Legislative Analysis

FOSTER CARE AND ADOPTION AMENDMENTS

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House Bill 5974 (proposed substitute H-1)
House Bill 6073 (proposed substitute H-1)
House Bill 6074 as introduced
Sponsor: Rep. Mary Whiteford

House Bill 5975 (proposed substitute H-1)
Sponsor: Rep. Laurie Pohutsky

House Bill 5976 as introduced
Sponsor: Rep. Tyrone A. Carter

House Bill 5977 as introduced
Sponsor: Rep. Phil Green

House Bill 5978 as introduced
Sponsor: Rep. Rodney Wakeman

House Bill 6070 (proposed substitute H-1)
Sponsor: Rep. Jack O'Malley

House Bill 5980 as introduced
Sponsor: Rep. Stephanie A. Young

House Bill 5981 as introduced
Sponsor: Rep. Sarah Anthony

House Bill 6075 as introduced
Sponsor: Rep. Daire Rendon

Committee: Families, Children and Seniors
Complete to 5-10-22

SUMMARY:

Taken together, the bills would do the following:

- Define certain nonparent adults as relatives under the juvenile code, the child care licensing act, the Probate Code, and the Guardianship Assistance Act. (HBs 5974, 6073, 6074, and 6075)
- Provide a credit against the individual and corporate income tax for qualified taxpayers that provide paid adoption leave to their employees. (HB 6070)
- Provide that a qualified residential treatment program is a residential use of property under Michigan zoning law. (HB 5981)
- Require lawyer-guardians ad litem to have trauma-informed training if provided by the State Court Administrative Office (SCAO). (HB 5975)
- Require the Department of Health and Human Services (DHHS) to do all of the following:
    - Issue extended (three-year) foster family home and foster family group home licenses under certain conditions. (HB 5980)
    - Conduct a comprehensive needs assessment regarding the use of residential treatment. (HB 5977)
    - Implement requirements concerning family finding and engagement services. (HB 5978)
    - Submit a cost savings report to the legislature. (HB 5976)

House Bill 5974 would amend the juvenile code (Chapter XIIA of the Probate Code) to amend the definition of the term ***relative*** as used in specified sections of the code.[1]

Relative now generally means an individual who is at least 18 who by blood, marriage, or adoption has one of several listed relationships to a child. In addition, for the purpose of placement, ***relative*** includes a stepparent, ex-stepparent, parent who shares custody of a half-sibling, or parent of a man whom the court has found probable cause to believe is the putative father of the child if there is no man with legally established rights to the child.

Under the bill, ***relative*** would mean either of the following:

- An individual who is at least 18 years old who is related to a child within the fifth degree by blood, marriage, or adoption, including the following:
  - The spouse of an individual related to the child within the fifth degree, even after the marriage has ended by death or divorce.
  - The parent who shares custody of a half-sibling of the child.
  - The parent of a man whom the court has found probable cause to believe is the putative father of the child if there is no man with legally established rights to the child.
- An individual who is at least 18 years old who is not related to a child within the fifth degree by blood, marriage, or adoption but who has a strong emotional tie or role in the child's life (or in the child's parent's life, if the child is an infant), as determined by DHHS or, if the child is an ***Indian child***, as determined solely by the ***Indian child's tribe***.

  Indian child would mean an unmarried person who is under the age of 18 and either is a member of an ***Indian tribe*** or is eligible for membership in an Indian tribe as determined by that Indian tribe.

  Indian tribe would mean any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in the federal Alaska Native Claims Settlement Act.

  Indian child's tribe would mean the Indian tribe an Indian child is a member of or eligible for membership in or, if the child is a member of or eligible for membership in more than one tribe, the tribe with which the child has the most significant contacts.

MCL 712A.13a

House Bill 5975 would amend the juvenile code to require a lawyer-guardian ad litem to participate in trauma-informed training if provided by SCAO.

MCL 712A.17d

House Bill 5976 would amend the Foster Care and Adoption Services Act to require DHHS to submit to the legislature and the House and Senate appropriations committees an annual report that identifies cost savings due to reductions in foster youth in foster care programs compared

[1] Of the applicable sections, the term ***relative*** is used in sections 13b (change in foster care placement), 18f (preparation and review of case service plan), 19 (court review hearings), and 19a (permanency planning hearings).

to the cost when the highest number of foster youth were in the foster care system in the immediately preceding 10 years. The report would have to include details of DHHS's efforts to reinvest the costs savings identified in the report, including information about reinvestment in prevention services, permanency services, adoption services, safety assessments, adoptive and foster family recruitment, training, caseworker bonuses, and wage increases. The report would be due each January 1 beginning January 1, 2023.

Proposed MCL 722.953a

House Bill 5977 would amend 1973 PA 116, the child care licensing act, to require DHHS to annually conduct a comprehensive needs assessment regarding using residential treatment and the needs of youth who are referred to this type of treatment. The assessment would have to identify the types of beds currently being used and the types of beds needed and the age group, gender, and geographic region of youth receiving those treatment services and those in need of the treatment services. DHHS would have to work with community partners to assist providers in meeting the needs of foster youth identified through the assessment. The assessment would have to be conducted every January 1 beginning January 1, 2023.

Proposed MCL 722.116a

House Bill 5978 would amend the Foster Care and Adoption Services Act to provide that, upon appropriation and by no later than October 1, 2022, DHHS must work in conjunction with entities that perform family finding and engagement services to help foster youth who are separated from their family to connect to family and friends who may assist in the foster youth's care. In addition, by December 31, 2022, DHHS would have to make efforts in family finding and engagement services on behalf of all foster youth currently in the foster care program. DHHS also would have to incorporate family finding and engagement services in all current and future child abuse and child neglect investigations.

Proposed MCL 722.953b

House Bill 5980 would amend the child care licensing act to require DHHS to issue an extended license to a foster family home or foster family group home that has been licensed for at least one year and is in good standing with DHHS. An extended license would be effective for three years after its date of issuance unless revoked, refused renewal, or modified to a provisional license under the act. An extended license would have to be renewed every three years upon application and approval. (A regular license under the act is currently effective for two years after the date of issuance unless revoked, refused renewal, or modified to a provisional license.)

MCL 722.118

House Bill 5981 would amend the Michigan Zoning Enabling Act to provide that a ***qualified residential treatment program*** is a residential use of property for the purposes of zoning, is a permitted use in all residential zones, and is not subject to a different special or conditional use permit or procedure than that required for other dwellings of similar density in the same zone.

Qualified residential treatment program would mean a program in a child caring institution to which all of the following apply:[2]

- The program has a trauma-informed treatment model, evidenced by the inclusion of trauma awareness, knowledge, and skills into the program's culture, practices, and policies.
- The program has registered or licensed nursing and other licensed clinical staff on-site or available 24 hours a day, seven days a week, who provide care in the scope of their practice as provided in Part 170 (Medicine), Part 172 (Nursing), Part 181 (Counseling), Part 182 (Psychology), Part 182A (Applied Behavior Analysis), and Part 185 (Social Work) of the Public Health Code.
- The program integrates families into treatment, including maintaining sibling connections.
- The program provides aftercare services for at least six months post discharge.
- The program is accredited by an independent not-for-profit organization as described in 42 USC 672(k)(4)(G).[3]
- The program 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.

House Bill 6070 would amend Parts 1 and 2 (individual and corporate income tax) of the Income Tax Act to provide that, for tax years beginning on and after January 1, 2023, a ***qualified taxpayer*** that voluntarily provides paid ***adoption leave*** to its employees may claim a credit against the tax in an amount equal to 50% of the amount of wages[4] paid during the tax year to each qualifying employee during any period the employee is on adoption leave or $4,000 per qualified employee, whichever is less.

Qualified taxpayer would mean a taxpayer that is an employer that has written policy offering adoption leave that satisfies the following:

- The policy provides at least two weeks of paid adoption leave for each full-time qualifying employee and a proportionate amount of adoption leave for each part-time qualifying employee.
- The rate of payment for adoption leave is at least 50% of the wage normally paid to that same employee for services performed for the employer.

Adoption leave would mean a period of absence related to an adoption of a child by the employee to provide time for bonding and adjustments immediately after placement of that child with the employee.

Qualified employee would mean an individual who has been employed by the employer for at least one year and who for the preceding year had compensation that does not exceed 60% of the amount applicable for highly compensated employees under the Internal Revenue Code for that same year.[5]

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[2] Also see https://dhhs.michigan.gov/OLMWEB/EX/FO/Public/FOM/912-1.pdf

[3] See https://www.law.cornell.edu/uscode/text/42/672

[4] As defined in section 3306(b) of the Internal Revenue Code: https://www.law.cornell.edu/uscode/text/26/3306

[5] If the preceding year were 2021, the applicable amount would be $130,000. Sixty percent of that amount is $78,000. See section 414(q)(1)(B) https://www.law.cornell.edu/uscode/text/26/414. The adjusted amounts are available here: https://www.irs.gov/retirement-plans/plan-participant-employee/definitions

However, the maximum amount of leave with respect to any qualifying employee for which a credit may be claimed under the bill could not exceed 12 weeks. The credit could not exceed the employee's normal hourly wage rate multiplied by the number of hours of leave taken. The wages of an employee not paid an hourly wage would have to be prorated to an hourly wage rate as prescribed by the Department of Treasury. Any adoption leave paid by the state or a political subdivision of the state or required to be paid by law could not be included in determining the amount of the credit under the bill.

The amendments to the individual income tax would provide that a qualified taxpayer who is a member of a flow-through entity that voluntarily provides paid adoption leave to its employees could claim credit against the member's tax liability based on the member's distributive share of business income reported from that flow-through entity or an alternative method approved by the department.

If the amount of credit allowed for a tax year and any unused carryforward exceeded the qualified taxpayer's tax liability for the tax year, the portion that exceeds the tax liability would not be refunded but could be carried forward to offset tax lability in subsequent tax years for up to five years.

MCL 206.678

MCL 125.3102 and 125.3206

House Bills 6073, 6074, and 6075 would respectively amend provisions of the child care licensing act, the Probate Code and juvenile code, and the Guardianship Assistance Act to provide that the term "related" or "relative," as applicable, has the meaning given to "relative" as defined by House Bill 5974, above.

MCL 722.111 (HB 6073)
MCL 710.22 and 712A.18 (HB 6074)
MCL 722.872 (HB 6075)

FISCAL IMPACT:

House Bill 5974 would not have a significant fiscal impact on state expenditures to DHHS or on local units of government.

House Bill 5975 would have an indeterminate fiscal impact on the state. The bill would require lawyer-guardians ad litem (LGALs) to take trauma-informed training if provided by SCAO. The fiscal impact would depend on whether training is provided and, if so, the form of that training. According to SCAO, training options are likely to result in the following costs:

- A 60- to 90-minute training webinar would cost approximately $500.
- A six-hour training webinar would cost approximately $1,600, utilizing three to four speakers.
- Adding a module to the current five-module LGAL online training on the SCAO Learning Management System (LMS) would cost roughly $6,000. Costs would include development of written content, adding content to the LMS, testing on the LMS, etc.

- A full-day in person training for up to 100 LGALs would cost approximately $10,000 ($4,200 for the venue, $4,700 for the speakers, $400 for travel, and $500 for printing).

House Bill 5976 would have no fiscal impact on the state and local units of government, except for any negligible DHHS costs for providing an annual report to the legislature. It should be noted, however, that section 367b of the Management and Budget Act requires the May Revenue Estimating Conference to forecast Medicaid and human services (including foster care) expenditure and caseload projections for the entitlement lines for the current and next two ensuing fiscal years. These expenditure and caseload projections, in practice, automatically increase or decrease the Medicaid and human services entitlement line items, which makes any efforts to "reinvest" savings difficult. Conversely, if a Medicaid and human services entitlement line item is forecast to have a shortfall, that entitlement line is not then required, for example, to reduce reimbursement rates, eligibility limits, or utilization limits.

House Bill 5977 would increase state and local units of government costs by a minimal amount. The legislature has appropriated anywhere from $250,000 to $500,000 for similar needs assessments performed by DHHS. The counties may also experience a minimal cost, as they may need to work with and respond to any information requests from DHHS to determine how counties utilize their licensed child caring institution beds, by need, age, and gender.

House Bill 5978 would have no fiscal impact on the state or local units of government unless there is a separate legislative action to appropriate funds for DHHS for family finding and engagement services.

House Bill 5980 would likely increase state expenditures to DHHS by an indeterminate amount and would not have a significant impact on local units of government. Under the bill, the department may see decreased costs related to the administration of foster family homes and foster family group homes license renewal every three years rather than every two years. The amount of any savings gained is indeterminate and would depend on the number of extended licenses that are issued by the department.

House Bill 5981 would not have a significant fiscal impact on state expenditures to DHHS or on local units of government.

House Bill 6073 would not have a fiscal impact on any unit of state or local government.

House Bills 6074 and 6075 would not have a significant fiscal impact on state expenditures to the Department of Health and Human Services (DHHS) or local units of government.

A fiscal analysis of **House Bill 6070** is in progress.

Legislative Analyst: E. Best
Fiscal Analysts: Sydney Brown
Kevin Koorstra
Robin Risko
Jim Stansell