination that a QRTP would provide the best level of care for the child, as well as evidence documenting specific treatment or service needs that will be met for the child in the placement and reasonable efforts made by DHHS to prepare the child to return home or to be placed with a relative, guardian, or adoptive parent or in a foster family home. The court would have to approve or disapprove the QRTP placement at each dispositional review hearing and permanency planning hearing held concerning the child.

For a child placed in a QRTP for more than 12 consecutive months or 18 nonconsecutive months, or for a child under 13 placed in a QRTP for more than six nonconsecutive months, DHHS would have to obtain the signed approval of the director of DHHS for continued placement of the child in that setting.

Finally, the bill would prohibit DHHS from enacting or advancing policies or practices that would result in a significant increase in the population of youth in the juvenile justice system in response to certain restrictions on foster care payments for child caring institutions under 42 USC 672(k).

Proposed MCL 722.123a

Senate Bill 469 would amend the juvenile code (Chapter XIIA of the Probate Code) to require the court to approve or disapprove QRTP placement as proposed by Senate Bill 468.

MCL 712A.19 and 712A.19a

Senate Bill 539 would amend the child care licensing act to require a child caring institution to complete a fingerprint-based criminal history check for all staff members. A child caring institution could not allow a staff member to work there unless all of the following conditions were met:

- DHHS receives written consent from the individual to conduct a criminal history check. DHHS would require the individual to submit his or her fingerprints to the Department of State Police and the Federal Bureau of Investigation for the criminal history check.
- The child caring institution receives the results of the criminal history check from DHHS.
- If the employee has a criminal conviction, the child caring institution would have to complete a written evaluation addressing the nature of the conviction, how long ago it was,

and the relationship between the conviction and regulated activity in the child caring institution for purposes of determining the individual's suitability for employment there.

A staff member who had previously undergone a criminal history check as described above and remained continuously employed with the child caring institution would not have to submit to another criminal history check for the renewal of that child caring institution's license.

MCL 722.115d and 722.115k

Tie-bars

Senate Bills 466 through 469 are all tie-barred to one another, which means that each could not take effect unless the others were enacted. Senate Bill 466 is additionally tie-barred to SB 539, meaning that SB 539 would also have to be enacted before SB 466 could take effect.

Senate Bill 539 is tie-barred to SBs 466 through 469, which means that it could not take effect unless those four bills were also enacted.

FISCAL IMPACT:

Senate Bill 466 would help satisfy new federal requirements and likely prevent the state from forfeiting a significant amount of federal Title IV-E funding for child welfare child care institution funding. The bill's provisions that define a "qualified residential treatment program" (QRTP) and that add other various requirements would satisfy new federal stipulations required by the Families First Prevention Services Act (FFPSA), Public Law 115-123, which was enacted in February 2018. Under the FFPSA's provisions, a state would no longer be able to receive federal Title IV-E funding for children placed in congregate care or residential out-of-home placements, unless these placements meet the requirements of the new QRTP definition or other specified facility qualifications.

According to DHHS, in FY 2018, 1,813 children were placed in congregate care settings at some time during the year, and the average length of continuous stay in these settings was 260 days. The daily foster care rate provided for these children in congregate care ranges from \$208 per day to \$620 per day. Without the enactment of the provisions contained in the bill, the federal Title IV-E funding currently used to help fund these placements would no longer be available.

The additional requirements of the QRTP definition may eventually increase costs to the DHHS by an indeterminate amount, depending upon how much any increase in required services under the new definition might raise expenses and administrative costs.

Senate Bill 467 would have no significant increase in costs for DHHS or local units of government.

Senate Bill 468 would increase costs for DHHS by approximately \$5.0 million. This increase in cost would be funded by a mix of both state funding and either federal Title IV-E or federal Title XX funding. The bill's provision that the qualified individual that conducts the assessments cannot be a DHHS employee (unless a waiver is requested) requires that the department contract with a third-party provider to complete the assessments. According to

DHHS, the department anticipates not asking for a waiver and estimates that the additional costs would be approximately \$5.0 million.

The FFPSA requires that a “qualified individual” make the assessments of QRTPs. Senate Bill 468 would satisfy this new federal requirement and ensure that the state does not forfeit the federal Title IV-E funding currently used to help fund these placements.

Senate Bill 469 would have an indeterminate fiscal impact on local courts. Under the bill, the Family Division of the Circuit Court would be required to review and approve or disapprove QRTP placement for children. Costs could be incurred depending on how these provisions affect caseloads in the courts and related administrative costs. Depending on the extent of costs incurred, local courts could most likely cover costs with existing funding.

Senate Bill 539 would require DHHS to conduct fingerprint-based criminal history checks for all adults before they are employed as a staff member for a child care institution. Currently, the department does not have the statutory authority to fingerprint these staff. The FFPSA requires that states must conduct criminal history checks for all adult child care institution staff, including fingerprint-based national database checks, beginning January 1, 2020. Any increased costs to DHHS of Senate Bill 539 would be dependent upon additional administrative costs that might be incurred for the collection or processing of fingerprints. However, according to the department, sufficient funding for these additional requirements has been allocated in the FY 2019-20 budget.

According to the department, if the statutory changes contained in Senate Bill 539 are not in place by January 1, 2020, there would be a significant negative fiscal impact to the state because federal Title IV-E funding could no longer be used to finance children placed in child caring institutions. Based on FY 2018 child care institution maintenance funding, the department estimates that the amount of federal IV-E funding that would be forfeited would be approximately \$27.6 million.

POSITIONS:

A representative of the Department of Health and Human Services testified in support of the bills. (10-30-19)

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